FEDERAL REGISTER

Vol. 88 Wednesday,
No. 210 November 1, 2023

Pages 74877–75226

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 88 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–09512—1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Printed on recycled paper.

Contents

Federal Register
Vol. 88, No. 210
Wednesday, November 1, 2023

Agency for Healthcare Research and Quality
NOTICES
Supplemental Evidence and Data Request:
Healthcare Delivery of Clinical Preventive Services for People with Disabilities, 74996–74998

Agriculture Department
See Animal and Plant Health Inspection Service
See Rural Housing Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74973–74974

Air Force Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74982–74984

Animal and Plant Health Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Importation of Live Swine, Pork and Pork Products, and Swine Semen From the European Union; Correction, 74974

Army Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74984–74985

Bureau of the Fiscal Service
RULES
Indorsement and Payment of Checks Drawn on the United States Treasury, 74884–74890

Centers for Medicare & Medicaid Services
PROPOSED RULES
21st Century Cures Act:
Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking, 74947–74970
NOTICES
Privacy Act; Matching Program, 74998–74999

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See National Technical Information Service

Consumer Product Safety Commission
PROPOSED RULES
Safety Standard:
Blade-Contact Injuries on Table Saws, 74909–74939

Defense Department
See Air Force Department
See Army Department
PROPOSED RULES
Federal Acquisition Regulation:
Cyber Threat and Incident Reporting and Information Sharing, 74970–74971
Standardizing Cybersecurity Requirements for Unclassified Federal Information Systems, 74970
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74985–74987
Meetings:
Board of Visitors, National Defense University, 74987–74988

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Charter Online Management and Performance System, 74988

Election Assistance Commission
NOTICES
Meetings; Sunshine Act, 74988–74989

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
NOTICES
Pesticides:
Concept for a Framework to Assess the Risk to the Effectiveness of Human and Animal Drugs Posed by Certain Antibacterial or Antifungal Pesticides, 74994–74995

Federal Accounting Standards Advisory Board
NOTICES
Meetings:
Appointments Panel Meeting, 74995

Federal Aviation Administration
PROPOSED RULES
Removal of Expiration Date on a Flight Instructor Certificate; Additional Qualification Requirements to Train Initial Flight Instructor Applicants; and Other Provisions:
Extension of Comment Period, 74908–74909
NOTICES
Fiscal Year 2024 Funding Opportunity:
Contract Tower Competitive Grant Program, 75083–75087

Federal Energy Regulatory Commission
RULES
Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards Under the NERC Standards Efficiency Review, 74879–74884
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74991–74993
Combined Filings, 74989–74991
Environmental Assessments; Availability, etc.:
Georgia Power Co., 74990
Meetings:
New York Power Authority; Technical Conference, 74993
Modification of Procedural Schedule:
FFP Project 101, LLC, 74990

Preliminary Determination of a Qualifying Conduit Hydropower Facility:
City of Homer, AK, 74993–74994

Federal Maritime Commission
NOTICES
Meetings:
National Shipper Advisory Committee, November 2023, 74995–74996

Federal Motor Carrier Safety Administration
NOTICES
Exemption Application:
Qualification of Drivers; Epilepsy and Seizure Disorders, 75089–75092
Qualification of Drivers; Hearing, 75088–75089
Meetings:
Women of Trucking Advisory Board, 75087–75088

Federal Reserve System
NOTICES
Change in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 74996

Fish and Wildlife Service
RULES
Endangered and Threatened Species:
Reclassifying Mitracarpus polycladus, 74890–74907

Food and Drug Administration
PROPOSED RULES
Prior Notice:
Adding Requirement to Submit Mail Tracking Number for Articles of Food Arriving by International Mail and Timeframe for Post-Refusal and Post-Hold Submissions, 74939–74947
NOTICES
Drug Products not Withdrawn from Sale for Reasons of Safety or Effectiveness:
Calcium Disodium Versenate (Edetate Calcium Disodium) Injection, 200 Milligrams Per Milliliter, and Others, 75002–75003
Final Order Terminating Debarment:
David Winne; Grant of Special Termination, 74999–75000
Patent Extension Regulatory Review Period:
Omegaven, 75003–75004
Requests for Nominations:
Public Advisory Panels of the Medical Devices Advisory Committee, 75000–75002

Foreign Assets Control Office
NOTICES
Sanctions Action, 75095

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation:
Cyber Threat and Incident Reporting and Information Sharing, 74970–74971
Standardizing Cybersecurity Requirements for Unclassified Federal Information Systems, 74970

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
PROPOSED RULES
21st Century Cures Act:
Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking, 74947–74970

Health Resources and Services Administration
NOTICES
Meetings:
Advisory Committee on Infant and Maternal Mortality; Correction, 75004

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Manufactured Home Construction and Safety Standards Act Park Model RV Exemption, 75012–75013
Public Housing Capital Fund Program, 75013–75014

Indian Affairs Bureau
NOTICES
Helping Expedite and Advance Responsible Tribal Homeownership Act:
Approval of Ho-Chunk Nation of Wisconsin Amended Residential Leasing Ordinance, 75014–75015
Indian Gaming:
Approval of Tribal-State Class III Gaming Compact Amendment between Spokane Tribe of Indians and the State of Washington, 75016

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office
NOTICES
Privacy Act; Systems of Records, 75016–75019

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Drawn Stainless Steel Sinks from the People's Republic of China, 74976
Initiation of Five-Year (Sunset) Reviews, 74977–74978
Permits, Applications, Issuances, etc.:
Stanford University, et al.; Duty-Free Entry of Scientific Instruments, 74977

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Light-Based Physiological Measurement Devices and Components Thereof, 75032–75033
Clad Steel Plate from Japan; Institution of a Five-Year Review, 75026–75029
Silicomanganese from China and Ukraine, 75029–75032
Steel Concrete Reinforcing Bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine, 75033–75036

Justice Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Defined Monetary Assistance Victims Reserve, 75036–75037

Land Management Bureau
RULES
Onshore Oil and Gas Operations:
Federal and Indian Oil and Gas Leases; Codification of Onshore Orders 1, 2, 6, and 7; Correction, 74890
NOTICES
Plats of Survey:
Alaska, 75019–75020
Temporary Closure of Public Lands:
2023–2027 Off-Highway Vehicle Races in the Jean/Roach Dry Lakes Special Recreation Management Area, Clark County, NV, 75020–75021

Legal Services Corporation
NOTICES
Grant Awards for the Delivery of Civil Legal Services to Eligible Low-Income Clients Beginning January 1, 2024, 75037–75040

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation:
Cyber Threat and Incident Reporting and Information Sharing, 74970–74971
Standardizing Cybersecurity Requirements for Unclassified Federal Information Systems, 74970

National Credit Union Administration
NOTICES
Staff Draft 2024–2025 Budget Justification, 75040–75076

National Institute of Standards and Technology
NOTICES
Meetings:
National Artificial Intelligence Advisory Committee, 74979

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application, Registration, and Alumni Systems, 75007–75008
Meetings:
Center for Scientific Review, 75009–75010
National Institute of Allergy and Infectious Diseases, 75005–75007, 75009
National Institute of Environmental Health Sciences, 75005
National Institute of Neurological Disorders and Stroke, 75004–75005, 75009
National Institute on Aging, 75006, 75008

National Oceanic and Atmospheric Administration
PROPOSED RULES
Endangered and Threatened Species:
Proposed Protective Regulations for the Threatened Banggai Cardinalfish (Pterapogon kauderni); Meeting and Hearing, 74971–74972
NOTICES
Taking or Importing of Marine Mammals:
Tillamook South Jetty Repairs in Tillamook Bay, OR, 74979–74981

National Technical Information Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Limited Access Death Master File Systems Safeguards Attestation Forms, 74981–74982

Nuclear Regulatory Commission
NOTICES
Environmental Assessments; Availability, etc.:
Global Nuclear Fuel—Americas Wilmington Nuclear Fuel Fabrication Facility, 75076–75078
Performance Review Board Members, 75078

Personnel Management Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Questionnaire for Public Trust Positions and Supplemental Questionnaire for Selected Positions, 75078–75079

Presidential Documents
PROCLAMATIONS
Special Observances:
National First Responders Day (Proc. 10659), 74877–74878
EXECUTIVE ORDERS
Artificial Intelligence; Effort to Ensure Safe, Secure, and Trustworthy Development and Use (EO 14110), 75189–75226

Reclamation Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certification Summary Form and Reporting Summary Form for Acreage Limitation, 75025–75026
Forms to Determine Compliance by Certain Landholders, 75023–75024
Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 75021–75023

Rural Housing Service
NOTICES
Meetings:
Community Facilities Program, Virtual Public Listening Session, 74975–74976

Securities and Exchange Commission
RULES
Short Position and Short Activity Reporting by Institutional Investment Managers, 75100–75188
NOTICES
National Market System Plan Governing the Consolidated Audit Trail for Purposes of Short Sale-Related Data Collection; Amendment, 75079–75080

Small Business Administration
NOTICES
Disaster Declaration:
Tennessee, 75080

Social Security Administration

NOTICES

Privacy Act; System of Records, 75080–75083

State Department

NOTICES

Meetings:

Foreign Affairs Policy Board, 75083

Substance Abuse and Mental Health Services Administration

NOTICES

Fiscal Year 2024 Supplemental Funding Opportunity, 75010–75011

List of Certified Laboratories and Instrumented Initial Testing Facilities that Meet Minimum Standards to Engage in Urine Drug Testing, 75011–75012

Surface Mining Reclamation and Enforcement Office

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Certification of Blasters in Federal Program States and on Indian Lands, 75026

Transportation Department

See Federal Aviation Administration

See Federal Motor Carrier Safety Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Online Complaint Form for Service-Related Issues in Air Transportation, 75093–75095

Meetings:

Advisory Committee on Transportation Equity, 75092–75093

Treasury Department

See Bureau of the Fiscal Service

See Foreign Assets Control Office

NOTICES

Meetings:

Treasury Advisory Committee on Racial Equity, 75095–75096

Veterans Affairs Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Certificate of Delivery of Advance Payment and Enrollment, 75096–75097

Separate Parts In This Issue

Part II

Securities and Exchange Commission, 75100–75188

Part III

Presidential Documents, 75189–75226

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.

3 CFR

Proclamations:

10659 74877

Executive Orders:

14110 75191

14 CFR

Proposed Rules:

61 74908
63 74908
65 74908
141 74908

16 CFR

Proposed Rules:

1264 74909

17 CFR

240 75100
249 75100

18 CFR

40 74879

21 CFR

Proposed Rules:

1 74939

31 CFR

240 74884

42 CFR

Proposed Rules:

414 74947
425 74947
495 74947

43 CFR

3170 74890

45 CFR

Proposed Rules:

171 74947

48 CFR

Proposed Rules:

1 (2 documents) 74970
2 (2 documents) 74970
4 (2 documents) 74970
7 (2 documents) 74970
10 (2 documents) 74970
11 (2 documents) 74970
12 (2 documents) 74970
37 (2 documents) 74970
39 (2 documents) 74970
52 (2 documents) 74970

50 CFR

17 74890

Proposed Rules:

223 74971

Federal Register
Vol. 88, No. 210
Wednesday, November 1, 2023

Presidential Documents

Title 3—

The President

Proclamation 10659 of October 27, 2023

National First Responders Day, 2023

By the President of the United States of America

A Proclamation

Every day, Americans across the country witness the absolute courage and selfless sacrifice of our first responders. Whether they are police officers and sheriff's deputies protecting our communities; firefighters running into burning buildings; or emergency medical technicians, paramedics, 911 dispatchers, 988 crisis responders, and other public health workers providing emergency care, these heroes are always there for us when we need them. On National First Responders Day, we honor and celebrate these extraordinarily brave women and men who put themselves in harm's way to keep our Nation safe.

Today we ask more of our first responders than ever before. Law enforcement officers who serve and defend communities across America are constantly confronted with dangerous threats. Firefighters face growing challenges as climate change makes deadly fires more frequent and ferocious. Relief workers are responding to public emergencies that have no precedent. Emergency medical service providers are working longer hours since the pandemic while taking on new roles and risks. Yet every day, our first responders answer the call while seldom seeking recognition in return, irrespective of the personal toll.

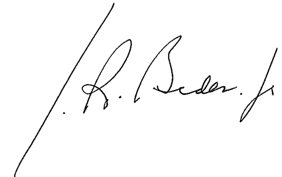
My Administration is committed to supporting and protecting our Nation's first responders. That is why I signed the American Rescue Plan, which provides States, cities, and Tribes with billions of dollars to retain and hire more law enforcement officers, firefighters, and emergency health providers; pay overtime and bonuses; and keep communities safe. Last year I was proud to sign into law the most sweeping gun safety bill in nearly 30 years to ensure our officers are not out-gunned on the streets. We are also strengthening background checks for gun purchasers, cracking down on illegal gun sales, and reining in ghost guns that are frequently used in violent crimes. In 2021, I signed into law the Protecting America's First Responders Act, expanding death, disability, and education benefits for first responders killed or permanently disabled in the line of duty as well as their families.

In addition, I secured $600 million in my Bipartisan Infrastructure Law package to boost Federal firefighter pay and increased the minimum wage to $15 an hour—a critical first step in giving these heroes the pay, respect, and dignity they deserve. Meanwhile, we are supporting crisis response efforts through my Investing in America agenda, which includes funding to improve community resilience to natural disasters. My Administration also launched the National Firefighter Registry for Cancer, the largest effort ever undertaken to understand and reduce the risk of cancer among firefighters. I was proud to sign the Federal Firefighters Fairness Act of 2022 to provide access to job-related disability benefits to firefighters diagnosed with certain kinds of cancer or lung disease as well as legislation funding research on mitigating the risks firefighters face from toxic PFAS—so-called "forever chemicals"—while ensuring the Department of Defense will no longer purchase gear that contains PFAS as soon as an alternative is available.

Today and every day, we thank our first responders for their immeasurable service and recommit to giving them the tools they need to succeed. We remember the patriots who lost their lives running toward danger to protect others. We honor the families of the first responders who continue to sacrifice so their loved ones can serve the rest of us and keep our communities safe. These heroes possess a rare commitment to their fellow Americans. They represent the best of who we are, and they are a big reason why I have never been more optimistic about our country's future.

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 October 28, 2023, as National First Responders Day. I call upon all the people of the United States to observe this day with appropriate programs, ceremonies, and activities to honor our brave first responders and to pay tribute to those who have lost their lives in the line of duty.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of October, 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. 2023–24246
Filed 10–31–23; 8:45 am]
Billing code 3395–F4–P

Rules and Regulations

Federal Register

Vol. 88, No. 210

Wednesday, November 1, 2023

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

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

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM19–17–001; Order No. 902]

Electric Reliability Organization Proposal To Retire Requirements in Reliability Standards Under the NERC Standards Efficiency Review

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final action.

SUMMARY: The Federal Energy Regulatory Commission (Commission) approves the retirement of six Reliability Standards and their requirements proposed by the North American Electric Reliability Corporation, the Commission-certified Electric Reliability Organization.

DATES: This action is effective February 1, 2024.

FOR FURTHER INFORMATION CONTACT:

Michael Gandolfo (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, Telephone: (202) 502–6817

Mark Bennett (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, Telephone: (202) 502–8524

SUPPLEMENTARY INFORMATION: 1. Pursuant to section 215(d)(2) of the Federal Power Act (FPA),[1] the Commission approves the North American Electric Reliability Corporation's (NERC) request to retire six Reliability Standards with a combined total of 56 requirements. For the reasons discussed below, we determine that the retirement of six Reliability Standards (the MOD A Reliability Standards)[2] in their entirety is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

I. Background

A. Section 215 of the FPA and the Mandatory Reliability Standards

2. Section 215 of the FPA provides that the Commission may certify an ERO, the purpose of which is to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.[3] Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[4] Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[5] and subsequently certified NERC.[6]

B. NERC Petition

3. On June 7, 2019, NERC submitted a petition proposing, among other things, the retirement of the MOD A Reliability Standards, in their entirety without replacement (NERC Petition). NERC explained that these requirements are administrative in nature or relate expressly to commercial or business practices and provide little or no reliability benefit.[7] NERC explained that the MOD A Reliability Standards were submitted in response to Commission's directives in Order No. 890 and Order No. 693 to develop Reliability Standards ''to provide for consistency and transparency in the methodologies used by transmission providers to calculate [Available Transfer Capability].''[8] NERC clarified that ''[Available Transfer Capability] and [Available Flowgate Methodology], as well as e-Tags, are commercially-focused elements facilitating interchange and balancing of interchange,'' and that system operators maintain reliability by monitoring Real-time flows based on System Operating Limits and Interconnection Reliability Operating Limits.[9]

C. Notice of Proposed Rulemaking

4. On January 23, 2020, the Commission issued a NOPR proposing to approve the retirement of 74 of the 77 Reliability Standard requirements requested by NERC.[10] In the NOPR, the Commission proposed, *inter alia,* to approve the retirement of the MOD A Reliability Standards, but noted that, if approved, the Commission intended to coordinate the effective dates for the retirement of the MOD A Reliability Standards with successor North American Energy Standards Board (NAESB) business practice standards.[11] The Commission explained that equivalent NAESB business practice standards are expected to replace the MOD A Reliability Standards proposed for retirement.[12]

5. The Commission noted that NERC's proposed retirements ''are largely consistent with the Commission-approved bases for retiring Reliability Standard requirements articulated in

[1] 16 U.S.C. 824o(d)(2).

[2] Reliability Standards MOD–001–1a (Available Transmission System Capability), MOD–004–1 (Capacity Benefit Margin), MOD–008–1 (Transmission Reliability Margin Calculation Methodology), MOD–028–2 (Area Interchange Methodology), MOD–029–2a (Rated System Path Methodology), and MOD–030–3 (Flowgate Methodology).

[3] 16 U.S.C. 824o(c).

[4] *Id.* 824o(e).

[5] *Rules Concerning Certification of the Elec. Reliability Org. & Procedures for the Establishment, Approval, & Enf't. of Elec. Reliability Standards,* Order No. 672, 114 FERC ¶ 61,104, *order on reh'g,* Order No. 672–A, 114 FERC ¶ 61,328 (2006).

[6] *N. Am. Elec. Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[7] *Id.* at 21–22.

[8] NERC Petition at 18 (*citing Preventing Undue Discrimination & Preference in Transmission Serv.,* Order No. 890, 72 FR 12266 (Mar. 15, 2007),118 FERC ¶ 61,119, *order on reh'g,* Order No. 890–A,73 FR 2984 (Jan. 16, 2008) 121 FERC ¶ 61,297 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 74 FR 12540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009); *Mandatory Reliability Standards for the Bulk-Power Sys.,* Order No. 693, 72 FR 16416 (Apr. 4, 2007), 118 FERC ¶ 61,218, at PP 1020–1126 *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007)). In 2009, the Commission approved the six MOD Reliability Standards containing methodologies for calculating Available Transfer Capability (ATC) or Available Flowgate Capacity (AFC). *See, Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, & Existing Transmission Commitments & Mandatory Reliability Standards for the Bulk-Power Sys.,* Order No. 729, 74 FR 64884 (Dec 8, 2009), 129 FERC ¶ 61,155 (2009), *order on reh'g,* Order No. 729–A,75 FR 26057 (May 11, 131 FERC ¶ 61,109 (2010).

[9] NERC Petition at 21.

[10] *Elec. Reliability Org. Proposal to Retire Requirements in Reliability Standards Under the NERC Standards Efficiency Rev.,* Notice of Proposed Rulemaking, 170 FERC ¶ 61,032 (Jan. 23, 2020) (NOPR).

[11] *Id.* P 21 n.35.

[12] *Id.*

prior proceedings.'' [13] In proposing to approve NERC's request, the Commission stated that NERC ''provided an adequate basis to conclude that the requirements proposed for retirement: (1) provide little or no reliability benefit; (2) are administrative in nature or relate expressly to commercial or business practices; or (3) are redundant with other Reliability Standards.'' [14] Further, the Commission acknowledged NERC's assertion that retiring the MOD A Reliability Standards is justified because, being primarily administrative or related to commercial or business practices, they ''no longer serve a reliability purpose.'' [15] Specifically, the Commission noted NERC's assertion that the MOD A Reliability Standards contain ''commercially-focused elements facilitating interchange and balancing of interchange,'' and system operators maintain reliability by monitoring Real-time flows based on System Operating Limits and Interconnection Reliability Operating Limits.[16]

D. NOPR Comments

6. The Commission received five sets of comments—two of which were specific to the proposed retirement of the MOD A Reliability Standards.[17] Neither of the two comments the Commission received in response to NERC's proposed retirement of the MOD A Reliability Standards opposed NERC's proposal. In its comments, Bonneville states that it appreciates the Commission's recognition of the relationship between the MOD A retirements and the publication of Business Practice Standards by NAESB to replace the commercial aspects of the MOD requirements.[18] Further, Bonneville believes ''it will be important to continue the efforts to avoid commercial requirements in the NERC Reliability Standards and, likewise, avoid reliability requirements in NAESB Business Practice Standards.'' [19] Similarly, WAPA expressed its support for the direction of the industry and the work performed by the Standards Efficiency Review project. More specifically, WAPA agreed with NERC's assertion that Available Transfer Capability/Available Flowgate Capability, along with e-Tags, ''are commercially-focused elements facilitating interchange and balancing of interchange.'' [20] WAPA also asked the Commission to ensure that ''appropriate measures are in place to ensure stakeholder[s] can provide input into the development of the new business practices.'' [21]

E. Order No. 873 and the Prior Retirements of Other Reliability Standard Requirements

7. On September 17, 2020, the Commission issued Order No. 873,[22] approving the retirement of 18 Reliability Standard requirements,[23] remanding two requirements for further consideration by NERC, and taking no action on the proposed retirement of the MOD A Reliability Standards.[24] In Order No. 873, the Commission confirmed the approach proposed in the NOPR and provided developments since then, noting that on March 30, 2020, NAESB submitted Version 003.3 of the Standards for Business Practices and Communication Protocols for Public Utilities, including the Modeling business practices intended to replace the MOD A Reliability Standards upon their retirement, for which the Commission had issued a NOPR.[25] The Commission concluded that ''[i]n light of these developments, this final action does not address the retirement of MOD A Reliability Standards. The Commission will determine the appropriate action regarding the proposed retirement of the MOD A Reliability Standards at a later time.'' [26]

F. NAESB Standards for Business Practices and Communications Protocols for Public Utilities

8. In Order No. 676–J, the Commission revised its regulations to incorporate by reference, as mandatory enforceable requirements, the current version of NAESB's Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant (WEQ) of NAESB, Version 003.3 of the NAESB WEQ Business Practice Standards (WEQ Version 003.3 Standards).[27] Among other things, the WEQ Version 003.3 Standards address the technical issues affecting Available Transfer Capability and Available Flowgate Capability calculation for wholesale transmission services, with the addition of certain revisions and corrections. The Commission also revised its regulations to provide that transmission providers must avoid unduly discriminatory and preferential treatment in the calculation of Available Transfer Capability.[28]

9. The first compliance filing concerned the cybersecurity and Parallel Flow Visualization standards included in Version 003.3. The Commission directed utilities to make the second compliance filing reflecting the remainder of the revisions in Version 003.3 12 months after implementation of the WEQ Version 003.2 Standards, or no earlier than October 27, 2022, with an implementation date no earlier than three months following compliance filings submission (no earlier than January 27, 2023), resulting in a 15-month implementation period.[29]

II. Commission Determination

10. Pursuant to section 215(d)(2) of the FPA,[30] the Commission approves the proposed retirement of the MOD A Reliability Standards, to be coordinated with the effective date of the tariff records accepted in the orders on the second set of Order No. 676–J compliance filings, February 1, 2024.[31] As explained herein, we are satisfied with NERC's justification for these retirements. In particular, we note NERC's explanation that the MOD A Reliability Standards are no longer necessary because Available Transfer Capability, Available Flowgate Capability, and e-Tags fundamentally pertain to commercial and business operations, and that system operators

[13] *Id.* P 1 (*citing N. Am. Elec. Reliability Corp.,* 138 FERC ¶ 61,193, at P 81 (March 2012 Order), *order on reh'g and clarification,* 139 FERC ¶ 61,168 (2012); *Elec. Reliability Org. Proposal to Retire Requirements in Reliability Standards,* Order No. 788, 78 FR 73424 (Dec. 6, 2013), 145 FERC ¶ 61,147, at P 1 (2013)).

[14] *Id.* P 25.

[15] *Id.* P 21.

[16] *See id.* P 22 (citing NERC Petition at 21).

[17] These two comments were received from the Bonneville Power Administration (Bonneville) and the Western Area Power Administration (WAPA).

[18] Bonneville Comments at 3.

[19] *Id.*

[20] WAPA Comments at 3.

[21] *Id.* at 5.

[22] *Elec. Reliability Org. Proposal to Retire Requirements in Reliability Standards Under the NERC Standards Efficiency Rev.,* Order No. 873, 172 FERC ¶ 61,225 (2020).

[23] NERC withdrew the originally requested retirement of Reliability Standard VAR–001–6, Requirement R2 on May 14, 2020.

[24] *Id.* P 4.

[25] *Id.* (*citing Standards for Bus. Pracs. & Commc'n Protocols for Pub. Utils.,* Notice of Proposed Rulemaking, 172 FERC ¶ 61,047 (2020)).

[26] *Id.*

[27] *Standards for Bus. Pracs. & Commc'n Protocols for Pub. Utils.,* Order No. 676–J, 86 FR 29491 (June 2, 2021), 175 FERC ¶ 61,139 (2021).

[28] *Id.* P 33.

[29] *Id.* PP 48, 50. The Commission noted that the implementation of the NAESB Available Transfer Capability -related standards contained in WEQ–023 will be coordinated with the retirement of the NERC MOD A Reliability Standards. *Id.* P 43 n.53.

[30] 16 U.S.C. 824o(d)(2).

[31] *See ISO-New England,* 185 FERC ¶ 61,070 (2023); *N.Y. Indep. Sys. Operator, Inc.,* 185 FERC ¶ 61,067 (2023); *PJM Interconnection, L.L.C.,* 185 FERC ¶ 61,068 (2023); *Ala. Power Co.,* 185 FERC ¶ 61,073; *Versant Power,* 185 FERC ¶ 61,065 (2023); *Cal. Indep. Sys. Operator Corp.,* 185 FERC ¶ 61,072 (2023); *MATL LLP,* 185 FERC ¶ 61,074 (2023); *Golden Spread Elec. Coop., Inc.,* 185 FERC ¶ 61,071 (2023).

maintain reliability by monitoring Real-time flows based on System Operating Limits and Interconnection Reliability Operating Limits. We are further persuaded that retiring the MOD A Reliability Standards will not result in a reliability gap.

11. Regarding WAPA's comments focused on the importance of ensuring stakeholders' ability to provide input.[32] Order No. 676–J explained that NAESB has procedures to ensure that interested persons have input into NAESB's standard development regardless of the interested persons' NAESB membership and that ''each standard NAESB adopts must be supported by a consensus of the relevant industry segments. Standards that fail to gain consensus support are not adopted.'' [33] Therefore, we believe WAPA's concerns were fully addressed.

III. Information Collection Statement

12. The information collection requirements contained in this final action are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[34] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[35] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Comments on the collection of information are due within 60 days of the date this order is published in the **Federal Register**. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

13. These MOD Standards are currently located in the FERC–725A (OMB Control No. 1902–0244) collection. The collection is currently approved by OMB and contains Reliability Standards MOD–0001–1a, MOD–004–1, MOD–008–1, MOD–028–2, MOD–029–2a and MOD–030–3 (the MOD A Reliability Standards), along with other Reliability Standards. In Docket No. RM19–17–001, the Commission approves the retirement of these six current OMB-approved MOD Reliability Standards and their associated requirements. The retirements will be coordinated with the effective dates for the successor NAESB business practice standards, which mirror the retired responsibilities from the MOD–A Reliability Standards.

14. Reliability Standards MOD–001–1a, MOD–004–1, MOD–008–1, MOD–028–2, MOD–029–2a, and MOD–030–3 are all currently approved within the FERC–725A information collection. The number of respondents below is based on an estimate of the NERC compliance registry for transmission service providers (TSP), transmission operators (TOP), transmission planners (TP), resource planners (RP), and balancing authorities (BA).[36] As these entities still have obligation to other NERC Reliability Standards when updating the FERC–725A for this collection the number respondents shall remain the same and only the man-hours will be reduced.

MOD–001–1a—AVAILABLE TRANSMISSION SYSTEM CAPABILITY—RETIREMENT

[Burden reduction]

Applicable entity (respondent)	Number of respondents (1)	Annual number of responses per respondent (2)	Annual number of responses (1) * (2) = (3)	Average burden hours and cost per response (4) [37]	Total annual burden hours and cost reduction (rounded) (3) * (4) = (5)
FERC–725A, OMB Control No. 1902–0244					
TSP—Retired	71	1	71	120 hrs.; $8,144.40	8,520 hrs.; $578,252.4.
TOP—Retired	165	1	165	120 hrs.; $8,144.40	19,800 hrs.; $1,343,826.
FERC–725A for MOD–001–1a Total Retired					28,320 hrs.; $1,922,078.40.

MOD–004–1—CAPACITY BENEFIT MARGIN—RETIREMENT

[Burden reduction] [38]

Applicable entity (respondent)	Number of respondents (1)	Annual number of responses per respondent (2)	Annual number of responses (1) * (2) = (3)	Average burden hours and cost per response (4) [39]	Total annual burden hours and cost reduction (rounded) (3) * (4) = (5)
RP—Retired	159	1	159	60 hrs.; $4,072.20	9,540 hrs.; $647,479.80.
TSP—Retired	71	1	71	60 hrs.; $4,072.20.	4,260 hrs.; $289,126.20.
BA—Retired	98	1	98	60 hrs.; $4,072.20	5,880 hrs.; $399,075.60.

[32] WAPA Comments at 5.

[33] *See* Order No. 676–J, 175 FERC ¶ 61,139 at P 5.

[34] 44 U.S.C. 3507(d).

[35] 5 CFR 1320.

[36] The number of TSP (71), TOP (165), TP (98), RP (159), and BA (98) are taken based on the NERC Compliance Registry information as of August 17, 2023, and represent U.S. registered entities.

[37] The estimated hourly cost (salary plus benefits) is a combination based on the Bureau of Labor Statistics (BLS), as of 2022, for 75% of the average of an Electrical Engineer (17–2071) $77.29/hr, 77.29 × .75 = 57.9675 ($57.97-rounded) ($57.97/hour) and 25% of an Information and Record Clerk (43–4199) $39.58/hr × .25% = 9.895 ($9.90 rounded) ($9.90/hour), for a total ($57.97 + $9.90 = $67.87/hour).

[38] In 2015 the Commission approved the retirement of the load-serving entity function. *See N. Am. Elec. Reliability Corp.,* 150 FERC ¶ 61,213 (2015); *N. Am. Elec. Reliability Corp.,* 153 FERC ¶ 61,024 (2015). NERC has an ongoing standard drafting team project to replace this function as an applicable entity in the Reliability Standards with the distribution provider function. *See* Project-2022–02 Modifications to TPL–001 and MOD–032.

[39] The estimated hourly cost (salary plus benefits) is a combination based on the Bureau of Labor Statistics (BLS), as of 2022, for 75% of the average of an Electrical Engineer (17–2071) $77.29/hr, 72.29 × .75 = 57.9576 ($57.96-rounded) ($57.96/hour) and 25% of an Information and Record Clerk (43–4199) $39.58/hr, $39.58 × .25% = 9.895 ($9.90 rounded) ($9.90/hour), for a total ($57.96+$9.90 = $67.86/hour).

MOD–004–1—CAPACITY BENEFIT MARGIN—RETIREMENT—Continued

[Burden reduction][38]

Applicable entity (respondent)	Number of respondents (1)	Annual number of responses per respondent (2)	Annual number of responses (1) * (2) = (3)	Average burden hours and cost per response (4)[39]	Total annual burden hours and cost reduction (rounded) (3) * (4) = (5)
TP—Retired	203	1	203	60 hrs.; $4,072.20	12,180 hrs.; $826,656.60.
FERC–725A for MOD–004–1 Total Retired					31,860 hrs.; $2,162,338.20.

MOD–008–1—TRANSMISSION RELIABILITY MARGIN CALCULATION METHODOLOGY—RETIREMENT

[Burden reduction]

Applicable entity (respondent)	Number of respondents (1)	Annual number of responses per respondent (2)	Annual number of responses (1) * (2) = (3)	Average burden hours and cost per response (4)[40]	Total annual burden hours and cost reduction (rounded) (3) * (4) = (5)
FERC–725A, OMB Control No. 1902–0244					
TOP—Retired	165	1	165	60 hrs.; $4,072.20	9,900 hrs.; $671,913.
FERC–725A for MOD–008–1 Total Retired					9,900 hrs.; $671,913.

MOD–028–2—AREA INTERCHANGE METHODOLOGY PROPOSED FOR RETIREMENT

[Burden reduction]

Applicable entity (respondent)	Number of respondents (1)	Annual number of responses per respondent (2)	Annual number of responses (1) * (2) = (3)	Average burden hours and cost per response (4)[41]	Total annual burden hours and cost reduction (rounded) (3) * (4) = (5)
FERC–725A, OMB Control No. 1902–0244					
TOP—Retired	165	1	165	60 hrs.; $4,072.20	9,900 hrs.; $671,913.
TSP—Retired	71	1	71	60 hrs.; $4,072.20	4,260 hrs.; $289,126.20.
FERC–725A for MOD–028–2 Total Retired					14,160 hrs.; $961,039.20.

MOD–029–2a—FLOWGATE METHODOLOGY—RETIREMENT

[Burden reduction]

Applicable entity (respondent)	Number of respondents (1)	Annual number of responses per respondent (2)	Annual number of response (1) * (2) = (3)	Average burden hours and cost per re- sponses (4)[42]	Total annual burden hours and cost reduction (rounded) (3) * (4) = (5)
FERC–725A, OMB Control No. 1902–0244					
TOP—Retired	165	1	165	60 hrs.; $4,072.20	9,900 hrs.; $671,913.
TSP—Retired	71	1	71	60 hrs.; $4,072.20	4,260 hrs.; $289,126.20.
Total for MOD–029–2a for Retired					14,160 hrs.; $961,039.20.

[40] *Id.*

[41] *Id.*

[42] *Id.*

MOD–030–2—FLOWGATE METHODOLOGY—RETIREMENT
[Burden reduction]

Applicable entity (respondent)	Number of respondents (1)	Annual number of responses per respondent (2)	Annual number of responses (1) * (2) = (3)	Average burden hours and cost per response[43] (4)	Total annual burden hours and cost reduction (rounded) (3) * (4) = (5)
FERC–725A, OMB Control No. 1902–0244					
TOP—Retired	165	1	165	60 hrs.; $4,072.20	9,900 hrs.; $671,913.
TSP—Retired	71	1	71	60 hrs.; $4,072.20	4,260 hrs.; $289,126.20.
Total for MOD–030–2 for Retired					14,160 hrs.; $961,039.20.

Title: FERC–725A, Mandatory Reliability Standards for the Bulk-Power System.

Action: Modifications to Existing Collections of Information in FERC–725A.

OMB Control No: 1902–0244 (FERC–725A).

Respondents: Business or other for profit, and not for profit institutions.

Frequency of Responses: On occasion (and proposed for deletion).

Necessity of the Information: Reliability Standards MOD–001–1a (Available Transmission System Capability), MOD–004–1 (Capacity Benefit Margin), MOD–008–1 (Transmission Reliability Margin Calculation Methodology), MOD–028–2 (Area Interchange Methodology), MOD–029–2a (Rated System Path Methodology), and MOD030–3 (Flowgate Methodology) (the MOD A Reliability Standards) were part of the implementation of the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power system. As these Reliability Standards are retired, their purpose and requirements have been moved into the NAESB business practice standards.

Internal review: The Commission has reviewed NERC's proposal and determined that this action is necessary to implement section 215 of the FPA.

15. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

16. Comments concerning the information collections and requirements approved for retirement in this final action and the associated burden estimates, should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov.*

IV. Environmental Analysis

17. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[44] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[45] The actions approved here fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act

18. The Regulatory Flexibility Act of 1980 (RFA)[46] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.

19. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business.[47] The Small Business Administration has established size standards, for the types of affected entities that range from a maximum of 250–1,000 employees for an entity and its affiliates to be considered small.

20. This final action accepts the request of NERC, the Commission-certified ERO, to retire the MOD A Reliability Standards and recognizes that NAESB business practice standards will cover the obligations. This final action reduces paperwork burdens for both large and small business entities. The Commission estimates the total industry reduction in burden for all entities (large and small) to be 112,560 hours or 68.5 hours per response.

21. Based on the information above, the Commission certifies that the proposed reductions will not have a significant impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis is required. The Commission certifies that this final action will not have a significant economic impact on a substantial number of small entities.

VI. Document Availability

22. 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*).

23. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

24. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. Email the

[43] *Id.*

[44] *Reguls. Implementing the Nat'l Env't Policy Act,* Order No. 486, FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[45] 18 CFR 380.4(a)(2)(ii).

[46] 5 U.S.C. 601–612.

[47] 13 CFR 121.101.

Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

25. These regulations are effective February 1, 2024. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

Issued October 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–24095 Filed 10–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

31 CFR Part 240

RIN 1530–AA22

Indorsement and Payment of Checks Drawn on the United States Treasury

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Bureau of the Fiscal Service (Fiscal Service) of the Department of the Treasury (Treasury) is amending its regulations that govern the payment of checks drawn on the United States Treasury (Treasury checks). The amendments coincide with the development of Fiscal Service's enhanced check post payment processing system, which will provide Treasury check return information to financial institutions more quickly than today. Financial institutions will receive this information through their existing communication channels with the Federal Reserve Banks (FRBs), generally prior to the expiration of the time periods in which financial institutions must make Treasury check deposits available for withdrawal as prescribed by Regulation CC, Availability of Funds and Collection of Checks. Accordingly, Fiscal Service is amending its regulations so that, with certain exceptions, a financial institution will be liable if it pays a canceled Treasury check, also known as a payment over cancellation (POC), without waiting to receive the return information that would enable the financial institution to know the check has been canceled.

DATES: Effective December 1, 2023.

FOR FURTHER INFORMATION CONTACT: Gary Swasey, Director, Post Payment Division at (215) 816–8230 or *gary.swasey@fiscal.treasury.gov;* or Thomas Kearns, Senior Counsel, at (202) 874–6680 or *thomas.kearns@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Currently, when either Fiscal Service or a payment certifying agency puts a ''stop payment'' (also known as a ''check stop'') on a Treasury check to cancel it, there is a possibility that the canceled check may still be paid. Fiscal Service or an agency may put a ''stop payment'' on a check payment because the payee submitted a check claim (*i.e.,* claimed that the check was either lost or stolen), because the certifying agency realized the payment was incorrect, or because it was otherwise improper. When a canceled or ''stopped'' check is subsequently paid, this leads to what is known as a payment over cancellation (POC). POCs are improper payments, which can amount to $100 million or more each year.

Fiscal Service is developing enhancements to its post payment processing system that will result in Treasury check return information being made available to financial institutions sooner than is the case today. With Fiscal Service's current post payment processing system, several days often pass before Fiscal Service can provide information on Treasury check returns that the Federal Reserve Banks (FRBs) transmit to financial institutions through existing communication channels. The system enhancements will enable Fiscal Service to provide check return information to financial institutions through these existing channels within the time periods prescribed by Regulation CC, Availability of Funds and Collection of Checks (12 CFR part 229), for when a financial institution must make funds deposited by Treasury check available for withdrawal.

Under the current regulations at 31 CFR part 240, a financial institution generally is not liable for a POC if the institution has taken ''reasonable efforts'' to ensure the check is authentic.[1] The final rule amends the definition of ''reasonable efforts'' found at 31 CFR 240.2 to include a requirement that financial institutions wait for check return information within the time periods set out by Regulation CC to help verify that a Treasury check is valid[2] and authentic. It is also making conforming changes to 31 CFR part 240 to require that financial institutions ensure a Treasury check has not been canceled before making the funds associated with that check available for withdrawal.

In those instances where a financial institution has taken reasonable efforts but check return information for a POC on a properly presented check is not transmitted to the financial institution prior the funds availability timeframe specified in Regulation CC, the financial institution would not be liable for releasing the funds associated with the Treasury check. While Fiscal Service expects this circumstance to be uncommon, it understands that compliance with Regulation CC requires the release of the funds within certain timeframes, and thus under the final rule a financial institution will not be liable for a POC due to complying with Regulation CC. (Note, however, that this does not affect the presentment guarantees found in 31 CFR 240.4. As is currently the case, if Fiscal Service declines a check due to improper presentment and reverses the provisional credit, the presenting financial institution may still be liable for payment on the check regardless of Regulation CC's requirements.)

After enhancements to Treasury's post payment processing system have been implemented and the final rule's requirements become effective (no sooner than 30 days after publication of the final rule), the system and rule changes should greatly reduce payment issues involving Treasury checks and more closely align the treatment of canceled Treasury checks with industry practices for other canceled checks in the banking system. The changes will eliminate many POCs, because they will allow a certifying agency to place a ''true stop'' on a Treasury check. The system changes will also help reduce instances where a Treasury check (or an item purporting to be a Treasury check) may be charged back to the financial institution, because they will allow the financial institution to verify that the check is not counterfeit, that the amount has not been altered, that the check is not stale-dated, and that the check has not been previously negotiated. For these non-POC circumstances, financial institutions are already liable for accepting such instruments. While the final rule does not impact a financial institution's liability in these other circumstances, Fiscal Service's enhanced post payment processing

[1] ''Authenticity'' is a presentment guaranty, as described by 31 CFR 240.4.

[2] ''Validity'' and ''valid check'' are defined in the final rule. See section III.B., below.

system will help financial institutions avoid the liability. Furthermore, in those instances where a financial institution does release the funds associated with a Treasury check prior to receiving the check return information, that financial institution has an increased likelihood of being able to recover those funds, because the return information will be available a short time after the funds are released (typically no more than a few days, as opposed to up to 18 months later if a reclamation following a check claim were to occur).

In addition to receiving check return information through existing channels, a financial institution may choose to obtain early notice regarding the validity and authenticity of Treasury checks by using the Fiscal Service's Treasury Check Verification System (TCVS). While financial institutions will not be required to use TCVS, the use of TCVS may allow financial institutions to catch canceled, duplicate, or other problematic checks at the time of presentment, as opposed to after presentment but before the financial institution makes deposited funds available for withdrawal. TCVS, in conjunction with the enhanced post payment system, will help financial institutions avoid accepting duplicate presentations, thus avoiding the associated liability. The enhancements to Treasury's post payment processing system will not eliminate acceptance of duplicate presentations entirely, but in those instances where the subsequent presentation of a Treasury check occurs after Treasury's records have been updated, TCVS will allow a financial institution to avoid liability by declining the previously negotiated Treasury check when presented again. TCVS will similarly be of assistance to financial institutions in identifying Treasury checks where the payment amount has been altered, as well as for counterfeit instruments purporting to be Treasury checks.

II. Response to Comments

During the comment period, Fiscal Service received nine comments on the notice of proposed rulemaking (NPRM) that was published on February 1, 2023 (88 FR 6674), from individuals and from the banking industry. The industry commenters supported Fiscal Service's effort to combat check fraud and to reduce POCs. However, some commenters also expressed concerns with aspects of the NPRM. As many of these comments addressed the same or similar issues, below we respond to these comments in the following categories:

- Required Use of TCVS,
- Financial Institution Liability for POCs,
- Presentment to Non-Financial Institutions,
- Communicate Check Cancellation Information to Federal Reserve Banks, and
- Reduce the Number of Treasury Checks.

A. Required Use of TCVS

A majority of the comments expressed concerns over the proposed requirement to use TCVS to verify that a Treasury check has not been canceled for a financial institution to avoid liability for a POC. Issues raised related to the required use of TCVS included: concerns regarding what would happen if TCVS is out of service when a financial institution attempts to verify a Treasury check; the amount of time required for tellers to manually verify a Treasury check using TCVS; unavailability of TCVS when Treasury checks are deposited remotely or by ATM; and the expense and time for financial institutions to implement technological upgrades or alterations of their systems to integrate the use of TCVS.

The final rule addresses these concerns by removing the requirement that a financial institution use TCVS to verify that a Treasury check has not been canceled to avoid liability for a POC. Instead, to avoid liability for a POC, and in alignment with comments received, the final rule allows a financial institution to rely on the check return information that it already receives through the FRBs' established channels of communication. Fiscal Service's enhanced post payment processing system will enable the FRBs to provide check return information on a properly presented Treasury check to the financial institution within the timeframes prescribed by Regulation CC for making funds from a deposited Treasury check available for withdrawal. The financial institution will not be required to make changes to its check processing system to receive the check return information from the FRBs because the information will move through existing communication channels.

Although the use of TCVS is not required under the final rule, TCVS will still be available for financial institutions to voluntarily obtain information regarding the status of a Treasury check. In addition to giving financial institutions early notice of check cancellation information, TCVS may assist financial institutions in reducing the risk of liability for counterfeit instruments and duplicate presentations of Treasury checks.

B. Financial Institution Liability for POCs

Several commenters expressed concern over the shift in liability to financial institutions for POCs on Treasury checks. Some of these concerns were tied to issues arising from the requirement to use TCVS to avoid liability and, thus, have been resolved because the final rule does not contain such a requirement (see preceding section 2.A.). The approach under the final rule to avoid liability for a POC on a Treasury check instead relies on the FRBs' existing channels of communication for check return information. The onus is on Fiscal Service's post payment processing system to provide the check return information to the FRBs in an accelerated fashion, so that financial institutions may receive this information from the FRBs within the timeframes prescribed by Regulation CC for making funds deposited by Treasury check available for withdrawal.

However, other commenters expressed concerns regarding the shift in liability for POCs that were not related to the use of TCVS. Fiscal Service believes that because (1) the enhanced post payment system will make check return information available on an accelerated basis compared to today, and (2) financial institutions will receive information confirming that a Treasury check has been canceled through existing communication channels, it is not unreasonable for financial institutions to accept liability for POCs. Further, this shift in liability will bring the processing of Treasury checks more in alignment with the processing of checks generally, where the liability for releasing funds on a canceled non-Treasury check falls on the financial institution accepting the check. A financial institution may avoid this liability by not making the funds associated with a Treasury check available for withdrawal until the financial institution receives the check return information from an FRB, provided that it receives notice of a POC prior to the expiration of the Regulation CC funds availability time periods. Additionally, in those instances where the return information is unavailable for the financial institution to verify the status of a properly presented Treasury check before the financial institution is required to release the funds under Regulation CC, the financial institution will not be liable if the release of funds necessary to comply with Regulation CC results in a POC.

C. Presentment to Non-Financial Institutions

A few commenters raised the issue of how the proposed rule and its shift in liability for POCs would operate in conjunction with Treasury checks presented to businesses that cash checks that are not financial institutions, and the financial institutions that service them. One commenter pointed out that the NPRM did not address whether the agreements between these businesses and financial institutions could continue to address how the liability for POCs would be assigned. The final rule is silent on that issue and is not intended to alter the ability of entities entering into such agreements to assign liability for POCs or otherwise declined checks. To the extent that such assignment of liability is allowable by other applicable laws and rules, the final rule does not affect these entities' ability to negotiate such agreements. However, such agreements will have no impact on financial institutions' liability due to POCs on Treasury checks with regard to the Federal Government, as described by the final rule.

To the extent that commenters identified concerns with the unavailability of TCVS in situations where businesses that are not financial institutions cash Treasury checks, the final rule addresses those concerns by removing the requirement to use TCVS to avoid liability for a POC on a Treasury check.

D. Communicate Check Cancellation Information to Federal Reserve Banks

A few commenters suggested that a better method for addressing POCs, rather than require the use of TCVS by financial institutions, would be to communicate the check cancellation information to the FRBs' check processing system and have the system communicate this information to financial institutions with the FRBs' check return information. These commenters pointed out this approach would not require financial institutions to modify their check processing systems to accommodate the required use of TCVS, would work with the financial institutions' current systems, and would entail little or no cost to the financial institutions.

Consistent with these comments, under the final rule, financial institutions will continue to receive check return information from the FRB check processing system's existing channels of communication, as they currently do. The enhancements to Fiscal Service's post payment processing system will enable Fiscal Service to communicate check information to the FRBs more quickly, including the information that a Treasury check has been canceled. Financial institutions do not need to make any changes to continue receiving this information from the FRB's check processing system; the information will simply be available more rapidly through the channels already in use.

Two commenters suggested that the FRBs should provide this check cancellation information to the financial institution of first deposit, rather than the presenting financial institution. This suggestion is out of scope and nonviable at this time because of the changes that would be required of the FRBs' check processing system (and possibly of the financial institutions receiving the cancellation information). However, Fiscal Service is receptive to considering this possibility at a later date. In the meantime, although not required, financial institutions of first deposit can use TCVS to help reduce their risk of liability for POCs prior to receiving the check return information through existing communication channels.

E. Reduce the Number of Treasury Checks

One commenter pointed out that an effective method of reducing POCs is to reduce the number of Treasury checks issued in the first place and that Fiscal Service should educate payment-issuing agencies regarding the benefits of electronic payments. Fiscal Service agrees that reducing the number of checks issued for Federal payments is a worthy objective. Fiscal Service has long worked with Federal agencies to reduce the number of checks they issue and to make payments electronically. For more than a decade, the number of Treasury checks issued each year has generally declined, from approximately 170 million in 2012, for example, to approximately 45 million in fiscal year 2023.

Despite the effort to reduce the number of Treasury checks issued, Treasury checks will continue to be issued for the foreseeable future (although in reduced numbers). Additionally, although 31 U.S.C. 3332 requires most Federal payments to be made electronically, this provision does not apply to payments made pursuant to the Internal Revenue Code. Within these limitations, Fiscal Service fully supports and actively works to promote the continued decrease in the number of Treasury checks issued each year.

III. Summary of Proposed Rule Changes

A. Amendment to the Definition of, and Guarantee Regarding, ''Reasonable Efforts''

Part 240 currently includes a presentment guarantee, made by the guarantor of a check presented to Treasury for payment, that the guarantor has made all reasonable efforts to ensure that the check is an authentic Treasury check and not a counterfeit check. The existing definition of ''reasonable efforts'' focuses on the watermark or other security features of a security check, to ensure that the Treasury check is authentic and not counterfeit. The final rule amends the definition of ''reasonable efforts'' to add the requirement of verifying not only the Treasury check's authenticity, but also the check's validity, by requiring a financial institution to receive the check return information before making funds from a Treasury check available for withdrawal to ensure that the check has not been canceled. An exception to this requirement will apply if the check's return information is not transmitted to the financial institution prior the appropriate funds availability timeframe specified in Regulation CC, and the financial institution must make the funds available for withdrawal in order to remain in compliance with Regulation CC. In such cases, the financial institution would not be held liable for releasing the funds associated with the Treasury check if it results in a POC (unless the financial institution is otherwise subject to liability under the presentment guarantees found in § 240.4).

A corresponding amendment to the presentment guarantees found in current regulations would change the guarantee of Treasury check's authenticity to include a presentment guarantee regarding the check's validity as well, as described below.

B. Adding a Definition of ''Validity''

Part 240 had not previously included a definition of ''validity.'' The final rule adds a definition of ''validity'' or ''valid check'' as proposed.

The definition describes a valid Treasury check as a payable instrument (*i.e.,* not a counterfeit check, as defined in the existing regulations) that has not been previously negotiated or canceled (*i.e.,* meets the criteria for negotiability). A corresponding amendment to the presentment guarantees would add a new presentment guarantee regarding the check's validity.

C. Adding a Definition of ''Cancellation'' or ''Canceled''

Part 240 had not previously defined ''cancellation'' or ''canceled'' with regard to a Treasury check. The final rule adds a definition of ''cancellation'' or ''canceled'' as proposed.

This definition describes a canceled Treasury check as one that was once a valid and negotiable instrument, but is no longer due to a reason other than the Treasury check's negotiation. A Treasury check may be canceled because it has limited payability (*i.e.,* it is older than one year past its issuance date, and thus stale-dated), or because Treasury or the certifying agency has placed a ''stop payment'' (as defined below) on it.

D. Adding a Definition of ''Stop Payment''

The regulations had not previously defined a ''stop payment'' with regard to a Treasury check. The final rule adds a definition of this term as proposed.

This definition describes the situation where Treasury or the certifying agency has indicated in its systems that an authentic Treasury check should not be paid. Reasons for issuing a stop payment on a Treasury check include that the Treasury check has been reported lost or stolen, it has been issued to a deceased payee, or it was discovered to be improper. Once a stop payment has been placed on a Treasury check, the check has been canceled and is no longer a valid Treasury check (even though it is an authentic Treasury check).

E. Amendment to the Processing of Checks, Declination, and the Reasons for Refusal

Current Treasury regulations require that an FRB cash a Treasury check presented to it, except in certain circumstances where the FRB must instead refuse to pay the Treasury check. The check must be refused if (1) the check bears a material defect or alteration, (2) the check was presented more than one year later than the check's date of issuance, or (3) the FRB has been notified by Treasury, pursuant to Treasury regulations, that a check was issued to a deceased payee. As proposed, the final rule adds a fourth circumstance in which an FRB must refuse to pay a Treasury check: when Treasury has notified the FRB that a Treasury check is not valid.

As noted above, under this definition, a Treasury check is invalid if the Treasury check is counterfeit, previously negotiated, or canceled.

A corresponding amendment to the regulation regarding Treasury's right of first refusal is the instruction for Treasury to decline payment of a Treasury check when Treasury is being requested to make payment on a check that is not valid.

IV. Section-by-Section Analysis

A. Section 240.2—Definitions

The final rule amends the definitions section of part 240, found at 31 CFR 240.2, by removing the lettering within that section (the list letters (a), (b), (c), etc.), and simply listing the terms in alphabetical order within the section. This comports with the Office of the Federal Register's recommendation for a list of definitions found in regulations, as stated in section 2–13 of the Document Drafting Handbook. This change also removes the need to re-letter the list of definitions when new definitions are added to the list.

For the reasons set forth above, the final rule amends § 240.2 to revise the definition of ''reasonable efforts''; add the definition of ''cancellation'' or ''canceled''; add the definition of ''stop payment'' or ''check stop'' or ''stop''; and add the definition of ''validity'' or ''valid check.'' Except for these four definitions, none of the definitions in § 240.2 are being substantively changed. These other definitions are listed herein only to reflect the removal of the list lettering schema and a few minor changes made for clarity.

B. Section 240.4—Presentment Guarantees

The final rule amends the presentment guarantees to include a guarantee that the guarantor has made reasonable efforts to ensure that the check is an authentic Treasury check and that it is valid at the time of acceptance.

C. Section 240.6—Provisional Credit; First Examination; Declination; Final Payment

The final rule amends the reasons that Treasury will decline a Treasury check upon first examination to include the fact that the check has been canceled, in addition to when the check has already been paid.

D. Section 240.12—Processing of Checks

The final rule amends the reasons that an FRB must refuse payment of a Treasury check to include circumstances where the FRB has been notified that the Treasury check has been canceled or is otherwise not valid.

V. Procedural Analysis

Regulatory Planning and Review

The rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866, as amended. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses, and identify alternatives that may reduce such impact, unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. In the NPRM published on February 1, 2023, Fiscal Service certified that the final rule will not have a significant economic impact on a substantial number of small entities.

Fiscal Service received some comments from the entities in the banking industry stating that requiring financial institutions to use TCVS prior to negotiating a Treasury check would place burdens on these entities by necessitating changes and upgrades to their check processing systems. In the final rule, the requirement in the NPRM to use TCVS has been eliminated. Instead, financial institutions will receive check return information for a properly presented Treasury check from the FRBs, through existing communication channels. Due to enhancements to Fiscal Service's post payment processing system, this check return information typically will be provided to financial institutions within the time periods for making funds available prescribed by Regulation CC. In the uncommon instances where a financial institution does not receive the return information within the appropriate time period, and must release the funds to comply with Regulation CC, the financial institution will not be held liable if that results in a POC (unless the financial institution would otherwise be subject to liability due to the presentment guarantees in § 240.4).

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a 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 budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. Fiscal Service has determined that this final rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 31 CFR Part 240

Authenticity, Canceled, Cancellation, Check, Check return, Check return information, Check stop, Declination, Financial institutions, Presentment, Presentment guarantees, Processing, Reasonable efforts, Stop, Treasury check, Valid check, Validity, Verification.

For the reasons set out in the preamble, we amend 31 CFR part 240 as follows:

PART 240—INDORSEMENT AND PAYMENT OF CHECKS DRAWN UPON THE UNITED STATES TREASURY

■ 1. The authority citation for part 240 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 321, 3327, 3328, 3331, 3334, 3343, 3711, 3712, 3716, 3717; 332 U.S. 234 (1947); 318 U.S. 363 (1943).

■ 2. Revise § 240.2 to read as follows:

§ 240.2 Definitions.

Administrative offset or *offset,* for purposes of this part, has the same meaning as defined in 31 U.S.C. 3701(a)(1) and 31 CFR part 285.

Agency means any agency, department, instrumentality, office, commission, board, service, or other establishment of the United States authorized to issue Treasury checks or for which checks drawn on the United States Treasury are issued.

Cancellation or *canceled* means that a Treasury check is no longer a valid instrument, due to the one-year limitation on negotiability and payment described in § 240.5(a), or the placement of a stop payment on the check by Treasury or the certifying agency.

Certifying agency means an agency authorizing the issuance of a payment by a disbursing official in accordance with 31 U.S.C. 3325.

Check or *checks* means an original check or checks; an electronic check or checks; or a substitute check or checks.

Check payment means the amount paid to a presenting bank by a Federal Reserve Bank.

Counterfeit check means a document that purports to be an authentic check drawn on the United States Treasury, but in fact is not an authentic check.

Days means calendar days. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or Federal holiday; the first day is not included. For example, if a reclamation was issued on July 1, the 90-day protest period under § 240.9(b) would begin on July 2. If the 90th day fell on a Saturday, Sunday, or Federal holiday, the protest would be accepted if received on the next business day.

Declination means the process by which Treasury refuses to make final payment on a check, *i.e.,* declines payment, by instructing a Federal Reserve Bank to reverse its provisional credit to a presenting bank.

Declination date means the date on which Treasury issues the declination.

Disbursing official means an official, including an official of the Department of the Treasury, the Department of Defense, any Government corporation (as defined in 31 U.S.C. 9101), or any official of the United States designated by the Secretary of the Treasury, authorized to disburse public money pursuant to 31 U.S.C. 3321 or another law.

Drawer's signature means the signature of a disbursing official placed on the front of a Treasury check as the drawer of the check.

Electronic check means an electronic image of a check drawn on the United States Treasury, together with information describing that check, that meets the technical requirements for sending electronic items to a Federal Reserve Bank as set forth in the Federal Reserve Banks' operating circulars.

Federal Reserve Bank means a Federal Reserve Bank or a branch of a Federal Reserve Bank.

Federal Reserve Processing Center means a Federal Reserve Bank center that images Treasury checks for archiving check information and transmitting such information to Treasury.

Financial institution means:

(1) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(2) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(3) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(4) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union which is eligible to make application to become an insured credit union under section 201 of such Act (12 U.S.C. 1781);

(5) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) which is an insured depositary institution (as defined in such Act) (12 U.S.C. 1811 *et seq.*) or is eligible to apply to become an insured depositary institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(6) Any financial institution outside of the United States if it has been designated by the Secretary of the Treasury as a depositary of public money and has been permitted to charge checks to the General Account of the United States Treasury.

First examination means Treasury's initial review of a check that has been presented for payment. The initial review procedures, which establish the authenticity and integrity of a check presented to Treasury for payment, may include reconciliation; retrieval and inspection of the check or the best available image thereof; and other procedures Treasury deems appropriate to specific circumstances.

Forged or unauthorized drawer's signature means a drawer's signature that has been placed on the front of a Treasury check by a person other than:

(1) A disbursing official; or

(2) A person authorized to sign on behalf of a disbursing official.

Forged or unauthorized indorsement means:

(1) An indorsement of the payee's name by another person who is not authorized to sign for the payee; or

(2) An indorsement of the payee's name made by another person who has been authorized by the payee, but who has not indorsed the check in accordance with §§ 240.4 and 240.13 through 240.17; or

(3) An indorsement added by a financial institution where the financial institution had no authority to supply the indorsement; or

(4) A check bearing an altered payee name that is indorsed using the payee name as altered.

Guarantor means a financial institution that presents a check for payment and any prior indorser(s) of a check.

Master Account means the record of financial rights and obligations of an account holder and the Federal Reserve Bank with respect to each other, where opening, intraday, and closing balances are determined.

Material defect or alteration means:

(1) The counterfeiting of a check; or

(2) Any physical change on a check, including, but not limited to, a change in the amount, date, payee name, or other identifying information printed on the front or back of the check (but not including a forged or unauthorized drawer's signature); or

(3) Any forged or unauthorized indorsement appearing on the back of the check.

Minor means the term minor as defined under applicable State law.

Monthly statement means a statement prepared by Treasury that includes the following information regarding each outstanding reclamation:

(1) The reclamation date;

(2) The reclamation number;

(3) Check identifying information; and

(4) The balance due, including interest, penalties, and administrative costs.

Original check means the first paper check drawn on the United States Treasury with respect to a particular payment transaction.

Payee means the person that the certifying agency designated to receive payment pursuant to 31 U.S.C. 3528.

Person means an individual, institution, including a financial institution, or any other type of entity; the singular includes the plural.

Presenting bank means:

(1) A financial institution which, either directly or through a correspondent banking relationship, presents checks to and receives provisional credit from a Federal Reserve Bank; or

(2) A depositary which is authorized to charge checks directly to Treasury's General Account and present them to Treasury for payment through a designated Federal Reserve Bank.

Provisional credit means the initial credit provided to a presenting bank by a Federal Reserve Bank. Treasury may reverse a provisional credit until Treasury deems completion of first examination or final payment made pursuant to § 240.6(d).

Reasonable efforts means, at a minimum:

(1) Confirming the validity of a check by obtaining the check return information prior to making the funds from the check available for withdrawal (except when the check return information has not been provided within the applicable timeframe prescribed by Regulation CC, and making funds available for withdrawal is necessary to comply with Regulation CC; however, this exception does not apply if the presenting bank is otherwise subject to liability due to the presentment guarantees found in § 240.4); and

(2) Confirming the authenticity of the check such as by verifying the existence of the Treasury watermark on an original check.

(3) Acceptance of a check by electronic image or other non-physical means does not impact reasonable efforts requirements. Based upon the facts at hand, including whether a check is an original check, a substitute check, or an electronic check, reasonable efforts may require the verification of other security features.

Reclamation means a demand for the amount of a check for which Treasury has requested an immediate refund.

Reclamation date means the date on which Treasury issues a reclamation. Normally, Treasury sends demands to presenting banks or other indorsers within two business days of the reclamation date.

Reclamation debt means the amount owed as a result of Treasury's demand for refund of a check payment, and includes interest, penalties and administrative costs assessed in accordance with § 240.8.

Reclamation debtor means a presenting bank or other indorser of a check from whom Treasury has demanded a refund in accordance with §§ 240.8 and 240.9. The reclamation debtor does not include a presenting bank or other indorser who may be liable for a reclamation debt, but from which Treasury has not demanded a refund.

Recurring benefit payment includes but is not limited to a payment of money for any Federal Government entitlement program or annuity.

Stop payment means that Treasury or a certifying agency has indicated that a Treasury check should not be paid and instead should be canceled. A stop payment could be placed on a Treasury check for reasons including that the check was reported lost or stolen; the check was determined to have been issued improperly; the payee was deceased prior to the issuance of the check; or any other allowable reason.

Substitute check means a paper reproduction of a check drawn on the United States Treasury that meets the definitional requirements set forth at 12 CFR 229.2(aaa).

Treasury means the United States Department of the Treasury, or when authorized, an agent designated by the Secretary of the Treasury or his or her delegee.

Treasury Check Offset means the collection of an amount owed by a presenting bank in accordance with 31 U.S.C. 3712(e).

Truncate means to remove a paper check from the forward collection or return process and send to a recipient, in lieu of such paper check, a substitute check or an electronic check.

U.S. securities means securities of the United States and securities of Federal agencies and Government corporations for which Treasury acts as the transfer agent.

Validity or *valid check* means an authentic Treasury check that is a payable instrument and has not been previously negotiated or canceled.

Writing includes electronic communications when specifically authorized by Treasury in implementing instructions.

■ 3. Amend § 240.4 by revising paragraph (d) to read as follows:

§ 240.4 Presentment guarantees.

* * * * *

(d) *Authenticity and validity.* That the guarantors have made all reasonable efforts to ensure that a check is both an authentic Treasury check (*i.e.,* it is not a counterfeit check) and a valid Treasury check (*i.e.,* it has not been previously negotiated or canceled).

* * * * *

■ 4. Amend § 240.6 by revising paragraph (c)(3) to read as follows:

§ 240.6 Provisional credit; first examination; declination; final payment.

* * * * *

(c) * * *

(3) Treasury has already received presentment of a substitute check, electronic check, or original check relating to the check being presented, such that Treasury is being requested to make payment on a check it has already paid; or Treasury is being requested to make payment on a check that is not valid due to a stop payment or other cancellation.

* * * * *

■ 5. Amend § 240.12 by revising paragraphs (a)(1)(ii) and (iii) and adding paragraph (a)(1)(iv) to read as follows:

§ 240.12 Processing of checks.

(a) * * *

(1) * * *

(ii) A check was issued more than one year prior to the date of presentment;

(iii) The Federal Reserve Bank has been notified by Treasury, in accordance with § 240.15(c), that a check was issued to a deceased payee; or

(iv) The Federal Reserve Bank has been notified by Treasury that a check is not valid.

* * * * *

David A. Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2023–24039 Filed 10–31–23; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3170

[BLM_HQ_FRN_MO4500173878]

RIN 1004–AE90

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Codification of Onshore Orders 1, 2, 6, and 7; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correcting amendment.

SUMMARY: On June 16, 2023, the Bureau of Land Management (BLM) published a final rule that codified Onshore Order 1—Approval of Operations; Onshore Order 2—Drilling Operations on Federal and Indian Oil and Gas Leases; Onshore Order 6—Hydrogen Sulfide Operations; and Onshore Order 7—Disposal of Produced Water into the Code of Federal Regulations (CFR). This action corrects two cross references in that regulation.

DATES: Effective on November 1, 2023.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, 1849 C St. NW, Room 5646, Washington, DC 20240; Attention: RIN 1004–AE90.

FOR FURTHER INFORMATION CONTACT: Yvette Fields, Chief, Division of Fluid Minerals, telephone: 240–712–8358, email: *yfields@blm.gov;* or Faith Bremner, Regulatory Analyst, Division of Regulatory Affairs, email: *fbremner@blm.gov.* Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Fields. 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 final codification rule (June 16, 2023, 88 FR 39514), placed the four Onshore Orders into the CFR without making any substantive changes to their content. The only changes made to the four Onshore Orders were related to formatting, such as adding new section and paragraph designations, so that the Orders conform to the Office of the Federal Register's Document Drafting Handbook requirements. Since the four Onshore Orders were duly promulgated through prior notice-and-comment rulemakings, and the final rule did not change them, the BLM codified the orders in the CFR as a final rule without any further public comment.

The technical amendment that is the subject of this correction is prompted by the inclusion of two incorrect cross references in the final codification rule. During the process of preparing the final rule for publication and updating cross references throughout the document, the BLM inadvertently included incorrect cross references in a portion of the final rule that pertain to blowout preventer testing requirements. These requirements are found at 43 CFR 3172.6. These testing requirements have been in effect since 1988.

List of Subjects in 43 CFR Part 3170

Administrative practice and procedure, Disposal of produced water, Drilling operations, Flaring, Government contracts, Hydrogen sulfide operations, Indians-lands, Immediate assessments, Mineral royalties, Oil and gas exploration, Oil and gas measurement, Public lands—mineral resources, Reporting and record keeping requirements, Royalty-free use, Venting.

Accordingly, 43 CFR part 3170 is corrected by making the following correcting amendments:

PART 3170—ONSHORE OIL AND GAS PRODUCTION

■ 1. The authority citation for part 3170 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

■ 2. Amend § 3172.6 by revising paragraphs (b)(9)(iv) introductory text and (b)(9)(xi) to read as follows:

§ 3172.6 Well control.

* * * * *

(b) * * *

(9) * * *

(iv) As a minimum, the test in paragraphs (b)(9)(ii) and (iii) of this section shall be performed:

* * * * *

(xi) All of the tests described in paragraphs (b)(9)(ii) through (x) of this section and/or drills shall be recorded in the drilling log.

* * * * *

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 2023–24053 Filed 10–31–23; 8:45 am]

BILLING CODE 4331–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2021–0058; FF09E22000 FXES1113090FEDR 234]

RIN 1018–BE53

Endangered and Threatened Wildlife and Plants; Reclassifying Mitracarpus Polycladus From Endangered to Threatened With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reclassifying *Mitracarpus polycladus* (a plant, no common name) from endangered to threatened (downlist) under the Endangered Species Act of 1973, as amended (Act). This action is based on our evaluation of the best available scientific and commercial information, which indicates that the species' status has improved such that it is not currently in danger of extinction throughout all or a significant portion of its range, but that it is still likely to become so in the foreseeable future. We are also finalizing a rule issued under section 4(d) of the Act that provides for the conservation of the species.

DATES: This rule is effective December 1, 2023.

ADDRESSES: The proposed rule, this final rule, and supporting documents are available at *https://www.fws.gov/office/caribbean-ecological-services/library* and at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2021–0058.

FOR FURTHER INFORMATION CONTACT: Edwin Muñiz, Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, P.O. Box 491, Boquerón, PR 00622; email:

Caribbean_es@fws.gov; telephone: (786) 244–0081. 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:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants reclassification from endangered to threatened if it no longer meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range). *Mitracarpus polycladus* is listed as endangered, and we are reclassifying *M. polycladus* as threatened (*i.e.,* ''downlisting'' the species). We have determined *M. polycladus* does not meet the Act's definition of an endangered species, but it does meet the Act's definition of a threatened species (likely to become an endangered species throughout all or a significant portion of its range within the foreseeable future). Reclassifying a species as a threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This rule reclassifies *Mitracarpus polycladus* from an endangered to a threatened species on the Federal List of Endangered and Threatened Plants and establishes provisions under section 4(d) of the Act that are necessary and advisable to provide for the conservation of this species (a ''4(d) rule'').

The basis for our action. Under the Act, we may determine that a species is an endangered or a threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We may reclassify a species if the best available commercial and scientific data indicate the species no longer meets the applicable definition in the Act. Based on the status review, the current threats analysis, and evaluation of conservation measures discussed in this rule, we conclude that *M. polycladus* no longer meets the Act's definition of an endangered species, and should be reclassified to a threatened species. The species is no longer in danger of extinction throughout all or a significant portion of its range, but is likely to become so within the foreseeable future.

We have determined that *Mitracarpus polycladus* is a threatened species due to the following threats: habitat destruction and modification due to road and trail maintenance; trampling by humans; human-caused fires; nonnative, invasive species; urbanization and tourism development; grazing; and the effects of climate change.

Because we are reclassifying *Mitracarpus polycladus* as a threatened species, we are also adopting a 4(d) rule to provide for the conservation of this species.

Previous Federal Actions

Please refer to the June 23, 2022, proposed rule to reclassify *Mitracarpus polycladus* (87 FR 37476) for a detailed description of previous Federal actions concerning this species.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited independent scientific opinions of the information contained in the June 23, 2022, proposed rule to downlist *Mitracarpus polycladus* (87 FR 37476). We sent the proposed rule to five independent peer reviewers and received one response. The peer review can be found at *https://www.regulations.gov.* In preparing the final rule, we incorporated the results of this review, as appropriate, into this final rule. A summary of the peer review comments and our responses can be found in the Summary of Comments and Recommendations, below.

Summary of Changes From the Proposed Rule

In the preamble of the June 23, 2022, proposed rule (87 FR 37476 at p. 37492), we describe our intention to propose to include all of the general exceptions to the prohibition against removing and reducing to possession, as set forth in 50 CFR 17.61, in the 4(d) rule for *Mitracarpus polycladus.* This approach provides our Territorial partners the ability to carry out conservation actions to benefit the species. However, we neglected to include the exceptions set forth at 50 CFR 17.61(c)(2) and (3) in the regulatory text of our proposed rule. In this final rule, we correct that oversight by adding these exceptions to the regulatory text of the 4(d) rule for *Mitracarpus polycladus.* This improves the 4(d) rule's clarity and accuracy, and makes it consistent with our proposed rule's and this final rule's preamble text.

In addition, in this final rule, we make minor, nonsubstantive editorial or stylistic changes and corrections to the June 23, 2022, proposed rule (87 FR 37476).

Summary of Comments and Recommendations

In the proposed rule published on June 23, 2022 (87 FR 37476), we requested that all interested parties submit written comments on the proposal by August 22, 2022. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices announcing the proposed rule and inviting general public comment were published in Spanish and English in the Primera Hora newspaper. We did not receive any requests for a public hearing or any public comments on the proposed rule.

Peer Reviewer Comments

As discussed in Peer Review, above, we received comments from one peer reviewer on the proposed rule. We reviewed the peer reviewer's comments for substantive issues and new information regarding the information contained in the proposed rule. The peer reviewer generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final rule. The peer reviewer's comments are incorporated into this final rule as appropriate.

Peer Reviewer Comments

(1) Comment: One peer reviewer provided additional references and updated information and corrections about the Anegada Island population including the following:

- On Anegada Island, *Mitracarpus polycladus* occurs adjacent to an unpaved road on Copper Rock leading to the beach and adjacent to a road to Flash of Beauty, a popular tourist spot.
- On Anegada Island, the population estimate is not definitive, but described as decreased from historical. Where *Mitracarpus polycladus* occurs adjacent to both sides of an unpaved road in one locality, the reviewer concluded that more individuals likely occurred between the two current clusters before the road was constructed.

Our response: We revised our description of the location of *Mitracarpus polycladus* on Anegada Island to reflect the occurrences adjacent to roads or trails, the threat of road and trail maintenance to those localities, and the impact of the road construction of the population trend. We have incorporated the provided information into our analysis in this final rule (see Summary of Biological Status and Threats and *Overall Summary of Factors Affecting the Species,* below).

(2) Comment: One peer reviewer noted that grazing is a threat to *Mitracarpus polycladus* on Anegada Island and suggested the threat of grazing should be more strongly reflected in the rule.

Our response: We describe the negative impact of grazing on the Anegada Island population in the proposed rule (87 FR 37476, June 23, 2022, at p. 37485) and under *Habitat Destruction and Modification,* below. We agree that grazing on Anegada Island impacts the population, and we more clearly describe the influence of grazing on habitat destruction and modification in this final rule.

(3) Comment: One peer reviewer provided information that several seed collections have been made from Anegada Island (most recently in June 2022), which demonstrates that the individuals are reproducing. The reviewer also noted that propagation efforts from plant material from Anegada Island were lost in Hurricane Irma and a February 2022 germination trial was not successful.

Our response: We are encouraged to learn of seed collection efforts and documented reproduction in the Anegada Island population. We have incorporated the information provided by the reviewer regarding the seed collection and propagation efforts into this final rule (see Background, below). Recovery efforts for the species, including propagation efforts, are ongoing and additional conservation actions including propagation and transplantation of *M. polycladus* will hopefully support recovery of the species in the future. We do recognize the challenges in propagation of *Mitracarpus*; thus, we did not rely on seed collection or propagation efforts in our status determination. Although the loss of propagated material and failure of the germination trial is unfortunate, the setback of this portion of the recovery effort does not change the species' rangewide condition or our determination that the species meets the definition of a threatened species and should be reclassified.

(4) Comment: One peer reviewer questioned the catastrophic impact of storm surge as an effect of climate change on the *Mitracarpus polycladus* that occur near the coast.

Our response: We describe the impact of sea level rise and the effects of climate change on the species in the proposed rule (87 FR 37476, June 23, 2022, at pp. 37485–37486) and under *Effects of Climate Change and Sea Level Rise,* below. We expect the impact to the species from storm surge to be shorter-term compared to the effect of sea level rise as it relates to saltwater exposure. *Mitracarpus polycladus* occurs in areas affected by storm surge from past and recent hurricanes and, as an island species, does not appear to be negatively affected by short-term exposure to saltwater as a result of storm surge and hurricanes. Although some individuals in low-lying areas may be affected by increasing exposure to saltwater for more prolonged periods in the future, we have determined this threat does not affect *Mitracarpus polycladus* at the species level.

I. Reclassification Determination

Background

A thorough review of the taxonomy, life history, ecology, and overall viability of *Mitracarpus polycladus* was presented in the 5-year status reviews (Service 2011, entire; Service 2018a, entire) and the June 23, 2022, proposed rule (87 FR 37476). Below, we present a summary of the biological and distributional information for *Mitracarpus polycladus.* Please refer to the 5-year reviews and proposed rule for more detailed information.

Taxonomy and Species Description

Mitracarpus polycladus is a small shrub in the Rubiaceae (coffee) family and the *Spermacoce* clade (Bremer 1996, p. 23). *Mitracarpus polycladus* was first collected in Puerto Rico in 1886, and was described in 1903 as a new species (Urban 1903, p. 389; Liogier 1997, p. 124). The taxonomy of the species has not changed since first described. Individuals of this plant species may reach up to 45 centimeters (cm) (17.7 inches (in)) in height, and its stems grow either erect or along the ground (Proctor 1991, p. 127; Liogier 1997, p. 125). The leaves are smooth and narrow, and the inflorescence is made up of smaller white flowers. The seed capsule is very small (1.5 millimeter (mm) (0.06 in) diameter) and contains black seeds (Proctor 1991, p. 127).

Biology

Mitracarpus polycladus colonizes exposed limestone where aggregations of sediment and water provide necessary conditions for seed germination and seedling rooting (Medina et al. 2012, p. 203). The phenology of *M. polycladus* is closely related to the dry and rainy seasons. Flower production occurs just after the peak of rainfall, which may start as early as May and end as late as December, and seed availability occurs during the dry season, which is December to March (Service 2018a, p. 8). The species shows a large reproductive output (high number of seedlings) after the rainy season followed by a low number of mature adults present during the next rainy season. Seed germination has been observed a few days after a rain event, producing numerous seedlings surrounding mature plants, denoting a clumped spatial distribution (Service 2018b, p. 6). The timing and spatial distribution of seedlings indicate the species produces viable seeds that stay in the soil seedbank until the next rain event (Service 2018b, p. 6).

Although a large number of seedlings (*e.g.,* 1,500 and 13,680 in 2011 and 2018, respectively) have been documented in Puerto Rico, seedling estimates are not included as part of the population abundance estimates because surveyors have been unable to determine seedling survival rates and effective recruitment (Service 2011, p. 24; Service 2018b, p. 8). High mortality of seedlings is observed due to natural thinning of the seedlings and environmental variables (drought stress) (Service 2018b, p. 8). Experts conclude that seeds are dependent on water or wind as a dispersal mechanism, with seeds that are not dispersed by water or wind clumping near the mature plant (Buitrago-Soto 2002, p. 25; Service 2018a, p. 9).

Little information is available regarding *Mitracarpus polycladus*'s pollinators. However, two insect groups (Hymenoptera and Lepidoptera) have been identified as visiting *M. polycladus* flowers and may act as effective pollinators of the species (Monsegur 2017, unpublished data). The observations of multiple insect groups visiting *M. polycladus* support our rationale for defining localities in the Guánica Commonwealth Forest (GCF) area as a single population, as available information indicates the species is cross-pollinated by insects. We expect insect-facilitated cross-pollination is taking place among GCF localities.

Distribution and Abundance

Mitracarpus polycladus was known to occur only in Puerto Rico and on Saba Island (a municipality of the Netherlands) in the Lesser Antilles at the time of listing (59 FR 46715; September 9, 1994). Although the species was discovered on Anegada Island (British Virgin Islands) in 1970, we were not aware of this occurrence at the time of listing (Service 2011, p. 9; Hamilton and Bárrios 2017, p. 1).

When listed, *Mitracarpus polycladus* was known in Puerto Rico only from the Mesetas trail in the GCF (DNR 1976, pp. 56–58; 59 FR 46715, September 9, 1994). No abundance estimates were available for the species in Puerto Rico, and no information was available on the status of the species on Saba Island. When the 1998 recovery plan was finalized, there was little information on *M. polycladus*'s historical and current abundance, distribution, ecology, and reproductive biology. At that time, we described *M. polycladus* occurrences in Puerto Rico and Saba Island as two populations (Proctor 1991, p. 2; Service 1998, p. 2).

At the time of listing and in the subsequent 5-year status reviews, occurrences of *Mitracarpus polycladus* in Puerto Rico were referred to as localities, and the occurrences on Anegada and Saba Islands were referred to as populations due to their distant geographic location. This approach did not consider the species-specific characteristics of clumped spatial distribution, distance among localities, natural geographic barriers, or the species' life-history requirement for cross-pollination. We now have additional information about *M. polycladus*'s geographic and spatial distribution and biological and ecological aspects of the species' life history (*e.g.,* pollinators, seed dispersion, phenology). This information indicates the following natural physical barriers preclude cross-pollination among populations and localities: coastal plains; dense, extensive forest patches; and bays. We also determined that connectivity among localities is required to maximize the likelihood of cross-pollination and gene flow, and to increase fruit production, viable seeds, and natural recruitment to support *M. polycladus* populations.

We now identify three natural populations of *M. polycladus:* (1) Guánica forest in south Puerto Rico (composed of at least 10 localities within the GCF, which is managed for *M. polycladus* conservation, and adjacent lands that provide suitable habitat and connectivity); (2) Saba Island; and (3) Anegada Island. A separate locality, Cerro Toro, was established as a private translocation effort. This population is disjunct (no connectivity nor cross-pollination) from the GCF population; thus, we determined it is a separate, introduced population.

Since the time of listing and the recovery plan development, targeted surveys have provided new abundance and distribution information and incidental observations (see table 1, below) (Service 2007 and 2017, unpublished data). The most recent survey information (see table 2, below) may underestimate population abundance and spatial extent as it did not include three natural localities due to time constraints. Because changes in the habitat have not been observed in the three localities not surveyed, we expect the abundance (number) and spatial extent (hectares (ha)) to be similar to the previous assessments. Therefore, the information from these three localities is unlikely to substantially change the estimates of abundance and extent of occupied area for the population. The increase in the number of localities recorded in Puerto Rico reflects additional survey efforts since the time of listing, while the increase in the number of individuals likely reflects the species' seasonal reproductive response to rain events and timing of surveys (Service 2018b, p. 3).

TABLE 1—ABUNDANCE AND DISTRIBUTION INFORMATION FOR MITRACARPUS POLYCLADUS IN THE GUÁNICA COMMONWEALTH FOREST IN PUERTO RICO SINCE 2011

Year	Number of localities	Abundance (# of adult plants)	Area occupied in hectares/acres	Source
2011	7	* 1,400	n/a	Service 2011, pp. 8, 14.
2018	9	12,472	0.42/1.02	Service 2018, p. 22.
2018	10	17,637	0.44/1.1	Service 2018b, p. 9.

* Includes only 4 localities.

In the Puerto Rico population, we are aware of 10 natural localities and 1 introduced locality; 8 natural localities occur in the GCF, and 3 are on private properties (Ballena Beach, Cerro Toro, and Monte de la Ventana, which extends into the GCF) (see table 2, below). We have identified additional potentially suitable habitat for the species, including appropriate vegetation structure and presence of exposed limestone, in aerial images of the GCF. However, this habitat has not been quantified or surveyed, and it is unknown if the species occurs there (Service 2018b, p. 8).

TABLE 2—CURRENT ABUNDANCE AND AREAL EXTENT OF MITRACARPUS POLYCLADUS AT KNOWN LOCALITIES IN PUERTO RICO

[Service 2018b, p. 9]

Locality name	Abundance (# of adult plants)	Area occupied in hectares/acres	Ownership
Caña Gorda	Undetermined		Puerto Rico Department of Natural and Environmental Resources (Department).
Jaboncillo	Undetermined		Department.
Mesetas Trail	13,064	0.255/0.63	Department.
Ballena Trail	1,048	0.036/0.09	

TABLE 2—CURRENT ABUNDANCE AND AREAL EXTENT OF MITRACARPUS POLYCLADUS AT KNOWN LOCALITIES IN PUERTO RICO—Continued

[Service 2018b, p. 9]

Locality name	Abundance (# of adult plants)	Area occupied in hectares/acres	Ownership
La Cueva	310	0.016/0.04	
Hoya Honda	246	0.004/0.01	
State road PR 333	653	0.028/0.07	
Las Picuas	336	0.024/0.06	
Monte de la Ventana	1,967	0.077/0.19	Department and Private.
Ballena Beach	Undetermined		Private.
Cerro Toro	13	0.004/0.01	Private.
Total:	17,637	0.44/1.1	

On Saba Island, the best available information indicates the species occurs in several localities along the road between The Bottom and Windward Side towns in the southern section of the island (Rojer 1997, p. 19). No current population estimate is available for Saba Island, and the 1997 assessment does not include a population estimate. On Anegada Island, surveys for *Mitracarpus polycladus* were conducted in 2015, 2016, and 2017, with an estimated population of 2,500 individuals in the north-central region of the island between Windlass Point and Cooper Rock (Bárrios and Hamilton 2018, pp. 3–4).

Habitat

Throughout its range in Puerto Rico, *Mitracarpus polycladus* occurs only on exposed limestone with sediment and water accumulation in holes and crevices. The species is restricted to geographical areas with unique substrate and climate features in dry forest habitat types that serve as corridors for pollinators and facilitate cross-pollination among *M. polycladus* localities within contiguous habitats. The species occurs among three major types of plant communities: coastal shrub forest, cactus scrub forest, and coastal scrub on sandy soil (DNR 1976, p. 53; Lugo et al. 1978, p. 282; Service 2018b, p. 11). Although these three plant communities occur on approximately 15 percent of the GCF, known occurrences of *M. polycladus* occupy a small total area (0.44 ha (1.1 ac)) where habitat and microhabitat features (*i.e.,* exposed limestone and aggregation of sediment and water) essential for the species are present (Service 2018b, p. 8; see table 2, above). However, surveys have not been conducted throughout the suitable forest types; thus, the species may occur elsewhere within this area. All known *M. polycladus* localities in Puerto Rico fall in the subtropical dry forest life zone. This life zone occupies an area of 121,640 ha (300,576 ac) (Ewel and Whitmore 1973, p. 9) and is the driest life zone in Puerto Rico. It receives a mean annual rainfall of 60–100 cm (24–40 in), experiences high temperatures, and has high evapotranspiration when sufficient water is available (Murphy and Lugo 1986, p. 90; Cáceres-Charneco 2018, p. 27). The climate in this region is seasonal, with most precipitation occurring in September and October (Lugo et al. 1978, p. 278) and another small peak of rainfall in May and June (Sloan et al. 2006, p. 196; Cáceres-Charneco 2018, p. 28).

On Saba Island, the best available information indicates the species occurs on Gile's cherty sandy loam soil found between The Bottom and Windward Side towns. This arid section of the island is located in the south portion of Saba Island (Rojer 1997, p. 19; Freitas *et al.* 2016, p. 10). On Anegada Island, *Mitracarpus polycladus* currently grows on limestone plain and coastal sandy habitats located in the north-central area of this island where the species is restricted to two localities situated between Windlass Point and Cooper Rock (Bárrios and Hamilton 2018, p. 4). This area on Anegada Island has similar environmental conditions and soil characteristics to *M. polycladus* localities in Puerto Rico.

Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the Lists of Endangered and Threatened Wildlife and Plants.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species, is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the Act's definition of an endangered species or threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic

process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

The initial recovery plan does not provide delisting criteria; however, the revised recovery plan provides three criteria for delisting *Mitracarpus polycladus* (Service 1998, p. 8; Service 2019, p. 4). The three delisting criteria outlined in the revised recovery plan are: (1) Threat reduction and management activities have been implemented to a degree that the species will remain viable into the foreseeable future; (2) existing natural populations of *M. polycladus* show a stable or increasing trend, as evidenced by natural recruitment and multiple age classes; and (3) within the historical range, at least three new populations of *M. polycladus* showing a stable or increasing trend have been established on lands protected by conservation measures, as evidenced by natural recruitment and multiple age classes (Service 2019, entire). Based on the information gathered and analyzed, two of these criteria have been partially met and the third has been initiated. The following discussion provides an assessment of the delisting criteria as they relate to evaluating the status of *M. polycladus.*

Criterion 1 for Delisting

Criterion 1 states that threat reduction and management activities have been implemented to a degree that the species will remain viable into the foreseeable future. Eighty-nine percent of the currently known *Mitracarpus polycladus* in Puerto Rico occur within the GCF, which is managed for conservation by the Puerto Rico Department of Natural and Environmental Resources (Department) (DNR 1976, p. 56). The management actions in the GCF protect *M. polycladus* from development activities and are compatible with the species' needs. The Department lists the species as critically endangered and reviews all proposed actions in the GCF that may impact *M. polycladus* or its habitat (DNRNA 2004, p. 52). The species is also impacted by road maintenance activities (vegetation trimming) in 5 of the 11 localities where the species occurs in Puerto Rico (4 of these localities are within the GCF) (Service 2018b, p. 10). Each of the localities in the GCF has experienced habitat destruction or modification from one or more threats, including intense trail use, human-caused fires, nonnative and invasive species encroachment, and road maintenance. However, the threats have been reduced, and the protected and managed habitat in the GCF remains a stronghold for the species with the largest number of individuals and areal extent occurring along the Mesetas trail. Thus, although *M. polycladus* is legally protected in this forest, it is subject to actions that limit its abundance and distribution in impacted areas. Two localities on private lands are subject to potential development pressure as discussed under ''Urbanization and Development,'' below.

Evidence of fire has been recorded on or adjacent to two *Mitracarpus polycladus* localities (Service 2018a, p. 27). The species does not colonize previously burned areas; therefore, fire can be a threat to species viability, as *M. polycladus* is endemic to dry limestone forest where vegetation did not evolve under a natural fire regime (Service 2018b, p. 12).

These threats of fire, development, nonnative and invasive species, and road and trail maintenance, coupled with competition with other plant species for specific habitat requirements such as holes and cracks for seed germination, and observed lack of dispersal mechanisms, reduce the species' ability to colonize other areas. Therefore, we determined that, while threat reduction and management activities at GCF have been implemented and have improved the species' viability, they have not been implemented or improved viability to a degree that the species will maintain viability into the foreseeable future. Thus, we conclude that this criterion has been partially met.

Criterion 2 for Delisting

Criterion 2 states that existing natural populations of *Mitracarpus polycladus* show a stable or increasing trend, as evidenced by natural recruitment and multiple age classes. Since the time of listing, the number of individuals and localities reported for *M. polycladus* have increased. Approximately 17,624 adult *M. polycladus* individuals are currently distributed in 10 natural localities in Puerto Rico occupying 0.44 ha (1.1 ac), with documented recruitment as evidenced by numerous seedlings in close proximity to adult plants, particularly after rain events. However, existing data indicate that seedlings' survival is uncertain due to natural thinning and environmental stochasticity (drought stress). However, effective recruitment has occurred, and seedlings and saplings were noted in seven of eight localities with abundance, seedling, and sapling counts in Puerto Rico during the 2018 assessment (Service 2018b, p. 9). Habitat modification caused by human-caused fires and subsequent encroachment of nonnative grasses has resulted in the loss of some clusters of individuals within a locality. Habitat modification and other threats, discussed below under Summary of Biological Status and Threats, may preclude the expansion of the species within known suitable habitats in Puerto Rico. The population trend on Anegada Island has been described as decreasing due to the removal of some individuals in one locality from past road construction. Seed collections have occurred recently in the Anegada Island population, indicating reproduction, although the level of recruitment in that population is unknown (Bárrios 2023, pers. comm.). The status and trend of the *M. polycladus* population on Saba Island, including reproduction and recruitment, is currently unknown.

Based on the uncertainty of population estimates and the lack of evidence of expansion into suitable habitat, we determined that a stable or increasing trend, as evidenced by natural recruitment and multiple age classes, has been met in Puerto Rico, but not on Saba or Anegada Islands. Thus, we conclude that this criterion has been partially met.

Criterion 3 for Delisting

Criterion 3 states that at least three new populations of *Mitracarpus polycladus* showing a stable or increasing trend have been established within the historical range on lands protected by conservation, as evidenced by natural recruitment and multiple age classes. In Cerro Toro, an undetermined number of *M. polycladus* individuals were translocated from the Monte de la Ventana locality by the landowner to establish a new population of the species physically separated from the GCF population. As of 2018, 13 of the planted individuals were still alive (Service 2018b, p. 9; see table 2, above), but no recruitment (seedlings or saplings) was observed. However, this recovery effort has not been expanded. The Royal Botanic Gardens (Kew), in collaboration with the National Park Trust of the Virgin Islands, has made effort to propagate material from *M. polycladus* on Anegada Island, but no planting efforts have been implemented. No further efforts of translocations or propagation and reintroduction are currently known. To increase the species' redundancy and long-term viability, additional populations should be established through translocation and/or propagation throughout the species' range. Thus, we conclude that this criterion has been initiated, but not met.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects. We consider these same five factors in downlisting a species from endangered to threatened.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response by and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary of the Interior (Secretary) determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

To assess *Mitracarpus polycladus* viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events); and representation is the ability of the species to adapt to both near-term and long-term changes in the physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. In addition, the 5-year reviews (Service 2011, entire; Service 2018a, entire) and our proposed rule (87 FR 37476; June 23, 2022) document our comprehensive biological status review for the species, including an assessment of the potential threats to the species.

The following is a summary of these status reviews and the best available information gathered since that time that have informed this decision. For additional information and details regarding the current, ongoing, and future threats to the species, see the June 23, 2022, proposed rule (87 FR 37476).

Habitat Destruction and Modification

Habitat destruction and modification were identified as factors affecting the continued existence of *Mitracarpus*

polycladus at the time of listing (59 FR 46715; September 9, 1994). Road and trail maintenance, human-caused fire, nonnative and invasive species, urbanization and tourism development, and grazing continue to contribute to the destruction and modification of *M. polycladus* habitat and are summarized below. Although changes to habitat conditions may affect pollinator abundance and distribution, available information does not indicate that a loss of pollinators is occurring in *M. polycladus* habitat, and we expect that sufficient pollinators are present to cross-pollinate within the pollinator's flight distance.

Roads and Trails Maintenance

Currently, in Puerto Rico, *Mitracarpus polycladus* occurs adjacent to or along paved and unpaved roads, parking areas, and trails that provide access to recreational areas in seven localities in the dry southern section of the GCF (Service 2018b, p. 5). These roads and trails are managed by the Department as scenic trails and natural areas. However, management and maintenance activities, primarily vegetation trimming, have affected *M. polycladus* individuals in these areas (Service 2018b, p. 10). Similarly, the Puerto Rico Department of Transportation and Public Works right-of-way maintenance causes impacts to individuals and habitat in the State Road PR 333 locality (Service 2018b, p. 10). Right-of-way maintenance activities have resulted in mortality of reproductive *M. polycladus* individuals in three localities and may reduce production of seeds and potential seedlings in these localities if the plants do not recover sufficiently to reproduce when conditions are suitable (Service 2018b, p. 10).

The largest known *Mitracarpus polycladus* cluster occurs adjacent to the heavily used Mesetas trail in GCF with 13,064 individuals occupying an area of 0.255 ha (0.63 ac). Approximately 25 to 30 percent of *M. polycladus* along the trail in this locality are exposed to damage caused by trail maintenance and human trampling (Service 2018b, pp. 10–11). Physical impacts to *M. polycladus* and its habitat are caused by the frequent use of the scenic trails and adjacent habitat in the GCF by residents and tourists for recreational activities (*i.e.,* hiking, running, and mountain biking) throughout the year (Service 2018a, p. 12).

Nonnative grass encroachment along trails follows a similar pattern to encroachment following fire and is described below. The Anegada Island population occurs adjacent to two trails or roads, and the species occurs along roads and trails in Puerto Rico. However, we expect that the effects of road and trail maintenance on the *M. polycladus* populations are limited to a small number of individuals closest to the road or trail edge. Although over half of localities and several thousand individuals are exposed to the threat of road and trail maintenance, available information indicates that this threat does not have a population-level or species-level impact.

Human-Caused Fire

Fires are not a natural event in the subtropical dry forests in Puerto Rico, and the native vegetation in the Caribbean is not adapted to this type of disturbance (Brandeis and Woodall 2008, p. 557; Santiago-García et al. 2008, p. 604). Human-caused fires were identified as a threat to the species when listed (59 FR 46715; September 9, 1994) and continue to occur throughout *Mitracarpus polycladus* habitat in Puerto Rico (Service 2018a, p. 27). Currently, 6 of 10 natural localities of *M. polycladus* occur in areas vulnerable to or at high risk of human-caused fires, particularly during the dry season (Service 2018b, p. 10). Although the Department implements a fire prevention and management program in the GCF during the dry season, fires still occur and impact *M. polycladus* and its habitat (Service 2018b, p. 11).

Fire affects *Mitracarpus polycladus* survival through impacts of heat and encroachment of nonnative, invasive plant species. Nonnative plant species outcompete *M. polycladus* and serve as fuel for fires (García-Cancel 2013, pp. 19, 33; Service 2018a, p. 27). The interaction of fire and nonnative species is described under ''Nonnative, Invasive Species,'' below. Moreover, *M. polycladus* does not grow in areas with visible evidence of past fires (Service 2018b, p. 11). This is likely due to destruction or loss of the seedbank, precluding species germination and recolonization of an area from the seedbank after a fire.

Fires destroy or reduce native vegetation through direct impacts to individuals and to the seedbank (which is not fire-adapted) (Wolfe 2009, p. 28). Fires reduce or eliminate *Mitracarpus polycladus* seeds in the seedbank and promote favorable conditions for the establishment of nonnative, invasive plant species. These species, such as guinea grass (*Megathyrsus maximus*), pajón grass (*Dichanthium annulatum*), and buffel grass (*Cenchrus ciliaris*), are adapted to a natural fire regime and serve as fuel for fires, thus promoting conditions for a more frequent fire regime that precludes the establishment of native vegetation, including *M. polycladus* (Thaxton et al. 2012, p. 9). This pattern occurs in *M. polycladus* habitat in the GCF, where nonnative grasses are present and *M. polycladus* is not observed (García-Cancel 2013, entire; Service 2018b, p. 12). Other factors such as seed predation, seed intrinsic viability, and seedling survival also affect forest recovery after fire. In *M. polycladus* habitat, fires promote habitat fragmentation, return habitat to an earlier successional state, and slow forest recovery processes (Brandeis and Woodall 2008, p. 557; Meddens et al. 2008, p. 569).

Fire negatively impacts *Mitracarpus polycladus* and its habitat, and the capacity of the species to recover from catastrophic fire events is unknown. Moreover, *M. polycladus* occurs in areas with high vulnerability to fires, exacerbating the potential effects of fire on individuals and populations. The effects of climate change and nonnative, invasive species may alter conditions in *M. polycladus* habitat to promote increased susceptibility to fire (as described under ''Nonnative, Invasive Species,'' below). Therefore, even with the Department's current fire prevention and management program efforts during the dry season, human-caused fires occur every year within the species' range. Fires in *M. polycladus* localities affect the survival and recruitment of individuals, population resiliency, and, potentially, the species' viability (Service 2018b, p. 11). Information regarding the threat of fire to the Anegada and Saba Island populations is less extensive than the information for Puerto Rico; however, we expect the threat of human-caused fire is similar since the Anegada and Saba Island populations also occur along roadsides.

Nonnative, Invasive Species

Caribbean dry forests generally have seedbanks with low numbers and variety of species, and forest regeneration in areas disturbed through mechanical vegetation removal or through burning is largely dependent on propagules or seeds from nearby habitats (Wolfe 2009, p. 28). Nonnative species typically become established more quickly and may have less specific habitat or life-history requirements than native species. When nonnative species become established in a disturbed habitat, they outcompete native species for resources, including space, nutrients, water, and sunlight. The impacts of nonnative, invasive species are second only to habitat destruction and modification and are among the greatest threats to the persistence of

native rare species and their habitats in Puerto Rico (Thomson 2005, p. 615; García-Cancel 2013, entire). Nonnative species like guinea grass, buffel grass, pajón grass, and African grass (*Heteropogon contortus*) aggressively colonize and compete with native species for sunlight, nutrients, water, and ground cover (space), suppressing native vegetation (García-Cancel 2013, entire; Rojas-Sandoval and Meléndez-Ackerman 2016, p. 156; Service 2018b, p. 12). In addition, *M. polycladus* does not occur in areas occupied (or dominated) by nonnative grasses at localities in the GCF (García-Cancel 2013, entire; Service 2018b, p. 12). Nonnative trees (*e.g.,* lead tree (*Leucaena leucocephala*)) also colonize *M. polycladus* habitat, particularly after fire events, and suppress the growth of native vegetation (Wolfe and Van Bloem 2012, entire).

In areas where *Mitracarpus polycladus* is established, nonnative species do not appear to reduce habitat directly by displacing existing *M. polycladus* individuals, but primarily impact populations by preventing or reducing colonization by the species when the area is disturbed. In summary, nonnative invasive species outcompete *M. polycladus* for required resources, promote increased frequency and intensity of fire, and prevent establishment of seedlings, thus impacting *M. polycladus* at the individual, population, and, potentially, species levels.

Urbanization and Development

One *Mitracarpus polycladus* locality occurs within the project area of a proposed wind generation project (San Francisco Wind Farm) in Monte de la Ventana. This project occupies 79 ha (195 ac) of dry forest habitat with 1,967 *M. polycladus* individuals in the project area (Service 2018b, pp. 1, 11). Ninety-six percent of *M. polycladus* individuals on the site occur on and adjacent to now-abandoned roads accessing the site. The wind farm construction project is covered by an incidental take permit under a habitat conservation plan (HCP) that includes conservation measures to minimize adverse effects to listed species in the project area (Service 2013, p. 3). Although a substantial portion of this property is identified as a conservation area under the HCP, the conservation areas do not include habitat for *M. polycladus* (Service 2013, p. 3). The species grows in open areas (*e.g.,* dirt roads and wind turbine pads in the project area) where it is vulnerable to effects from the project's operations, including impacts from maintenance activities, vehicle traffic, and habitat encroachment by nonnative, invasive plants. To date, this wind farm project has not been constructed, but we have no indication that the project is abandoned.

The Ballena beach locality has been subject to development pressure in the past with proposals for the development of a hotel in that area. Although this hotel development project has not been constructed, it may be pursued in the future.

Mitracarpus polycladus occurrences on Anegada and Saba Islands are also threatened by development. On Anegada Island, in the British Virgin Islands, the potential for island-wide development exists, with local community support and road improvement works underway (Hamilton 2016, p. 185). Anegada Island has been recognized by its government as an undeveloped island with high potential for tourism development due to the beauty of its natural resources (sandy beaches and coral reefs). In 2007, the Government of Anegada developed a land use plan (Plan) designating areas for commercial and residential purposes, hotel development, agriculture, community parks and recreational areas, a business district, protection and conservation, and government offices and related facilities (Island Resources Foundation (IRF) 2013, p. 24). The Plan proposes to set aside some areas for conservation (IRF 2013, p. 25); however, the proposed areas do not contain *M. polycladus* or its habitat. If the Plan is enacted fully, we expect *M. polycladus* and its habitat to be reduced or eliminated by the proposed development of the island. Although urbanization and development plans for Saba Island (a municipality of the Netherlands) are unknown, the potential for urbanization and tourism development is present.

Grazing

On Anegada and Saba Islands, *Mitracarpus polycladus* habitat has been degraded by the grazing of feral livestock, such as goats and donkeys (Freitas et al. 2016, p. 21; Bárrios and Hamilton 2018, p. 5; Hamilton 2020, pers. comm.). Livestock presence and grazing leads to an increase in soil erosion while foraging, as observed on Saba Island (Freitas et al. 2016, p. 21). These animals also trample *M. polycladus* individuals, reduce its abundance, and affect the population structure. The best available information indicates feral livestock grazing may currently impact the Anegada and Saba Island populations.

In summary, impacts associated with habitat destruction and modification due to vegetation clearance for maintenance and improvement activities of roads and trails, urbanization and tourism development, human-caused fires, and encroachment of nonnative plant species have been documented as current and ongoing threats to *Mitracarpus polycladus* throughout its range. In Puerto Rico, although about 89 percent of *M. polycladus* individuals occur within the GCF, the species and its habitat are impacted by the rangewide threats, although development is less likely in the GCF compared to lands in private ownership. Human-caused fires have been documented in *M. polycladus* habitat even when fire management practices are implemented during the dry season. The remaining 11 percent of the individuals on Puerto Rico occur on private lands not managed for conservation, where habitat destruction and modification resulting from road clearing and wind farm development and operation may impact individuals and localities. All *M. polycladus* individuals on Saba Island and Anegada Island occur on private lands and are not purposefully managed for conservation. Occurrences on Saba Island are subject to threats of grazing and human-induced fire, and potentially to the threat of urbanization and development. *Mitracarpus polycladus* on Anegada Island are at risk due to grazing, urbanization and development, and human-induced fire.

Limited Distribution and Small Population Size

At the time of listing, we identified the species' limited distribution (*i.e.,* two isolated populations: one in Puerto Rico and one on Saba Island) coupled with an undetermined but presumably low number of individuals (*i.e.,* no abundance information was available) as the primary threats to the species. Since listing, our knowledge concerning *Mitracarpus polycladus's* abundance and distribution has improved, and we are aware of increased individuals and localities throughout the southern section of the GCF (Service 2018a, p. 22). Currently, there are three known natural populations (Puerto Rico, Saba Island, Anegada Island) and one introduced population occurring on three Caribbean islands across the species' historical range. The species is restricted to small clusters on exposed limestone, occupying a total area of 0.44 ha (1.1 ac) in southern Puerto Rico (no areal extent is estimated for the populations on Anegada and Saba Islands). The limited distribution of the four populations makes *M. polycladus* vulnerable to catastrophic events (*e.g.,*

widespread and severe drought and large-scale fires).

Small population size can exacerbate other threats acting on the species. Populations that are small, isolated by habitat loss or fragmentation, or impacted by other factors are more vulnerable to extirpation by natural, randomly occurring events (such as predation or stochastic weather events), and to genetic effects that plague small populations, collectively known as small population effects (Purvis et al. 2000, p. 1947). These effects can include genetic drift, founder effects (over time, an increasing percentage of the population inheriting a narrow range of traits), and genetic bottlenecks leading to increasingly lower genetic diversity, with consequent negative effects on adaptive capacity and reproductive success (Keller and Waller 2002, p. 235).

Nine natural localities on Puerto Rico are smaller localities with varying degrees of connectivity and cross-pollination between localities; in contrast, only one natural locality, the Mesetas trail locality in GCF, has a high number of individuals and connectivity. The best available information for Anegada and Saba Islands indicates that these populations are currently small (2,500 on Anegada Island and unknown abundance on Saba Island) and in a few localities with limited distribution.

Effects of Climate Change and Sea Level Rise

The Intergovernmental Panel on Climate Change (IPCC) concluded that evidence of warming of the climate system is unequivocal (IPCC 2014, pp. 2, 40). Observed effects associated with climate change include widespread changes in precipitation amounts, increased extreme weather events including droughts, heavy precipitation, heat waves, more intense tropical cyclones, and an increase in sea level (IPCC 2014, pp. 40–44). Rather than assessing climate change as a single threat in and of itself, we examined the potential consequences to the species and its habitat that arise from changes in environmental conditions associated with various aspects of climate change (temperature, precipitation, and sea level rise). Vulnerability to climate change impacts can be defined as a function of sensitivity, exposure, and adaptive capacity of the species to those changes (IPCC 2007, pp. 6, 21; Glick and Stein 2010, p. 19).

The IPCC-modelled scenarios for the Caribbean islands predict precipitation declines, sea level rise, stronger and more frequent extreme weather events, and temperature increases by 2050 (Penn 2010, p. 45; Khalyani et al. 2016, p. 265; Gould et al. 2018, p. 813; Strauss and Kulp 2018, p. 3; U.S. Global Change Research Program (USGCRP) 2018, p. 136). We examined a downscaled model for Puerto Rico and the British Virgin Islands based on global emissions scenarios from the Climate Model Intercomparison Project (CMIP3) dataset. The more current CMIP5 dataset was not available for the species' range at the time of analysis. The Special Report on Emissions (SRES) scenarios using the CMIP3 dataset are generally comparable to the more recent representative concentration pathway (RCP) scenarios from RCP4.5 (SRES B1) to RCP8.5 (SRES A2) (Lorde 2011, entire; IPCC 2014, p. 57; Khalyani et al. 2016, pp. 267, 279–280). Under both scenarios, emissions increase, precipitation declines, and temperature and total dry days increase, resulting in extreme drought conditions that convert subtropical dry forest into dry and very dry forest (Khalyani et al. 2016, p. 280).

Modeling shows dramatic changes to Puerto Rico through 2100; however, the divergence in these projections increases after mid-century (Khalyani et al. 2016, p. 275). By 2050, Puerto Rico is predicted to be subject to a decrease in rainfall, along with increased drought intensity (Khalyani et al. 2016 p. 265; USGCRP 2018, p. 136). As precipitation decreases, influenced by warming, it will tend to accelerate the hydrological cycles, resulting in wet and dry extremes (Cashman et al. 2010, pp. 1, 51, 53; Jennings et al. 2014, pp. 1, 5–6). A reduction in precipitation in the subtropical dry forests, where rain events are already limited, will affect *Mitracarpus polycladus* viability through reduced seed viability and result in increased seedling mortality. Droughts compromise seedling recruitment as evidenced following dry periods, when seedling and adult mortality is the highest and other individuals show partial die-off (Service 2018b, p. 8). In fact, under experimental conditions, the germination and survival of seedlings of the closely related *M. maxwelliae* were negatively affected by reduced soil moisture (Buitrago-Soto 2002, p. 25). There are indications that the southern region of Puerto Rico, where *M. polycladus* occurs, has experienced negative trends in annual rainfall. Between 2000 and 2016, Puerto Rico had seven drought episodes concentrated around the south, east, and southeastern regions of the island. The most severe drought occurred between 2014 and 2016, when Puerto Rico experienced 80 consecutive weeks of moderate drought, 48 weeks of severe drought, and 33 weeks of extreme drought conditions (Alvarez-Berríos et al. 2018, p. 1). Prolonged dry seasons may represent a bottleneck for seedlings and promote changes in the composition of recruits of plant species (Allen et al. 2017, p. 6). Additionally, prolonged droughts and associated changes in soil conditions (*i.e.,* temperature and soil humidity) would result in conditions promoting fire throughout *M. polycladus*'s range, impacting individuals and reducing seed viability, and therefore species' recruitment. Moreover, the absence of forest canopy on the exposed limestone substrate where *M. polycladus* occurs reduces suitable habitat conditions (*i.e.,* hydrology and moisture retention) that buffer the severity of stress resulting from environmental perturbations, such as droughts.

The IPCC global models and scenarios analyzed for the downscaled models apply to the Caribbean islands. Downscaled general circulation models predict dramatic shifts in the life zones of Puerto Rico with potential loss of subtropical rain, moist, and wet forest, and with the appearance of tropical dry and very dry forests anticipated (Khalyani et al. 2016, p. 275). Some species may move to higher elevations in response to this shift in life zones; however, the extent of a species' ability to redistribute will depend on its dispersal capability and forest connectivity (Khalyani et al. 2019, p. 11). Due to *Mitracarpus polycladus*'s low dispersal capability, clumped spatial distribution, and habitat requirements (exposed limestone), as well as the limited availability of its required habitat, a shift from dry to very dry forest is expected to affect species' viability because of a lack of suitable habitat and the species' inability to move to suitable habitat. Based on the similarity of habitat and geographic proximity, the effects of climate change on Anegada and Saba Islands are expected to be similar to Puerto Rico as emissions increase, precipitation declines, and temperature and total dry days increase, resulting in extreme drought conditions that convert subtropical dry forest into dry and very dry forest (Khalyani et al. 2016, entire). In the subtropical dry forest habitat where *M. polycladus* occurs, climate change may impact the species through declines in natural recruitment and population expansion.

Sea level rise is another expected effect of climate change that may affect coastal communities and habitat in the Caribbean islands (Penn 2010, entire; Lorde 2011, entire; Strauss and Kulp 2018, p. 1). Integrated sea level rise projection and flood risk analysis

predict that floods reaching 0.5 meter (m) (1.64 feet (ft)) above current high tide levels will become common events throughout most of the Caribbean by 2050 (Strauss and Kulp 2018, p. 2). Other scenarios using RCP4.5 and RCP8.5 forecast that by mid-century, sea level is expected to increase by 0.24 m (0.8 ft) to 0.85 m (2.8 ft) (Church et al. 2013, p. 1182; Sweet et al. 2017, p. 75; Strauss and Kulp 2018, p. 14). Based on these sea level rise projections, coastal floods will negatively affect *Mitracarpus polycladus* habitat at or below the 1.0 m (3.3 ft) sea level near the coast or in areas with high coastal erosion through the effects of saltwater inundation. In Puerto Rico, *M. polycladus* occurs at elevations ranging from 1.5 m (5 ft) to 52 m (172 ft) from current sea level (Service 2018b, p. 5). On Saba Island, *M. polycladus* occurs at an elevation ranging from 12 m (40 ft) to 335 m (1,100 ft) (Rojer 1997, p. 19; Freitas et al. 2016, p. 10). On Anegada Island, *M. polycladus* occurs at elevations ranging from 1 m (3.2 ft) to 8 m (26 ft) from current sea level (Bárrios 2021, pers. comm.; Hamilton 2021, pers. comm.). Across the range, the only known locality in an area with potential to be affected by flooding and sea level rise is the Windlass site on Anegada Island (approximately 200 *M. polycladus* individuals). The Windlass site is located in the sandy and rocky areas on the northern coast of the island where the habitat is subjected to high energy wave and coastal erosion (Bárrios and Hamilton 2018, p. 5). *Mitracarpus polycladus* individuals occur in elevations higher than those we expect to be impacted by sea level rise on Puerto Rico, Saba Island, and other localities on Anegada Island. Based on predicted sea level rise and the elevation where most individuals occur, we determined sea level rise does not pose a threat to the species in the foreseeable future. Nevertheless, sea level rise may indirectly impact the species, particularly on Anegada Island, through development associated with displacement of the human population from coastal areas to inland and urban areas where individuals of *M. polycladus* occur (Penn 2010, pp. 21, 249; Hamilton 2016, p. 101). We do not expect significant effects to *M. polycladus* from sea level rise, although one coastal locality on Anegada Island has the potential to be affected.

In summary, other natural and human-caused factors, such as the limited distribution of the three known natural populations and the effects of climate change (*i.e.,* decreased rainfall, severe droughts, and shift in life zones), are current threats to *Mitracarpus polycladus.* The threats to the species will be exacerbated by the expected changes in climatic conditions by 2050. We expect the projected changes in habitat and microhabitat conditions of temperature and rainfall will have negative effects on *M. polycladus.* The ecology of *M. polycladus* appears closely linked to specific current climatic conditions of rain seasonality and drought periods. By 2050, sea level rise is expected to affect the Caribbean islands, including Puerto Rico, Anegada Island, and Saba Island. Overall, the effects of a changing climate on *M. polycladus* will be exacerbated by the relatively low number of populations and habitat degradation and fragmentation, which can affect the future viability of the species.

Conservation Efforts and Regulatory Mechanisms

In the final listing rule (59 FR 46715; September 9, 1994), we identified the inadequacy of existing regulatory mechanisms as one of the factors affecting the continued existence of *Mitracarpus polycladus.* Outside of the protections provided by the Act, the Commonwealth of Puerto Rico legally protects *M. polycladus* as an endangered species, including protections to its habitat, through Commonwealth Law No. 241–1999 (title 12 of the Laws of Puerto Rico at sections 107–107u) and Regulation 6766 (To govern the management of threatened and endangered species in the Commonwealth of Puerto Rico), which prohibit collecting, cutting, and removal, among other actions, of listed plants (DRNA 2004, p. 11). These protections are described further in our June 23, 2022, proposed rule (87 FR 37476). Although there are legal mechanisms in place (*e.g.,* laws or regulations) for the protection of *M. polycladus,* the enforcement of such mechanisms on private and public land is sometimes challenging. Land managers, landowners, and law enforcement officers are not always aware of the localities occupied by the species throughout its range or may have difficulty correctly identifying the plant (Service 2018b, p. 10). Therefore, limited public awareness of the species and its status exacerbates the challenge of implementation of existing laws and regulations and affects conservation of *M. polycladus* and its habitat.

On Anegada Island, various conservation and education efforts are taking place for the protection of rare plant and animal species (Gardner et al. 2008, entire; IRF 2013, p. 29). However, we are unaware of any formal regulatory mechanism that protects *Mitracarpus polycladus* on Anegada Island or Saba Island (Geelhoed et al. 2013, p. 12).

We do not expect this species to be removed from legal protection by the Commonwealth when it is reclassified as a threatened species under the Act. This plant is now more abundant, is widely distributed, and largely occurs within conserved lands. Despite the existing regulatory mechanisms and conservation efforts, the threats discussed above are still affecting the species to the extent that it does not meet the criteria for delisting. However, additional opportunities exist to engage the public and provide information about *M. polycladus* and support the enforcement of existing protective mechanisms.

Overall Summary of Factors Affecting the Species

We have carefully assessed the best scientific and commercial information available regarding the threats that are currently impacting and expected to impact *Mitracarpus polycladus* in developing this rule. Limited distribution and a low number of individuals were considered a threat to *M. polycladus* when we listed the species (59 FR 46715; September 9, 1994). Recent information indicates the species is more abundant and widely distributed than was known at the time of listing, and most individuals occur in protected lands where threats are reduced, although threats are still present. We determined that habitat destruction and modification (*e.g.,* vegetation clearance with trail and road maintenance activities, human-caused fires, encroachment by nonnative and invasive species, urbanization and tourism development, and grazing), as well as other natural or manmade factors such as limited distribution and the effects of climate change, will continue to pose threats to *M. polycladus* in the foreseeable future.

We evaluated the biological status of this species, both currently and into the future, considering the species' viability as characterized by its resiliency, redundancy, and representation. *Mitracarpus polycladus* has demonstrated some level of resiliency to natural and anthropogenic disturbances in the past. Adult individuals have overcome disturbances such as droughts and habitat modification, road and trail maintenance, and fires. However, seedlings are susceptible to the effects of drought and to the invasion of nonnative plant species after fire or other disturbance events. The lack of or reduced seedling recruitment affects

population demographics and the long-term viability of the species.

For *Mitracarpus polycladus* to maintain viability, populations, or some portion thereof, must be sufficiently resilient. Resiliency describes the ability of a population to withstand stochastic events (arising random factors). We can measure resiliency based on metrics of population health: for example, birth versus death rates and population size. For this rule, our classification of resiliency relies heavily on the biology of the species and habitat characteristics in the absence of highly certain population size or trend estimates.

We broadly defined categories of resiliency for *Mitracarpus polycladus* populations by assessing demographic and habitat parameters and anchored these categories in the species' needs and life-history characteristics (see table 3, below). Important species' characteristics center on the species' seasonality, seedling mortality after drought, dispersal capability, and competition with nonnative grasses for space and resources. The demographic metrics we evaluated include abundance at localities and evidence of reproduction or recruitment. We assessed habitat characteristics, including the degree of habitat protection (or, conversely, development risk), extent of suitable habitat, connectivity to other localities, and vulnerability to threats. A population may not exhibit each characteristic of the category as defined, but most parameters known for the population fall into the resilience category. For example, a population that is described as highly resilient may have high abundance, high number of localities, good distribution of localities, and recruitment at most localities even if suitable habitat and connectivity is limited.

TABLE 3—DEFINITIONS FOR MITRACARPUS POLYCLADUS POPULATION RESILIENCY CATEGORIES

High	Moderate	Low
• Abundance is high; • Number of localities is high, and they occupy a greater spatial extent within suitable habitat; • Reproduction and recruitment are such that the population remains stable or increases; • Abundant suitable habitat occurs outside known localities; and • Connectivity occurs among most localities.	• Abundance is moderate; • Number of localities is moderate, and they occupy a limited spatial extent within suitable habitat; • Reproduction and/or recruitment is occurring at some localities; • Recruitment and mortality are equal such that the population does not grow, or the population trend is unknown; • Some suitable habitat occurs outside known localities; and • Connectivity occurs between at least two localities.	• Abundance is low. • Number of localities is limited to one, and it occupies a very restricted spatial extent. • No reproduction or recruitment is occurring. • Mortality exceeds recruitment such that the population is declining. • Limited or no suitable habitat occurs outside known locality; and • There is no connectivity between localities (single locality population).

Currently, three *Mitracarpus polycladus* natural populations are known from three islands in the Caribbean (*i.e.,* Puerto Rico, Anegada Island, and Saba Island). In Puerto Rico, many *M. polycladus* adult individuals occur in small clusters, and seedlings have been documented, particularly after rain events. Information from Anegada Island and Saba Island is very limited, making it difficult to determine the level of population resiliency. However, both of those populations of *M. polycladus* demonstrate some level of resiliency as populations remain on the landscape on both islands and have presumably overcome historical disturbances of varying magnitude and duration, including habitat modification.

The short time it takes *Mitracarpus polycladus* to reach reproductive size and the extent of seed production facilitates population-level resiliency. However, resiliency is limited by the small size of clusters of individuals, species' seasonality, low dispersal capacity, and high seedling mortality. We have no evidence that known *M. polycladus* clusters are expanding or colonizing suitable habitat away from roads and trails. The lack of expansion and colonization results in isolated clusters with an increased chance of reduced genetic variation due to genetic drift, potentially resulting in inbreeding depression and lower resiliency. In addition, *M. polycladus* has been displaced by nonnative, invasive species after habitat disturbance by fire, which further precludes the effective recruitment of the species. The *M. polycladus* population in Puerto Rico occurs on 0.44 ha (1.1 ac) of habitat in 10 naturally occurring and 1 introduced locality. Suitable habitat connects some, but not all, localities. Increased connectivity between scattered localities in Puerto Rico is expected to improve population resiliency. The Saba and Anegada Islands populations occur in limited areas as well. We do not have information about the population trend and areal extent of these localities. Overall, the limited areal extent of *M. polycladus* contributes to its susceptibility to stochastic and catastrophic events. Based on these factors, we determined that the Puerto Rico population currently exhibits moderate resiliency while the Anegada and Saba Islands populations exhibit unknown or low resiliency.

The species' viability is also affected by its ability to adapt to changing environmental conditions. We have no information on the genetic variability of *Mitracarpus polycladus* nor information on variation in adaptive life-history traits, and, therefore, we evaluated the species' ability to adapt based on its likelihood of maintaining the breadth of genetic diversity and gene flow. This species occurs in small patches of suitable habitat within subtropical dry forest on three islands of the Caribbean with little variation in habitat conditions between populations. Historically, genetic diversity may have contributed to the species' ability to adapt to changing conditions, and the species likely has maintained underlying genetic diversity. Rangewide, all populations are vulnerable to the threats that could result in the extirpation of clusters of individuals or localities and the loss of genetic representation.

The ability of the species to adapt is also a function of the level of gene flow among populations. The three *Mitracarpus polycladus* populations are disconnected; thus, gene flow is limited to individuals within populations due to the lack of connectivity that would allow cross-pollination among populations. As described above in *Limited Distribution and Small Population Size,* small, isolated populations are susceptible to genetic effects; however, the best available information indicates that species

viability is not affected by genetic issues at present. As fragmentation increases, gene flow will be reduced further, and the populations will become more vulnerable to genetic drift and inbreeding, thereby reducing the species' adaptive capacity. We determined *M. polycladus* representation is likely reduced from historical representation due to reduced or fragmented habitat conditions, but the species maintains moderate adaptive capacity.

Lastly, the species' viability depends on its ability to withstand catastrophic events, which is a function of the resiliency, number, and distribution of *Mitracarpus polycladus* populations. The more sufficiently resilient populations, and the wider the distribution of those populations, the more redundancy the species will exhibit. The primary catastrophic risks to *M. polycladus* include widespread, prolonged drought and fire. These threats are expected to increase in the future as the subtropical dry forest where the species occurs shifts to very dry forest habitat. The species' largest population (Puerto Rico) is moderately resilient and now occurs in a wider rangewide distribution than was known historically. We have determined *M. polycladus* currently exhibits moderate species redundancy.

In summary, the current abundance of *Mitracarpus polycladus* has increased and some of the identified threats have decreased since its listing in 1994. However, our analysis indicates that threats and stressors continue to affect the species. We based our analyses on biological factors, expert judgment regarding the consequences of interacting stressors to the species' viability, and our assessment of likely future habitat conditions.

Determination of Mitracarpus polycladus's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or threatened species. The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of endangered species or threatened species based on one or more of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we have determined that *Mitracarpus polycladus's* current viability is higher than was known at the time of listing (current abundance estimate of more than 20,000 adult individuals in three populations) and most individuals occur on protected lands where threats are reduced. At the time of listing, the known range of *M. polycladus* consisted of an undetermined number of individuals located in a single population in southern Puerto Rico and from one record on Saba Island. The primary threats were habitat destruction and modification, inadequacy of existing regulatory mechanisms, and limited distribution (see 59 FR 46715, September 9, 1994, pp. 46716–46717). Currently, *M. polycladus* is known to occur in 11 localities within an areal extent of 0.44 ha (1.1 ac) in southern Puerto Rico and several localities on Saba Island and Anegada Island. In Puerto Rico, about 89 percent of the known *M. polycladus* individuals occur within the GCF, a forest managed for conservation by the Department in a manner compatible with *M. polycladus's* needs and protected by Commonwealth regulations.

The remaining 11 percent of individuals on Puerto Rico and individuals on Saba and Anegada Islands occur on private lands and are at risk due to habitat destruction and modification from wind farm projects, urbanization, and tourism development. Information from Puerto Rico also indicates that threats from human-caused fires, human trampling, and nonnative and invasive species impact *Mitracarpus polycladus* on both public and private lands. These threats may be more severe for the populations on private lands, since fire management prevention practices and other management actions implemented on public lands are not required on private lands. On Saba and Anegada Islands, the species also faces threats due to residential and commercial development and degradation due to grazing of feral livestock. Information from Anegada Island and Saba Island is very limited, making it difficult to determine the level of population resiliency; however, both populations demonstrate some level of resiliency as we have longstanding records from the same localities that have presumably overcome historical disturbances of varying magnitude and duration, including habitat modification. Thus, we determined the Puerto Rico population currently exhibits moderate resiliency and the resiliency of the Anegada and Saba Islands populations is unknown or low.

The species' distribution is wider than known at the time of listing, and the species' listing by the Commonwealth of Puerto Rico provides some level of protection to *Mitracarpus polycladus.* However, remaining threats are ongoing and projected to impact the species in the future. These include the present or threatened destruction, modification, or curtailment of its habitat or range (*e.g.,* maintenance of existing roads and trails, human trampling, human-caused fires, encroachment of nonnative and invasive species after fires and other habitat modification activities, and urbanization and tourism development) (Factor A); and other natural or manmade factors affecting the continued existence of *M. polycladus* throughout its range (*e.g.,* limited distribution and the effects of climate change) (Factor E). The best available information does not indicate that overutilization or diseases are affecting the species or feral livestock are specifically targeting this species and consuming it. Despite the identification of these threats that currently, and are expected to continue to, impact the species, we conclude that the populations exhibit sufficient resiliency and species-level representation and redundancy.

In summary, *Mitracarpus polycladus* is distributed across a narrow range, but the number of localities within populations and environmental conditions have improved since the time of listing. Thus, after assessing the best available information, we conclude that *M. polycladus* is not in danger of extinction now throughout all of its range. We therefore proceed with determining whether *M. polycladus* is likely to become endangered within the foreseeable future throughout all of its range.

Based on biological factors and stressors to the species' viability, we determined 25 years to be the foreseeable future within which we can reasonably project threats and the species' response to those threats. The foreseeable future for the individual

factors and threats varies. We reviewed available information including forest management plans, proposed development projects, and fire history within the range of the species, to inform our assessment of likely future levels for each threat. Projections for 2050 predict increases in temperature and decreases in precipitation (Khalyani et al. 2016, pp. 274–275). However, divergence in temperature and precipitation projections increase dramatically after mid-century among climate change scenarios, making late-century projections more uncertain and reducing our ability to reliably predict stressors associated with climate change (Khalyani et al. 2016, p. 275). In addition, observation of threats and the effects of those threats on the species since it was listed in 1994 (more than 25 years ago) have given us a baseline to understand how threats may impact the species. We have observed the effects of habitat destruction and modification (such as vegetation clearance for maintaining or improving trails and access roads, human trampling, human-caused fires, invasive species, and urban and tourist development) and climate change (predicted changes in temperature, increased droughts, and life zones shifting) on the species since its listing and incorporated these observations to reliably predict the species' response to these threats.

The 25-year period includes multiple generations of the species and allowed adequate time for impacts from conservation efforts or changes in threats to be observed through population responses. This timeframe accounts for the species' reproductive biology, and thus the time required by multiple generations of *Mitracarpus polycladus* to reach a reproductive size and effectively contribute to the viability of the species. It accounts for reaching maturity, flowering, setting viable fruits and seeds, seed germination, and seedling survival and establishment, and it allows environmental stochastic events such as severe drought periods to affect the species. Furthermore, the established timeframe provides an opportunity to analyze the implications of the Department's forest management actions, and existing laws and regulations to protect currently known populations.

Although population numbers and abundance of *Mitracarpus polycladus* have increased and the species' occurrences appear stable, threats remain in magnitude, scope, and impact over time. Habitat destruction and modification, such as vegetation clearance for maintaining or improving trails and access roads, human trampling, human-caused fires, invasive species, and urban and tourist development (Factor A), and other natural or manmade factors such as the effects of climate change (Factor E) may limit the species' abundance and distribution of occurrences. Gene flow will continue to be limited to individuals within populations due to the lack of connectivity that would allow cross-pollination among populations; populations may become more vulnerable to genetic drift and inbreeding, thereby reducing the species' ability to adapt to changing conditions. Although much of the Puerto Rico population occurs in the GCF, which is managed for conservation, actions that benefit the species will not eliminate the threats of trail maintenance, trampling, nonnative and invasive species, and human-caused fires, and these threats are expected to continue to affect the species in the foreseeable future. Proposed urbanization and tourism development projects may be completed in the foreseeable future. Furthermore, under climate change projections, the risk of catastrophic drought and fire is expected to increase with the subtropical dry forest shifting to very dry forest habitat within the foreseeable future.

The magnitude of effects associated with habitat destruction and modification along with climate change are expected to continue and potentially increase in the foreseeable future. Despite the existing regulatory mechanisms and conservation efforts, the threats discussed above are still affecting the species to the extent that it does not meet the criteria for delisting. Thus, after assessing the best available information, we conclude that *M. polycladus* is not currently in danger of extinction, but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the provision of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (hereafter ''Final Policy''; 79 FR 37578; July 1, 2014) that provided that if the Service determines that a species is threatened throughout all of its range, the Service will not analyze whether a species is endangered in a significant portion of its range.

Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant, and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for *Mitracarpus polycladus,* we choose to address the status question first by considering information pertaining to the geographic distribution of both the species and the threats that the species faces to determine whether there are any portions of the range where the species is endangered.

We evaluated the range of *Mitracarpus polycladus* to determine if the species is in danger of extinction now in any portion of its range. The range of a species can theoretically be divided into portions in an infinite number of ways. We focused our analysis on portions of the species' range that may meet the Act's definition of an endangered species. For *M. polycladus,* we considered whether the threats or their effects on the species are greater in any biologically meaningful portion of the species' range than in other portions such that the species is now in danger of extinction in that portion.

We examined the following threats: habitat loss and modification due to vegetation maintenance or trimming along roads and trails, human trampling, and urbanization and tourism development; human-caused fires; nonnative, invasive plant species; and the effects of climate change (prolonged droughts, expected shifts of life zones, and sea level rise), including cumulative effects. We also considered whether these threats may be exacerbated by small population size and limited connectivity between

populations. For detailed description of each threat, see **Summary of Biological Status and Threats**, above.

Habitat modification poses a threat to most of the 11 *Mitracarpus polycladu*s localities in Puerto Rico, as well as the populations on Saba and Anegada Islands. The *M. polycladus* populations on Puerto Rico, Anegada Island, and Saba Island experience threats of habitat degradation and modification due to vegetation clearance for maintenance and improvement of roads and trails, urbanization and tourism development, human-caused fires, and the subsequent encroachment of nonnative and invasive species. In addition, approximately 11 percent of *M. polycladus* individuals in Puerto Rico occur on private lands that are exposed to the threat of development more so than individuals on protected lands. Moreover, the species' localities in each population are distributed across a limited geographic area. Although climate change is expected to affect *M. polycladus* populations in the foreseeable future, we determined that climate change does not represent a current threat to the species; therefore, our assessment of the threat of climate change as a future threat is consistent with our ''threatened'' status determination for the species.

Small population size can exacerbate other threats on the species. The information regarding *Mitracarpus polycladus* populations on Anegada and Saba Islands is more limited than that regarding the Puerto Rico population. Based on the best available information for Anegada and Saba Islands, these populations are currently small or assumed to be small (2,500 on Anegada Island and unknown abundance on Saba Island) and in a few localities with limited distribution. Ten of the 11 species' localities on Puerto Rico also occur in clusters with low numbers of individuals that are isolated from other clusters, but the species is represented by a wider distribution on Puerto Rico than on Anegada and Saba Islands. Despite the rarity of *M. polycladus* on Anegada and Saba Islands, the species has demonstrated continued presence for decades in some localities. Although species' persistence does not equate with high resiliency or viability of a population or species, we expect *M. polycladus* populations to maintain resiliency in the future, despite ongoing threats. Therefore, small population size and low abundance in these localities, even when considered in the context of other threats, do not represent a concentration of threats at a biologically meaningful scale such that the species may be in danger of extinction in this portion. Based on our review of information and the synergistic effects of threats on Anegada and Saba Islands, this portion of the species' range does not provide a basis for determining that the species is in danger of extinction in a significant portion of its range.

Overall, we found that threats likely are impacting individuals or populations similarly across the species' range. Kinds of threats and levels of threats are more likely to vary across a species' range if the species has a large range rather than a very small natural range, such as *M. polycladus.* Species with limited ranges are more likely to experience the same types and generally the same levels of threats in all parts of their range. These threats are certain to occur, and populations are facing the same extent of threats, even though certain populations may have fewer occurrences.

We found no portion of *Mitracarpus polycladus'*s range where threats are impacting individuals differently than elsewhere in its range to the extent that the status of the species in one portion differs from any other portion of its range.

Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not need apply the aspects of the Final Policy, including the definition of ''significant,'' that those court decisions held were invalid.

Determination of Status

Our review of the best available scientific and commercial information indicates that *Mitracarpus polycladus* meets the Act's definition of a threatened species. Therefore, we are reclassifying *M. polycladus* as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

II. Final Rule Issued Under Section 4(d) of the Act

Under section 4(d) of the Act, the Secretary may promulgate protective regulations for threatened species. Because we are reclassifying this species as a threatened species, the prohibitions in section 9 will not apply directly. We are, therefore, promulgating below a set of regulations to provide for the conservation of the species in accordance with the Act's section 4(d), which also authorizes us to apply any of the prohibitions in section 9 to a threatened species. The discussion below regarding protective regulations under section 4(d) of the Act complies with our policy, as published in the **Federal Register** on July 1, 1995 (59 FR 34272), to identify to the maximum extent practical at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act.

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as ''threatened.'' The U.S. Supreme Court has noted that statutory language similar to the language in section 4(d) of the Act authorizing the Secretary to take action that she ''deems necessary and advisable'' affords a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of a threatened species. The second sentence grants particularly broad discretion to us when adopting prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld, as a valid exercise of agency authority, rules developed under section 4(d) that included limited prohibition against takings (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 WL 2344927 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 WL 511479 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not

address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The provisions of this 4(d) rule promote conservation of *Mitracarpus polycladus* by encouraging management of the habitat in ways that facilitate conservation for the species. The provisions of this rule are one of many tools that we use to promote the conservation of *M. polycladus.* As explained below, we are adopting a species-specific rule that sets out all of the protections and prohibitions applicable to *M. polycladus.*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

These requirements are the same for a threatened species with a species-specific 4(d) rule. For example, as with an endangered species, if a Federal agency determines that an action is ''not likely to adversely affect'' a threatened species, the action will require formal consultation and the formulation of a biological opinion (50 CFR 402.14(a)).

Provisions of the 4(d) Rule

Exercising the Secretary's authority under section 4(d) of the Act, we have developed a species-specific rule that is designed to address *Mitracarpus polycladus'*s conservation needs. As discussed previously in Summary of Biological Status and Threats, we have concluded that *Mitracarpus polycladus* is likely to become in danger of extinction within the foreseeable future primarily due to the present or threatened destruction, modification, or curtailment of its habitat or range (specifically, road and trail maintenance, human-caused fires, nonnative and invasive species, urbanization and tourism development; and grazing); and other natural or manmade factors (specifically, the effects of climate change). Section 4(d) requires the Secretary to issue such regulations as she deems necessary and advisable to provide for the conservation of each threatened species and authorizes the Secretary to include among those protective regulations any of the prohibitions that section 9(a)(2) of the Act prescribes for endangered species. We find that the protections, prohibitions, and exceptions in this species-specific rule as a whole satisfy the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of *M. polycladus.*

The protective regulations we are finalizing for *Mitracarpus polycladus* incorporate prohibitions from section 9(a)(2) of the Act to address threats to the species. Section 9(a)(2) prohibits the following activities for endangered plants: importing or exporting; certain acts related to removing, damaging, and destroying; delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce. These protective regulations include all of these prohibitions for *M. polycladus* because the species is at risk of extinction within the foreseeable future and putting these prohibitions in place will help to protect the species' existing populations, slow its rate of decline, and decrease synergistic, negative effects from other threats.

The exceptions to the prohibitions include all of the general exceptions to the prohibitions for endangered plants against removing and reducing to possession, as set forth at 50 CFR 17.61(c), and certain other specific activities that we except, as described below. Despite these prohibitions regarding threatened species, we may under certain circumstances issue permits to carry out one or more otherwise-prohibited activities, including those described above. The regulations that govern permits for threatened plants state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species (50 CFR 17.72). Those regulations also state that the permit shall be governed by the provisions of § 17.72 unless a special rule applicable to the plant is provided in §§ 17.73 to 17.78. Therefore, permits for threatened species are governed by the provisions of § 17.72 unless a species-specific 4(d) rule provides otherwise. However, under our recent revisions to § 17.71, the prohibitions in § 17.71(a) do not apply to any plant listed as a threatened species after September 26, 2019. As a result, for threatened plant species listed after that date, any protections must be contained in a species-specific 4(d) rule. We did not intend for those revisions to limit or alter the applicability of the permitting provisions in § 17.72, or to require that every species-specific 4(d) rule spell out any permitting provisions that apply to that species and species-specific 4(d) rule. To the contrary, we anticipate that permitting provisions will generally be similar or identical for most species, so applying the provisions of § 17.72 unless a species-specific 4(d) rule provides otherwise will likely avoid substantial duplication. Under 50 CFR 17.72 with regard to threatened plants, a permit may be issued for the following purposes: For scientific purposes, to enhance propagation or survival, for economic hardship, for botanical or horticultural exhibition, for educational purposes, or for other activities consistent with the purposes and policy of the Act. Additional statutory exceptions from the prohibitions are found in sections 9 and 10 of the Act.

We recognize the beneficial and educational aspects of activities with seeds of cultivated plants, which generally enhance the propagation of the species and, therefore, will satisfy permit requirements under the Act. We intend to monitor the interstate and foreign commerce and import and export of these specimens in a manner that will not inhibit such activities, providing the activities do not represent a threat to the species' survival in the wild. In this regard, seeds of cultivated specimens will not be subject to the prohibitions above, provided that a statement that the seeds are of ''cultivated origin'' accompanies the

seeds or their container (*e.g.,* the seeds could be moved across State lines or between territories for purposes of seed banking or use for outplanting without additional regulations) (50 CFR 17.71(a)).

We recognize the special and unique relationship with our State and Territorial natural resource agency partners in contributing to conservation of listed species. State and Territorial agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State and Territorial agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing all aspects of the Act. In this regard, section 6 of the Act provides that we must cooperate to the maximum extent practicable with the States and Territories in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State or Territorial conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve *Mitracarpus polycladus* that may result in otherwise prohibited activities without additional authorization.

Nothing in this 4(d) rule will change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or our ability to enter into partnerships for the management and protection of *Mitracarpus polycladus.* However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations and species-specific protective regulations promulgated concurrently with a decision to list or reclassify a species as threatened. The courts have upheld this position (*e.g., Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995) (critical habitat); *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service,* 2005 WL 2000928 (N.D. Cal. Aug. 19, 2005) (concurrent 4(d) rule)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. There are no federally recognized Tribes in the range of *Mitracarpus polycladus.*

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Caribbean Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.12, in paragraph (h), amend the List of Endangered and Threatened Plants by revising the entry for "*Mitracarpus polycladus*" under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
*	*	*	*	*
Mitracarpus polycladus	No common name	Wherever found	T	59 FR 46715, 9/9/1994; 88 FR [Insert **Federal Register** page where the document begins], 11/1/2023; 50 CFR 17.73(i).[4d]
*	*	*	*	*

■ 3. Amend § 17.73 by adding paragraph (i) to read as follows:

§ 17.73 Special rules—flowering plants.

* * * * *

(i) *Mitracarpus polycladus* (no common name).

(1) *Prohibitions.* The following prohibitions that apply to endangered plants also apply to *Mitracarpus polycladus.* Except as provided under paragraph (i)(2) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit

another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.61(b) for endangered plants.

(ii) Remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy the species on any such area; or remove, cut, dig up, or damage or destroy the species on any other area in knowing violation of any law or regulation of the Territory or in the course of any violation of a Territorial criminal trespass law.

(iii) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.61(d) for endangered plants.

(iv) Sale or offer for sale, as set forth at § 17.61(e) for endangered plants.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by permit under § 17.72.

(ii) Remove, cut, dig up, damage, or destroy on areas not under Federal jurisdiction if you are a qualified employee or agent of the Service or Territorial conservation agency which is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, and you have been designated by that agency for such purposes, when acting in the course of official duties.

(iii)(A) Any employee or agent of the Service, any other Federal land management agency, or a Territorial conservation agency, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession *Mitracarpus polycladus* from areas under Federal jurisdiction without a permit if such action is necessary to:

(*1*) Care for a damaged or diseased specimen;

(*2*) Dispose of a dead specimen; or

(*3*) Salvage a dead specimen which may be useful for scientific study.

(B) Any removal and reduction to possession pursuant to this paragraph must be reported in writing to the U.S. Fish and Wildlife Service within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with written directions from the Service.

(iv) Engage in any act prohibited under paragraph (i)(1) of this section with seeds of cultivated specimens, provided that a statement that the seeds are of ''cultivated origin'' accompanies the seeds or their container.

* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–24059 Filed 10–31–23; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 88, No. 210
Wednesday, November 1, 2023

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65 and 141

[Docket No.: FAA–2023–0825; Notice No. 23–06A]

RIN 2120–AL25

Removal of Expiration Date on a Flight Instructor Certificate; Additional Qualification Requirements To Train Initial Flight Instructor Applicants; and Other Provisions; Reopening of Comment Period

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

ACTION: Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This action reopens the comment period for the notice of proposed rulemaking (NPRM) published on May 23, 2023, titled ''Removal of Expiration Date on a Flight Instructor Certificate; Additional Qualification Requirements To Train Initial Flight Instructor Applicants; and Other Provisions.'' The proposed amendments would function to remove the expiration date from a flight instructor certificate, establish recent experience requirements, expand certain certificate reinstatement options for flight instructors, amend qualification requirements for flight instructors seeking to provide training to initial flight instructor applicants, and codify the requirements of a Special Federal Aviation Regulation. The FAA is reopening the comment period to allow commenters an additional opportunity to provide feedback on this proposed rule.

DATES: The comment period for the NPRM published on May 23, 2023, at 88 FR 32983, and closed on June 22, 2023, is reopened until December 1, 2023.

ADDRESSES: Send comments identified by docket number FAA–2023–0825 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 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.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

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 the 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.

FOR FURTHER INFORMATION CONTACT: Allan G. Kash, Training and Certification Group, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–1100; email *allan.g.kash@faa.gov.*

SUPPLEMENTARY INFORMATION:

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views relating to the rulemaking. 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 receives 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 delay. The FAA may change this proposal in light of the comments it receives.

B. Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

C. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the internet by—

1. Searching the Federal eRulemaking Portal at *www.regulations.gov;*
2. Visiting the FAA's Regulations and Policies web page at *www.faa.gov/regulations_policies/;* or
3. Accessing the Government Printing Office's web page at *www.GovInfo.com.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of

Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the internet through the Federal eRulemaking Portal referenced in item (1) above.

I. Background

On May 23, 2023, the FAA published an NPRM titled ''Removal of Expiration Date on a Flight Instructor Certificate; Additional Qualification Requirements To Train Initial Flight Instructor Applicants; and Other Provisions,'' in the **Federal Register** (88 FR 32983; Notice No. 23–06). The NPRM primarily proposed amendments to flight instructor certificate requirements in part 61. First, the FAA proposed to amend flight instructor certificate renewal requirements by changing the existing renewal requirements to recent experience requirements and adding a new method for persons to establish recent flight instructor experience. Additionally, the FAA proposed to allow a flight instructor whose recent experience lapsed by no more than three calendar months to reinstate flight instructor privileges by taking an approved flight instructor refresher course rather than completing a flight instructor certification practical test. Further, the FAA proposed to amend the qualification requirements for flight instructors seeking to provide training to initial flight instructor applicants by adding two new methods under which a flight instructor may become qualified to provide this training. Finally, the FAA proposed to relocate and codify Special Federal Aviation Regulation (SFAR) 100–2, *Relief for U.S. Military and Civilian Personnel who are Assigned Outside the United States in Support of U.S. Armed Forces Operations* into parts 61, 63, and 65.

Commenters were instructed to provide comments on or before June 22, 2023 (*i.e.,* 30 days from the date of publication of the NPRM). However, during the original comment period, the FAA received a request to extend the comment period to provide additional time to the public to comment on the proposed rule.[1] Specifically, the comment proposed several recommendations in lieu of the proposed rulemaking. One such comment urged the FAA to convene a working group and consult with the flight training industry and, at a minimum, an extension of the comment period until after AirVenture 2023.[2]

II. Reopening of Comment Period

The FAA grants the commenter's request for an extension of the comment period to comment on the proposed rule. Under the guidance of Executive Order 13563, which provides that the public must be afforded a meaningful opportunity to comment with a comment period that should generally be at least 60 days, the FAA finds that an additional thirty (30) days will provide sufficient opportunity for the public to comment (*i.e.,* a total period of 60 days). Therefore, the comment period for Notice No. 23–06 is reopened until December 1, 2023.

The FAA will not grant any additional requests to further extend the comment period for this rulemaking. Issued under authority provided by 49 U.S.C. 106(f), 44701(a)(5), and 44703(a) in Washington, DC, on or about October 26, 2023.

Brandon Roberts,

Executive Director, Office of Rulemaking.

[FR Doc. 2023–24082 Filed 10–31–23; 8:45 am]

BILLING CODE 4910–13–P

[1] *See* comment from William Edwards, Docket No. FAA–2023–0825–0132.

[2] The Experimental Aircraft Association's AirVenture Oshkosh Air Show was held from July 24 through July 30, 2023.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1264

[CPSC Docket No. 2011–0074]

Safety Standard Addressing Blade-Contact Injuries on Table Saws

AGENCY: Consumer Product Safety Commission.

ACTION: Supplemental notice of proposed rulemaking; notice of opportunity for oral presentation of comments.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) has determined preliminarily that there may be an unreasonable risk of blade-contact injuries associated with table saws. To address this hazard, the Commission proposes a rule under the Consumer Product Safety Act (CPSA) that would establish a performance standard that requires table saws to limit the depth of cut to no more than 3.5 millimeters when a test probe, acting as surrogate for a human finger or other body part, approaches the spinning blade at a rate of 1 meter per second (m/s). The Commission is providing an opportunity for interested parties to present comments on this supplemental notice of proposed rulemaking (SNPR).

DATES:

Deadline for Written Comments: Written comments must be received by January 2, 2024.

Deadline for Request to Present Oral Comments: Any person interested in making an oral presentation must send an email indicating this intent to the Office of the Secretary at *cpsc-os@cpsc.gov* by December 1, 2023.

ADDRESSES:

Written Comments: You may submit written comments in response to the proposed rule, identified by Docket No. CPSC–2011–0074, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. The Commission typically does not accept comments submitted by email, except as described below.

Mail/Hand Delivery/Courier/Written Submissions: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this document. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to *cpsc-os@cpsc.gov.*

Docket SNPR: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* insert docket number CPSC–2011–0074 into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Caroleene Paul, Directorate for Engineering Sciences, U.S. Consumer

Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone (301) 987–2225; fax (301) 869–0294; email *cpaul@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background [1]

On April 15, 2003, Stephen Gass, David Fanning, and James Fulmer, *et al.* (petitioners) requested that the CPSC require performance standards for a system to reduce or prevent injuries associated with contact with the blade of a table saw. The petitioners were associated with SawStop, LLC, and its parent company, SD3, LLC (collectively, SawStop). On October 11, 2011, the Commission published an advance notice of proposed rulemaking (ANPR) to consider whether there may be an unreasonable risk of blade-contact injuries associated with table saws. 76 FR 62678. The ANPR began a rulemaking proceeding under the CPSA. The Commission received approximately 1,600 public comments.

On May 12, 2017, the Commission published a notice of proposed rulemaking (NPR) to address blade-contact injuries associated with table saws. 82 FR 22190. The proposed rule stated that it would limit the depth of cut of a table saw to 3.5 mm or less when a test probe, acting as surrogate for a human finger or other body part, contacts the spinning blade at an approach rate of 1 m/s. CPSC staff estimated that the proposed rule would prevent or mitigate the severity of 54,800 medically treated blade-contact injuries annually, and that the proposed rule's aggregate net benefits on an annual basis could range from about $625 million to about $2.3 billion.[2] The Commission received written comments and oral presentations concerning the proposed rule. The written comments are available at *https://www.regulations.gov/document/CPSC-2011-0074-1154/comment,* and a video of the public hearing is available on the Commission's YouTube channel at *https://www.youtube.com/watch?v=BgPmKkGIILc.* Section VIII of this preamble contains a summary of the significant issues raised by the comments submitted, and the Commission's assessment of those issues.

Following publication of the NPR, CPSC staff completed a Special Study of table saw injuries that occurred in 2017.[3] On December 4, 2018, the Commission announced the availability of and sought comment on the study. 83 FR 62561. The Commission received written comments on the study results from the public, which are available at *regulations.gov,* under docket number CPSC–2011–0074.

In September 2019, CPSC staff submitted a Table Saw Update to the Commission with staff's analysis of NEISS data through 2018, including a discussion of the 2017 Special Study.[4] The results of the 2017 Special Study indicated that there might be a lower risk of injury on table saws equipped with a modular blade guard system that met the latest voluntary standards, compared to older table saws equipped with a traditional blade guard system. However, a 15-year trend analysis (from 2004 to 2018) of table saw injuries reported in the September 2019 update showed no reduction in table saw injuries from 2010 to 2018, despite the fact that a voluntary standard that became effective in 2010 required new table saws to be equipped with modular blade guard systems.[5]

This SNPR analyzes updated incident data through 2021. The data confirm the 2019 analysis and suggest no reduction in table saw injuries despite the fact that the relevant voluntary standard has required table saws to include modular blade guards since 2010.

Also since publication of the NPR in 2017, staff is aware of several changes to the table saw market that include:

- introduction of a compact table saw with active injury mitigation (AIM) capabilities;
- introduction of a Preventative Contact System (PCS) on a commercial sliding table panel saw;
- introduction of cordless, battery-powered bench saws by at least two manufacturers;
- change in ownership of patents related to SawStop AIM technology, with the acquisition of SawStop, LLC, by TTS Tooltechnic Systems Holding AG (TTS); and
- expiration of two patents related to SawStop AIM technology.

The Commission is issuing this supplemental notice of proposed rulemaking based on staff's analysis of newly available incident data, evaluation of newly available products, and other market information that did not exist at the time of the 2017 NPR. As discussed in greater detail in section VII of this preamble, the revised proposed rule is generally consistent with the rule proposed in the 2017 NPR, but includes an updated definition of the term ''table saw,'' a more precise description of the proposed performance requirement, and a revised anti-stockpiling provision.

The Commission now expects that the proposed rule would prevent or mitigate the severity of an estimated 49,176 injuries treated in hospital emergency departments or other medical settings per year. The Commission further estimates that net benefits would range from approximately $1.28 billion to $2.32 billion per year.

II. Statutory Authority

This supplemental notice of proposed rulemaking is authorized by the CPSA. 15 U.S.C. 2051–2084. Section 7 of the CPSA authorizes the Commission to promulgate a mandatory consumer product safety standard that sets forth performance or labeling requirements for a consumer product if such requirements are reasonably necessary to prevent or reduce an unreasonable risk of injury. 15 U.S.C. 2056(a). Section 9 of the CPSA specifies the procedure that the Commission must follow to issue a consumer product safety standard under section 7.

Pursuant to section 9(f)(1) of the CPSA, before promulgating a consumer product safety rule, the Commission must consider, and make appropriate findings to be included in the rule, on the following issues:

- The degree and nature of the risk of injury that the rule is designed to eliminate or reduce;
- The approximate number of consumer products subject to the rule;
- The need of the public for the products subject to the rule and the probable effect the rule will have on the utility, cost, or availability of such products; and
- The means to achieve the objective of the rule while minimizing adverse effects on competition, manufacturing, and commercial practices.

15 U.S.C. 2058(f)(1).

Under section 9(f)(3) of the CPSA, to issue a final rule, the Commission must find that the rule is ''reasonably necessary to eliminate or reduce an unreasonable risk of injury associated

[1] On October 18, 2023, the Commission voted 3–1 to publish this supplemental notice of proposed rulemaking. Commissioners Feldman and Trumka issued statements in connection with their votes available at: *https://www.cpsc.gov/s3fs-public/Comm-Mtg-Min-TableSaws-SupplementalNPR-Decisional.pdf?VersionId=JizUyNt5p7KDR_svKn2O6ql9VkHIR2E8.*

[2] *See* Commission Briefing Package: Proposed Rule: Safety Standard Addressing Blade-Contact Injuries on Table Saws, available at *https://www.cpsc.gov/content/Commission-Briefing-Package-Proposed-Rule-Safety-Standard-Addressing-Blade-Contact-Injuries-on-Table-Saws.*

[3] Table Saw Blade-Contact Injuries Special Study Report, available at *https://www.cpsc.gov/s3fs-public/Draft%20Notice%20of%20Availability%20Table%20Saw%20Blade%20Contact%20Injuries%20Special%20Study%20Report%20-%202017%20-%20November%2014%202018.pdf.*

[4] Available at: *https://www.cpsc.gov/s3fs-public/Table%20Saw%20Update%202019.pdf.*

[5] *Id.* at 27–32.

with such product'' and that issuing the rule is in the public interest. 15 U.S.C. 2058(f)(3)(A)&(B). Additionally, if a voluntary standard addressing the risk of injury has been adopted and implemented, the Commission must find that the voluntary standard is not likely to eliminate or adequately reduce the risk of injury, or substantial compliance with the voluntary standard is unlikely. The Commission also must find that expected benefits of the rule bear a reasonable relationship to its costs, and that the rule imposes the least burdensome requirements that prevent or adequately reduce the risk of injury for which the rule is being promulgated. 15 U.S.C. 2058(f)(3)(D)–(F).

III. The Product

A. Types of Table Saws

Table saws are stationary power tools used for the straight sawing of wood and other materials. The basic design of a table saw consists of a motor-driven saw blade that protrudes through a flat table surface. To make a cut, the operator places the workpiece on the table and, using a rip fence or miter gauge as a guide, pushes the workpiece into the blade (see Figure 1).

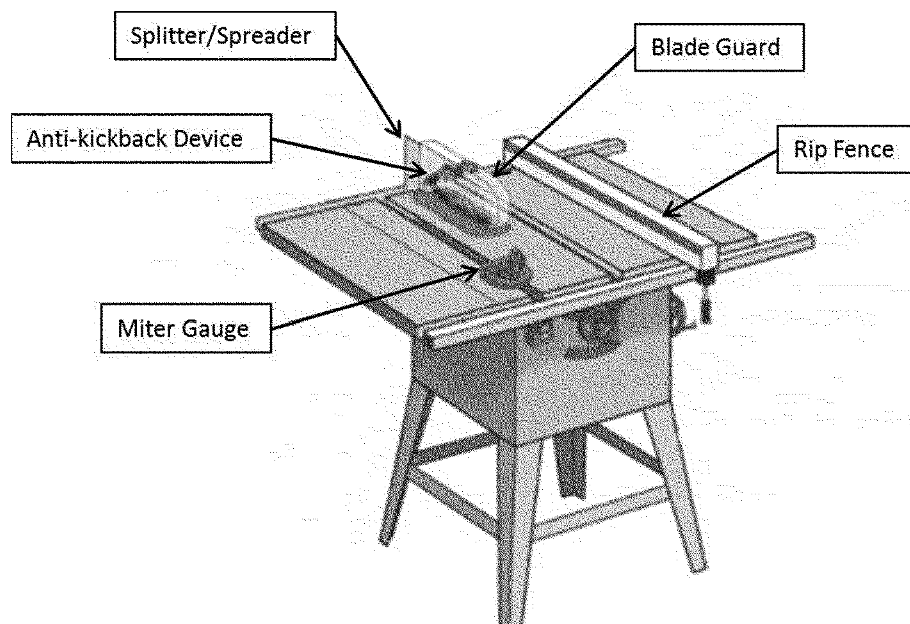


Figure 1. Typical table saw components

Table saws generally fall into three product types: bench saws, contractor saws, and cabinet saws. Although there are no exact distinctions among these types of saws, the categories are generally based on size, weight, portability, power transmission, and price. Some industry participants use additional specialized descriptions, such as ''jobsite saws,'' ''hybrid saws,'' and ''sliding saws.''

Bench saws are intended to be transportable, so they tend to be small, lightweight, and relatively inexpensive. In recent years, bench saw designs have evolved to include saws with larger and heavier-duty table surfaces, with some attached to a folding stand with wheels to maintain mobility. These larger portable saws on wheeled stands are commonly called ''jobsite saws'' because they are capable of heavier-duty work but still portable enough to move to work sites. Bench saws are generally powered using standard house voltage (110–120 volts), use universal motors,[6] drive the saw blade through gears, and range in weight from 34 pounds to 133 pounds. The universal motor and gear drive produce the high decibel noise and vibration that are distinctive characteristics of bench saws. Prices for bench saws range from $129 to as much as $1,499 for a high-end model. Based on available information, bench saws account for approximately 79 percent of the table saw market by volume.

Since the 2017 NPR was published, cordless battery-powered bench saws have been introduced widely to the table saw market. The first cordless table saw came to market in 2016, and at least three other brands have been introduced in the last few years. Cordless table saws typically run on lithium-ion batteries that range from 18 volts to 60 volts and are equipped with 8.25-inch blades with thinner kerfs to reduce friction while cutting. Prices for battery-powered bench saws range from $299 to $599 for the tool only, and the accompanying battery prices range from $50 to $150.

Contractor saws are larger and more powerful than bench saws, and range in weight from approximately 200 to 400 pounds. Although most contractor saws are stationary, a mobile base can be added to the frame. Contractor saws are often used in home workshops as a less expensive alternative to stationary cabinet saws. Contractor saws generally use a 10-inch blade, are powered using standard house voltage, use induction motors, and are belt driven. Compared to a bench saw, the induction motor and belt drive result in a table saw that produces less vibration and is quieter, more accurate, able to cut thicker pieces of wood, and more durable. Prices for contractor saws range from around $599 to $2,000, and contractor saws account for approximately 15 percent of the table saw market by volume of units sold.

[6] A universal motor runs on AC or DC power and uses current and electromagnets to rotate a shaft. Universal motors are lightweight, compact, and cheaper to produce than induction motors. An induction motor runs on AC power, which is used to create a rotating magnetic field to induce torque on the output shaft. Induction motors are quieter and last longer, but are also more expensive.

Cabinet saws—also referred to as stationary saws—are the largest, heaviest, and most powerful of the three table saw types, and are typically the highest grade saw found in home woodworking shops. Cabinet saws generally use a 10-inch blade, are powered using 220–240 volts, use a 1.75–5 horsepower or stronger motor enclosed in a cabinet, are belt driven, and weigh from around 300 pounds to 1,000 pounds. Components in cabinet saws are designed for heavy use and durability, and the greater weight further reduces vibration so that cuts are smoother and more accurate. Cabinet saws have an average product life of more than 20 years, and prices range from approximately $1,399 to $5,000. Based on available information, cabinet saws account for approximately 6 percent of the table saw market by unit volume.

B. Standard Safety Devices

In the 2017 NPR, the Commission described common safety devices on table saws that are designed to reduce contact between the saw blade and the operator. 82 FR at 22192. As described in the NPR, these devices generally fall into two categories: (1) blade guards, and (2) kickback-prevention devices including splitters, riving knives, and anti-kickback pawls.

The riving knife and modular blade guard represent the latest safety measures that have been incorporated into the voluntary standards for table saws. Blade guards surround the exposed blade and function as a physical barrier between the blade and the operator. Riving knives are curved metal plates that physically prevent the two halves of a cut workpiece from moving back towards each other and punching the splitting blade, which could cause the operator to lose control of the workpiece. The Power Tool Institute (PTI), the industry trade group that represents manufacturers of consumer-grade table saws, has estimated that in 2017, 80 percent of bench saws, 33 percent of contractor saws, and 25 percent of cabinet table saws sold were equipped with modular blade guards and riving knives.[7]

C. Active Injury Mitigation (AIM) Technology

The 2017 NPR described an AIM system that detects imminent or actual human contact with the table saw blade and then performs an action to prevent or mitigate the severity of the injury. The NPR described two AIM systems available at the time: the SawStop system and the Bosch REAXX system. *See* 82 FR at 22193–94. On July 16, 2015, SawStop filed with the U.S. International Trade Commission (ITC) a complaint against Bosch for patent infringement, and requested that the ITC order U.S. Customs to exclude Bosch REAXX saws from entering the U.S. market. On January 27, 2017, the ITC issued an order prohibiting Bosch from importing and selling Bosch REAXX saws, based on a determination that Bosch had infringed on two SawStop patents. *See* 82 FR 9075.

Since the 2017 NPR was published, CPSC staff has become aware of another AIM technology called the preventative contact system (PCS), developed by the Felder Group. The PCS detects motion by using a capacitive field around the blade, which can detect movement before a body part contacts the blade. Marketing of the system indicates that its detection system works for fast and slow body part movement and reacts to impending blade contact by retracting the blade below the table surface in milliseconds. Retraction of the blade is achieved by reversing the polarity of two strong electro-magnets that hold the blade arbor in place. Two magnets with the same magnetic poles will repel each other, and this action moves the saw blade below the tabletop fast enough to prevent injury to a body part that would otherwise contact the rotating saw blade. The PCS system is available as an option on Felder's most expensive sliding table saw.

IV. Risk of Injury

A. Description of Hazard

In 2017, CPSC staff conducted a Special Study of emergency department-treated table saw blade-contact injuries, in order to collect data on saw types, incident details, and injury characteristics that are otherwise not available in the standard National Electronic Injury Surveillance System (NEISS) data collections. The 2017 Study provided detailed information based on a snapshot of incidents that occurred in a single year. In 2017, there were an estimated 26,500 table saw blade-contact, emergency department-treated injuries. Of these, an estimated 25,600 injuries (96.4 percent) involved the finger. The estimated number of injuries for each of the most common diagnoses in blade-contact injuries were: 16,100 lacerations (60.9 percent), 5,500 fractures (20.6 percent), and 2,800 amputations (10.7 percent).

B. NEISS Trend Analysis

In the 2017 NPR briefing package, CPSC staff assessed trends for table saw blade-contact injuries reported through NEISS and concluded that there was no discernible change in the number or types of blade-contact injuries associated with table saws annually from 2004 to 2015. No statistically significant trend was detected in any of the analyses for the number of blade-contact injuries, amputations, hospitalizations, and finger/hand injuries. Staff also conducted a trend analysis to include the rate of injury per 10,000 table saws in use for each year in the analysis. The analysis again showed that there was no discernible change in the risk of injury associated with blade contact related to table saws from 2004 to 2015. *See* Staff NPR Briefing Package at 25–29.

In the 2019 Status Update briefing package, CPSC staff updated the NEISS trend analyses. Staff assessed trends for table saw blade-contact injuries, amputations, hospitalizations, and finger/hand injuries, and concluded once more that there was no discernible change in the number of blade-contact injuries or types of injuries related to table saw blade contact, this time for the period 2004 to 2018.[8] Trend analysis for the rate of injury per 10,000 table saws in use also showed that there was no discernible change in the risk of injury associated with blade contact related to table saws from 2004 to 2018, despite the increasing percentage of saws sold with modular blade guards and riving knives.

For this supplemental NPR, staff performed trend analyses for blade-contact injuries, amputations, hospitalizations, and finger/hand injuries up to 2021. The voluntary standards in place have required modular blade guards since the publishing of UL 987, 7th edition, which had an effective date of January 2010. The date ranges for the trend analyses cover a timespan when an increasing proportion of table saws in use were equipped with modular blade guards (2010 to 2021), as well as the approximate period during which table saws equipped with traditional blade guards were no longer being produced (2015 to 2021). Table 1 provides the estimated number of emergency department-treated injuries associated

[7] PTI comment (CPSC–2011–0074–1343) in response to notification of availability of 2017 Special Study. Retrieved from: *https://www.regulations.gov/comment/CPSC-2011-0074-1343.*

[8] Table Saw Update 2019. Available at: *https://www.cpsc.gov/s3fs-public/Table%20Saw%20Update%202019.pdf.*

with table saw blade contact from 2010 through 2021.

TABLE 1—NEISS ESTIMATES FOR TABLE SAW BLADE-CONTACT INJURIES, 2010–2021

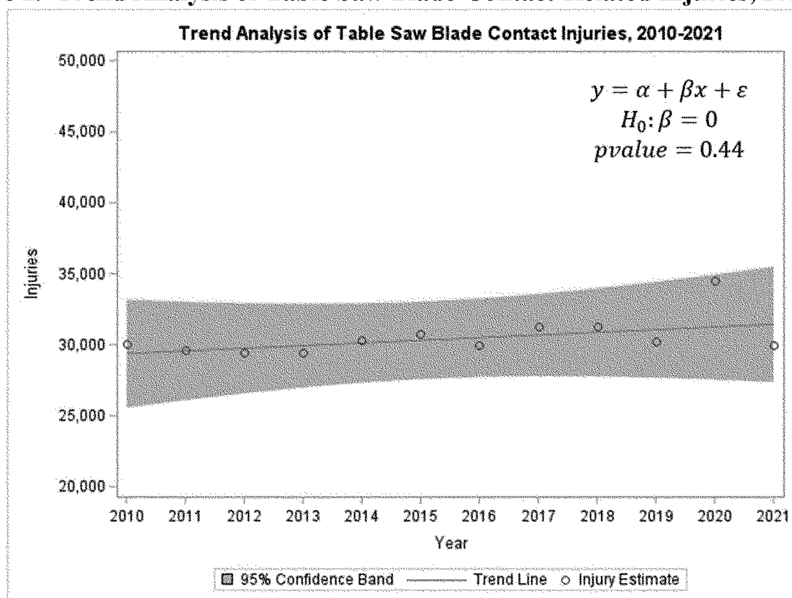
Year	Table saw blade contact injury estimates			
	N	Estimate	CV	95% Confidence interval
2021	655	30,000	0.10	24,100–35,900
2020	689	34,600	0.10	27,800–41,300
2019	627	30,300	0.09	24,900–35,700
2018	649	31,300	0.09	25,500–37,100
2017	654	31,300	0.09	25,800–36,700
2016	646	30,000	0.09	25,000–35,000
2015	642	30,800	0.09	25,100–36,500
2014	631	30,300	0.08	25,300–35,300
2013	662	29,500	0.09	24,500–34,500
2012	648	29,500	0.09	24,100–34,900
2011	362	29,600	0.09	24,300–35,000
2010	657	30,100	0.10	24,000–36,200

Source: U.S. CPSC: NEISS.

Figure 2 provides the estimated blade-contact injuries associated with table saws and the fitted trend line with a 95 percent confidence band for the fitted line from 2010 through 2021. The p-value associated with the slope of the fitted line is 0.44, which indicates that there is not a statistically significant trend in blade-contact injuries associated with table saws over this timeframe.

BILLING CODE 6355–01–P

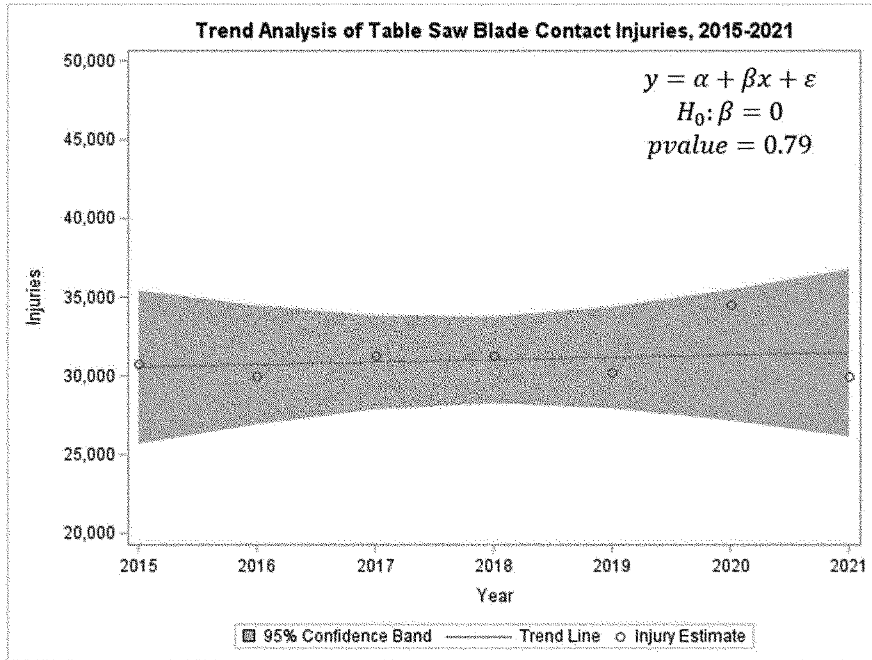
Figure 2. Trend Analysis of Table Saw Blade-Contact-Related Injuries, 2010-2021



Source: U.S. CPSC: NEISS

Figure 3 provides the estimated blade-contact injuries associated with table saws and the fitted trend line with a 95 percent confidence band for the fitted line from 2015 through 2021. The p-value associated with the slope of the fitted line is 0.79, which indicates that there is not a statistically significant trend in blade-contact injuries associated with table saws over this timeframe, despite the market shift during this time to table saws with modular blade guards and riving knives.

Figure 3. Trend Analysis of Table Saw Blade-Contact-Related Injuries, 2015-2021



Source: U.S. CPSC: NEISS

To assess any changes over time in the severity of table saw blade-contact injuries, CPSC staff performed trend analyses for blade-contact amputations, hospitalizations (including patients who were treated and admitted to the same hospital, as well as treated and transferred to a different hospital), and finger/hand injuries from 2010–2021 and 2015–2021. No statistically significant trend was detected in any of these analyses. Table 2 provides the total estimated number of blade-contact injuries from 2010 through 2021 for amputations, hospitalizations, and finger/hand injuries from blade contact, and expresses those numbers as a percentage of all estimated blade-contact injuries.

Table 2. NEISS Injury Estimates for Table Saw Blade-Contact Amputations, Hospitalizations, and Finger/Hand Injuries, 2010-2021

Year	Amputations		Hospitalizations		Finger/Hand Injuries	
	Estimate (95% CI)	*% of blade contact injuries*	*Estimate (95% CI)*	*% of blade contact injuries*	*Estimate (95% CI)*	*% of blade contact injuries*
2021	3,400 (2,200—4,500)	11.2%	2,000 (1,200—2,900)	6.7%	29,100 (23,400—34,800)	97.1%
2020	4,700 (3,200—6,300)	13.6%	3,200 (2,100—4,300)	9.3%	34,100 (27,400—40,800)	98.8%
2019	4,700 (3,200—6,100)	15.4%	2,400 (1,500—3,200)	7.8%	29,700 (24,300—35,100)	98.3%
2018	4,400 (3,100—5,600)	13.9%	3,100 (2,100—4,200)	10.0%	30,600 (24,900—36,400)	97.8%
2017	4,800 (3,200—6,400)	15.4%	2,800 (1,700—3,900)	8.9%	30,400 (25,100—35,800)	97.4%
2016	4,000 (2,600—5,300)	13.2%	3,500 (2,100—5,000)	11.8%	29,600 (24,600—34,500)	98.5%
2015	4,700 (3,100—6,300)	15.2%	3,800 (2,300—5,300)	12.3%	30,500 (24,900—36,100)	99.1%
2014	4,000 (2,400—5,500)	13.1%	3,100 (1,700—4,400)	10.1%	29,400 (24,600—34,300)	97.2%
2013	3,400 (2,300—4,600)	11.7%	3,000 (1,800—4,200)	10.2%	29,200 (24,300—34,200)	99.2%
2012	4,100 (2,700—5,600)	13.9%	2,900 (1,300—4,400)	9.8%	29,100 (23,700—34,400)	98.7%
2011	3,900 (2,700—5,100)	13.2%	2,900 (1,900—3,900)	9.9%	29,400 (24,200—34,700)	99.3%
2010	3,500 (2,500—4,500)	11.6%	2,800 (2,000—3,600)	9.2%	29,800 (23,700—36,000)	99.2%

Source: U.S. CPSC: NEISS

BILLING CODE 6355–01–C

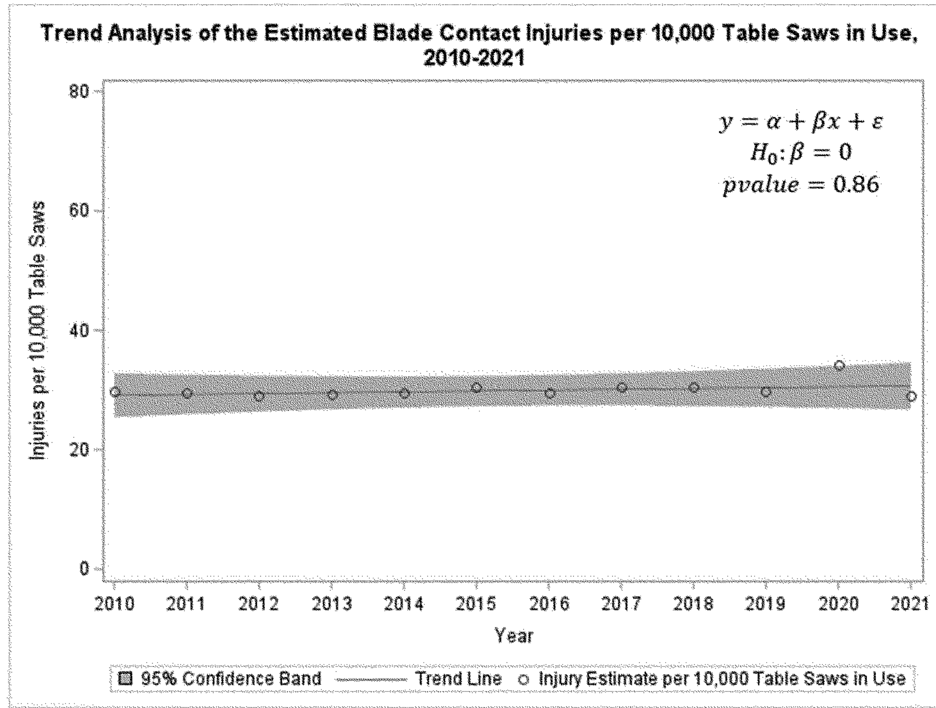
Table 3 provides an estimate of blade-contact injuries per 10,000 table saws in use for each year in the analysis. Figure 4 provides the trend analysis results for that data. The p-value associated with the slope of the fitted line is 0.86, which indicates that there is not a statistically significant trend. When limiting the trend analysis to the years 2015–2021, the p-value associated with the slope of the fitted line becomes 0.17, which also indicates the nonexistence of a statistically significant trend. Possible changes in usage patterns of table saws were not considered in these analyses.

TABLE 3—ESTIMATED TABLE SAW BLADE-CONTACT INJURIES PER 10,000 TABLE SAWS IN USE, 2010–2021

Year	Table saw blade contact injury estimates		Estimated number of table saws in use (in 10,000s) *	Estimates ** of table saw blade contact injury per 10,000 table saws in use	
	Blade contact injury estimate	95% Confidence interval	Table saws in use estimate	Estimate	95% Confidence interval
2021	30,000	24,100–35,900	1003.9	29.9	24.0–35.7
2020	34,600	27,800–41,300	883.6	39.1	31.5–46.8
2019	30,300	24,900–35,700	849.8	35.6	29.3–42.0
2018	31,300	25,500–37,100	828.6	37.8	30.8–44.8
2017	31,300	25,800–36,700	820.3	38.1	31.5–44.7
2016	30,000	25,000–35,000	822.2	36.5	30.4–42.6
2015	30,800	25,100–36,500	827.4	37.2	30.3–44.1
2014	30,300	25,300–35,300	831.3	36.4	30.4–42.5
2013	29,500	24,500–34,500	838.2	35.2	29.3–41.1
2012	29,500	24,100–34,900	847.4	34.8	28.4–41.1
2011	29,600	24,300–35,000	855.6	34.7	28.4–40.9
2010	30,100	24,000–36,200	866.5	34.7	27.7–41.8

* CPSC's Directorate for Economics provided the estimated numbers of table saws in use for this analysis.
** Estimates are calculated from the exact number of injuries point estimate, not the rounded estimate.

Figure 4. Blade-Contact Injuries per 10,000 Table Saws in Use Trend Analysis, 2010-2021



Source: U.S. CPSC: NEISS

Based on the foregoing analyses by CPSC staff, the Commission concludes that there has been no discernible change in the pattern of blade-contact injuries or types of injuries related to table saw blade contact, despite the transition of the market to modular blade guards and riving knives since 2010 and the phasing out of traditional blade guards since 2015.

V. Relevant Existing Standards

A. UL 987 and UL 62841–3–1

Underwriters Laboratories Inc. (UL) published the first edition of UL 987 *Stationary and Fixed Electric Tools* in 1971. The UL 987 standard includes voluntary requirements for cord-connected and permanently connected stationary and light industrial electric tools. UL revised the standard several times, with the 6th edition in 2005 and the 7th edition in 2007 introducing significant changes to the requirements covering blade guard design. The latest 8th edition was published in 2011, with revisions that clarified the requirements for table saws and defined terms specific to table saws.

In 2016, as part of UL's international harmonization goal to adopt international standards, UL published the first edition of UL 62841–3–1, *Electric Motor-Operated Hand-Held Tools, Transportable Tools and Lawn and Garden Machinery Part 3–1: Particular Requirements for Transportable Table Saws.* In 2019, UL removed section 43 (Table Saws) from UL 987, leaving UL 62841–3–1 as the

current voluntary standard for table saws. UL 62841–3–1 is recognized as an American National Standards Institute (ANSI) standard and contains essentially the same blade guard requirements as UL 987.

Section 19.101 of UL 62841–3–1 specifies that a table saw shall provide ''either a saw blade guard mounted to an extended riving knife complying with 19.101.2 or an over-arm saw blade guard complying with 19.101.3.'' Section 19.101.2 specifies that the guard may consist of independent side and top barriers and must have openings that provide visibility of the blade's cutting edge. This modular guard attaches to the riving knife and shall provide coverage over the saw blade as determined by a probe test. Section 19.103 specifies that a table saw shall be equipped with a riving knife that is located behind the blade at a height below the saw blade that allows the riving knife to pass freely through the cutting groove of the piece being cut. Section 21.106.3 specifies that an antikickback device attached to the riving knife shall be easily removable and function independently from the blade guard.

B. Active Injury Mitigation

Since 2004, table saws have been available in the U.S. market with AIM capabilities that mitigate injuries when a hand or finger makes contact with a rotating saw blade. In February 2015, UL defined an ''active injury mitigation'' system as an active system that serves to mitigate or prevent injury from exposure to a rotating saw blade. At a basic level, an AIM system for table saws must perform two functions: detect contact or imminent contact between the rotating saw blade and a human body part, and react to mitigate injury. Detection can be achieved by sensing electrical or thermal properties of the human body, or visually sensing and tracking the human body.

In 2015 and 2016, UL balloted proposals to add AIM system requirements for table saws to UL 987 and UL 62841–3–1, respectively. The ballots proposed performance requirements that limited the depth of cut to a probe simulating a human finger to 4 mm or less when introduced to an operating saw blade at an approach rate of 1 m/s. UL has identified a 4 mm cut from the surface of the skin as the quantitative threshold separating simple and complex lacerations in a human finger.[9] Simple lacerations can be managed at emergency departments with little expertise or by simple home care because these cuts generally heal without complications, while complex lacerations require more significant medical attention. Although CPSC staff expressed support for both ballots,[10] [11] both ballots failed, and AIM requirements were not adopted.

In July 2017, UL announced the availability of its *Recommended Practice for Determining the Depth of Cut on a Test Probe Contacting the Spinning Blade of a Table Saw,* UL RP 3002. The Recommended Practice is available as a test procedure for manufacturers or independent third parties to evaluate AIM performance. UL stated in its comment to the 2017 NPR that it chose to publish this Recommended Practice because it believes the addition of active technology on table saws will further reduce the incidence of blade-contact injuries and represent a marked increase in the safety of these devices.[12]

C. Adequacy of Voluntary Standard in Addressing Injuries

In January 2010, the voluntary standard's modular blade guard requirement took effect. Under this requirement, all table saws sold in the United States shall be equipped with a system consisting of a modular guard and antikickback device attached to a riving knife. In the NPR, the Commission noted staff's conclusion that, while the modular blade guard system was an improvement over the traditional blade guard system, a guard is only effective if used, and incident data and survey data indicate users remove modular blade guards for similar reasons (such as improved visibility or to make certain types of cuts) that they had removed traditional blade guards.

In its comments on the 2017 NPR,[13] PTI reported that its analysis of 299 table saw accidents from 2007 to 2015 indicated that 35 percent of the incidents involved table saws equipped with modular blade guards, and over 50 percent of those users had removed the blade guard prior to being injured. Similarly, staff conducted a Special Study of NEISS table saw incidents that occurred from January to December 2017. A summary of this 2017 Study was provided to the Commission in the Table Saw Update package in 2019. The 2017 Study confirmed that the majority of injuries occur on table saws without a blade guard installed, and that injured users of table saws equipped with modular blade guards removed the blade guard anecdotally at the same rate as injured users of table saws equipped with traditional blade guards. Further, as discussed in section IV of this preamble, CPSC staff assessed trends for table saw blade-contact injuries, amputations, hospitalizations, and finger or hand injuries since 2010, and concluded that there had been no statistically significant change over that time period.

VI. CPSC Staff Testing of AIM Since the 2017 NPR

CPSC staff has conducted tests on table saws equipped with AIM technology, using the test probe and test method described in Appendix A of Tab A of the 2017 NPR briefing package.[14] Staff used a computer-controlled electromechanical linear actuator to move a probe into the spinning blade of a table saw equipped with AIM technology. Staff conducted tests at varying blade heights and approach rates, tests with the ground of the power plug disconnected; and proof-of-concept evaluations of adding AIM technology to a battery-operated bench saw.

As discussed in section V of this preamble, UL identified the threshold between simple and severe lacerations to the finger as 4 mm from the surface of the skin. Because the test probe represents human flesh beneath the epidermis, staff subtracted the 0.5 mm thickness of the epidermal layer of skin from that 4 mm threshold value to arrive at a maximum allowable depth of cut to the test probe of 3.5 mm.

A. Prior Testing

In Tab A of the 2017 NPR briefing package, CPSC staff presented results of tests in which the test probe was introduced to an operating saw blade on a SawStop JSS–MCA jobsite table saw and a Bosch REAXX jobsite table saw. Both saws were equipped with 10-inch blades and some type of AIM technology. As shown in table 4, the depth of cut for the SawStop table saw tests ranged from 1.5 mm to 2.8 mm,

[9] Table Saw Hazard Study on Finger Injuries Due to Blade Contact, *UL Research Report,* Jan. 2014. Available at: *http://library.ul.com/wp-content/uploads/sites/40/2015/02/UL_WhitePapers_Tablesaw_V11.pdf.*

[10] Letter from Caroleene Paul, CPSC, to John Stimitz, UL, dated March 24, 2015. Retrieved from: *https://www.cpsc.gov/s3fs-public/CPSClettertoULcommenttoAIMSproposalwenclosures.pdf.*

[11] Letter from Caroleene Paul, CPSC, to John Stimitz, UL, dated March 11, 2016. Retrieved from: *https://www.cpsc.gov/s3fs-public/CPSClettertoULcommenttoAIMS.pdf.*

[12] Comment from Sarah Owen on behalf of UL in response to 2017 NPR. Retrieved from: *https://www.regulations.gov/comment/CPSC-2011-0074-1275.*

[13] PTI comment (CPSC–2011–0074–1288) in response to 2017 NPR. Retrieved from: *https://www.regulations.gov/comment/CPSC-2011-0074-1288.*

[14] Available at *https://www.cpsc.gov/content/Commission-Briefing-Package-Proposed-Rule-Safety-Standard-Addressing-Blade-Contact-Injuries-on-Table-Saws.*

and the depth of cut for the Bosch REAXX table saw tests ranged from 1.8 mm to 2.5 mm.

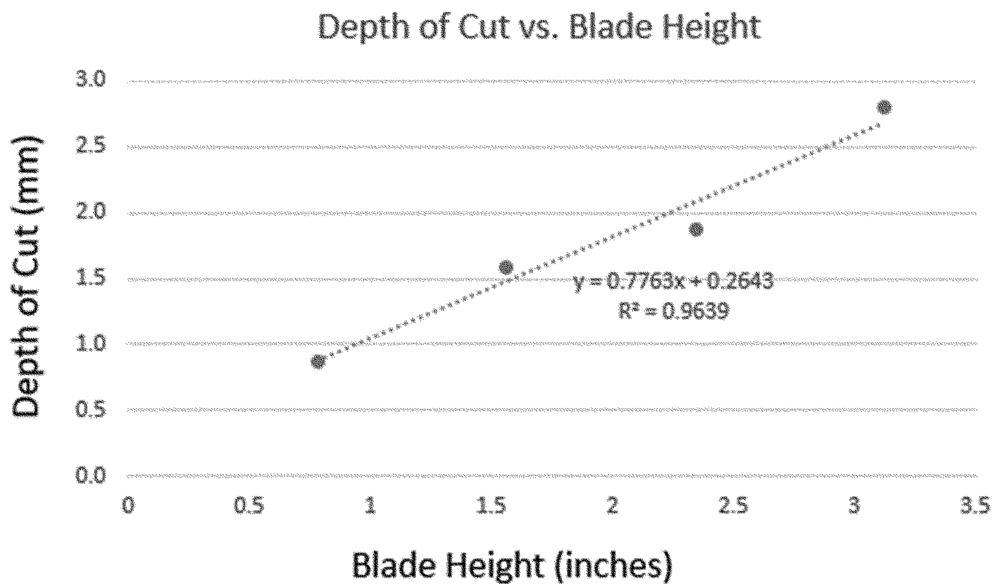
TABLE 4—DEPTH OF CUT VALUES FOR SAWSTOP AND BOSCH TABLE SAWS

Test run	Human body network (HBN) capacitance (pF)	Depth of cut (mm)	
		SawStop	Bosch
1	50	2.3	2.2
2	100	2.8	2.1
3	150	2.5	1.9
4	200	2.5	2.2
5	250	2.7	2.1
6	300	2.1	1.8
7	350	1.5	2.4
8	400	2.1	2.5
9	450	2.7	2.5
10	500	2.6	2.5
11	Short circuit	2.6	2.5

B. Additional Tests at Varying Blade Heights

Staff conducted tests at different blade heights on a SawStop JSS–MCA jobsite saw. As shown in Figure 5, test results indicate a linear relationship between depth of cut to the test probe and blade height. Staff determined the greatest depth of cut occurred when the table saw blade was set at its highest setting. For this reason, the rule proposed in this SNPR specifies that performance must be measured with the saw blade set at its highest setting, with no bevel angle.

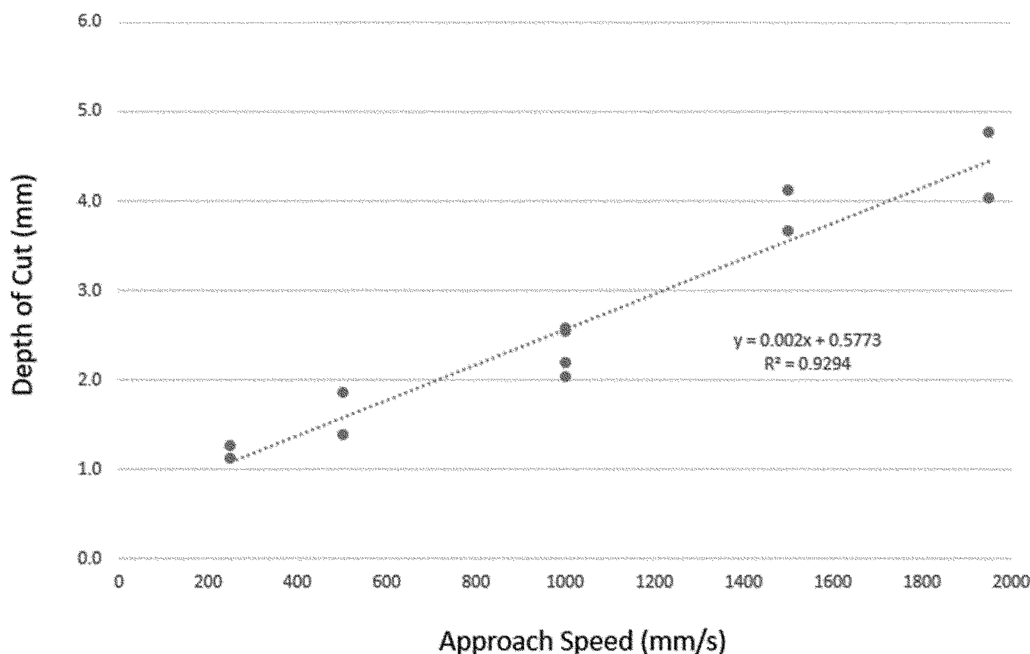
Figure 5. Depth of Cut versus Blade Height (tests conducted on SawStop JSS-MCA jobsite saw)



C. Additional Tests at Varying Approach Speeds

The approach rate of the test probe to the saw blade represents the speed at which a human finger moves toward the saw blade during a blade-contact incident. Staff conducted tests at different approach rates of the probe to the blade on a SawStop JSS–MCA jobsite saw. As shown in Figure 6, test results indicate a linear relationship between depth of cut to the test probe and approach speed. This linear relationship renders testing at multiple approach rates redundant, and the proposed rule in this SNPR thus requires that table saw performance be measured at an approach rate of 1 m/s.

Figure 6. Depth of Cut Versus Approach Speed



D. Additional Tests With Ground Disconnected

CPSC staff conducted tests with the ground plug of the power cord on a SawStop JSS–MCA jobsite saw disconnected. Test results showed no effect on AIM functionality.

E. Additional Tests of SawStop Compact Table Saw

Comments to the ANPR and the 2017 NPR questioned whether AIM technology can be applied to small bench saws. Staff conducted tests with an approach rate of 1 m/s on a SawStop CTS compact table saw, with an HBN capacitance of 50 pF.[15] This saw weighs 68 pounds, is equipped with a 10-inch blade, and is the smallest, most portable saw SawStop offers. Upon testing, the compact table saw equipped with AIM technology limited the depth of cut to a test probe, when approaching the blade at 1 m/s, to less than 3.5 mm.

F. Additional Tests Demonstrating AIM on Cordless Battery-Powered Bench Saws

Since the 2017 NPR was published, cordless battery-powered table saws have been introduced to the table saw market. Cordless table saws typically are powered by lithium-ion batteries that range from 18 volts to 60 volts and are equipped with 8.25-inch blades with thinner kerfs compared to typical 10-inch blades for corded electric table saws. To evaluate the feasibility of applying AIM technology on a battery-powered bench saw, staff modified a 33-pound battery-powered bench saw equipped with an 8.25-inch blade by adding lightweight aluminum framing. This modification allowed staff to position a standard SawStop 10-inch brake cartridge at a distance that would stop the bench saw's blade if the brake cartridge was activated. The proof-of-concept testing was designed to evaluate the ability of a lightweight battery-powered bench saw to withstand the energy of an AIM system activating, so the testing did not retract the blade; instead, all of the energy required for stopping the blade was absorbed by the brake cartridge and the bench saw's structure. With the table saw on and the blade spinning at full speed, staff remotely activated the brake cartridge and the bench saw's blade came to a complete stop. The bench saw moved approximately 1 inch vertically, but there was no damage to the saw or its table surface. Based on this testing, CPSC staff concluded that a battery-powered bench saw can withstand the reaction energy of an AIM system.

In addition, applying a signal to the saw blade can be achieved by using the bench saw's battery and a voltage reducer to reduce the battery voltage to the voltage required to induce a detection signal on the saw blade. CPSC staff has noted that battery-powered bench saws already use a voltage regulator to maintain voltage within acceptable limits for the table saw to function; therefore, if there is enough voltage to operate the bench saw, there will also be enough voltage to induce a signal on the saw blade.

VII. Proposed Requirement and Changes From 2017 NPR

Based on staff's evaluations of NEISS incident data, testing conducted prior to and subsequent to the publication of the 2017 NPR, and the comments received in response to the NPR and the Special Study as discussed in section VIII of this preamble, the Commission proposes the following revisions to the rule proposed in the 2017 NPR:

- Specifically reference jobsite saws, hybrid saws, sliding saws, and battery-powered saws in the definition of ''table saw,'' to better clarify the scope of the proposed rule and account for terms used by some industry participants;
- Remove the reference to ''radial approach rate'' from the rule's description of how the test probe must be introduced to the saw blade, and add descriptive language clarifying that movement of the test probe shall be parallel to the saw's table surface, with the center axis of the probe at a height of 15 ± 2 mm above the saw's table surface, as discussed in Response 1 in section VIII of this preamble;
- Require that testing be conducted while the spinning saw blade is at its

[15] 50 pF represents the body's minimum self-capacitance, and represents a worst-case scenario in which the table saw operator is located in such a way that the effective capacitance is the body's minimum self-capacitance. See Tab A of the 2017 NPR briefing package.

maximum height setting, as discussed in section VI of this preamble.

- Revise the rule's anti-stockpiling provision to prohibit the manufacture or importation of noncompliant table saws at a rate greater than 115 percent of the rate at which table saws were manufactured or imported during the 12-month period prior to promulgation of the final rule, rather than 120 percent of the rate at which saws were manufactured during any 12-month period in the five years preceding promulgation, to more closely match the growth rate of the table saw market over the last three years.

This SNPR also proposes to change the CFR part number to 1264.

While the proposed rule establishes performance requirements intended to mitigate the risk of injury associated with contacting table saw blades, it does not dictate how table saw manufacturers must meet those requirements. There already are different methods to limit the depth of cut to a test probe or finger. SawStop stops the blade and allows angular momentum to retract it. The Bosch REAXX retracts the blade with an explosive discharge. Since the 2017 NPR was published, a system based on reverse polarity of electromagnets to retract the blade has also been introduced to the market. Furthermore, manufacturers need not use the particular test procedure described in this preamble and in Tab A of the 2017 NPR briefing package, so long as the test method they use effectively assesses compliance with the standard. Other test probes and test methods using a different detection system may be developed to detect human contact with the saw blade and to measure depth of cut.

VIII. Response to Comments

The Commission published the 2017 NPR in the **Federal Register** on May 12, 2017. The public comment period ended on July 26, 2017. On August 9, 2017, the Commission held a public meeting to hear oral presentations concerning the NPR. CPSC received 437 comments, which can be found at *regulations.gov,* under docket number CPSC–2011–0074. Approximately 66 of the 437 NPR comments supported developing regulatory standards for table saws. The other commenters generally opposed the rulemaking proceeding. On December 4, 2018, the Commission published a notice of availability of the 2017 Special Study, with comment period ending February 4, 2019. CPSC received 4 comments to the 2017 Special Study, which can also be found at *regulations.gov,* under docket number CPSC–2011–0074.

In this section, we describe and respond to comments on the 2017 NPR and the 2017 Special Study. We present a summary of comments by topic, followed by the Commission's response.

A. Performance Requirements and Testing Procedure

Comment 1: Bosch and PTI commented on the use of the term ''radial'' in section 1245.3(b) of the NPR's proposed rule text. Bosch commented that a literal interpretation of that term would allow manufacturers to introduce a probe toward the blade at an angle that is likely to result in a shallower depth of cut, or no cut at all, thus resulting in artificially positive testing results. PTI commented that for a typical 10″ diameter blade table saw, advancing the test probe along the tabletop at an approach velocity of 1 m/s would lead to slightly less than 900 mm/s in the radial direction towards the center of the blade.

Response 1: CPSC staff agrees the descriptor ''radial'' can be misleading. For improved clarity, the rule proposed in this supplemental NPR omits that term from its performance requirement. The rulemaking instead describes a frontal approach to the saw blade, which is adjusted to its highest setting, with the center axis of the test probe parallel to the table saw top surface, 15 ± 2 mm above the table saw top surface, and perpendicular to the direction of approach to the saw blade. See Appendix A to Tab A of the NPR briefing package for an illustrated example of this configuration.

Comment 2: Bosch and PTI commented that the geometry of the test probe specified in rule proposed in the NPR may lead to inappropriately deep cut measurements because the contact area available for charge transfer is less on a square probe than on a cylindrical probe. This limited contact area may delay detection and lead to a deeper depth of cut on the test surrogate than would be experienced by a cylindrical probe that more closely resembles a finger.

Response 2: CPSC staff used a cuboid-shaped test probe made of conductive silicone rubber because the probe had already been developed by UL in its own testing of AIM technology and was readily available. Staff's tests using the square probe resulted in cuts less than 3 mm deep, and the commenter provided no evidence that a cylindrical probe will detect and trigger an AIM system faster than a square probe. In addition, body parts that may contact a saw blade, such as the fingertip, are not always cylindrical.

However, under §§ 1264.3 and 1264.4 of the proposed rule, testers may use a cylindrical probe as proposed by Bosch and PTI, rather than the square or cuboid probe used in UL's test methodology, as long as it possesses characteristics that render it a suitable surrogate for a human finger. The March 2015 UL Research Report referenced in PTI's comment recommends that a surrogate finger possess the following general characteristics:

- *Triggering:* An ability to trigger the selected safety mechanism upon finger contact with (or in very close proximity to) the blade;
- *Clean Cut:* Material properties that allow the surrogate finger to exhibit a clean cut upon contact with the blade; and
- *Finger Setup Rigidity:* The rigidity of the surrogate finger setup should minimize bending during blade contact with a minimum rigidity of 70 kN/m.

Comment 3: Bosch commented that the test probe is not an accurate representation of the human body. Bosch stated that if a test probe were made from pure zinc or tin and connected to Earth through a low-resistance cable, then it would transfer charge better than a connection made to a human being, which could lead to AIM technology performing better in the test lab than in real-world conditions.

Response 3: The test method described in Tab A of the 2017 NPR briefing package is based on triggering a capacitance-based AIM system with a conductive test probe that is coupled to a human body network (HBN), which is a circuit that mimics the human body. The HBN uses a series of capacitors and resisters to replicate the human body's impedance, the property that triggers a capacitance-based AIM system. When the test probe, connected to the HBN, contacts the blade of a table saw equipped with a capacitance-based AIM, the HBN changes the signal on the saw blade and triggers the AIM system. Whether the probe is made from metal (as posited by this comment) or conductive rubber (as used in staff's testing) is not significant, because, based on CPSC staff's testing, the material of the probe has minimal effect on impedance compared to the series combinations of the HBN and especially the series capacitance.

Comment 4: PTI commented that the rule proposed in the NPR is inconsistent with the February 2015 and February 2016 UL ballot proposals, which required testing at variable approach rates, including rates both above and below 1 m/s. PTI suggested that testing at higher approach rates is necessary

because higher approach rates result in more severe injuries.

Response 4: As discussed in section VI of this preamble, the results of staff's testing indicate a linear relationship between approach rate and depth of cut. In fact, the UL ballot proposals included approach rates and maximum depth of cuts that had a linear relationship. This linear relationship renders testing at approach rates greater than or less than 1 m/s redundant, as it is expected that higher or lower rates will result in correspondingly more or less severe injuries.

In addition, the available data on approach rates during both kickback and non-kickback-related table saw blade-contact incidents indicate the approach rate is unlikely to exceed 0.368 m/s.[16] Likewise, victim response information from the 2017 Special Study indicates that in the majority of cases, approximately 57 percent, blade contact did not involve the victim's hand being pulled into the blade. Of those cases, 46 percent involved ''reaching to do, or for, something,'' and in 17 percent ''the victim's hand was fed into the blade.'' CPSC staff advises that these descriptors indicate that movement of the operator's hand during blade contact was below an approach rate of 1 m/s.

Comment 5: PTI commented that the Commission's test protocol needs additional specifications to ensure repeatability and reliability.

Response 5: CPSC has not received specific support for PTI's assertion that the test protocol is not repeatable or reliable. On the contrary, staff's testing of four different table saws equipped with AIM technology has shown that the protocols in the test method are sound and repeatable.

Comment 6: PTI commented that the test procedure proposed in the NPR is incomplete because it does not specify the required distance between the probe holder and the plane of the saw blade and does not specify the required stiffness of the stabilizing strip supporting the probe. PTI also commented that, due to probe flexing, results are not repeatable.

Response 6: The test procedure intentionally does not prevent testers from using a different probe or testing setup from the one described in Tab A of the NPR briefing package, but instead allows different setups that have a minimum rigidity of 70 kN/m. The tester is at liberty to design the probe holder attachment to the linear actuator to ensure that the probe remains secure within the holder and approaches the saw blade in accordance with the requirements of the rulemaking. Staff's testing has shown that results produced by the test method are repeatable.

B. Effectiveness of Proposed Rule

Comment 7: Bosch commented that AIM-equipped table saws can require a properly grounded outlet, but properly grounded outlets may not be available on new jobsites or while working on sites with old electrical systems. Bosch suggests that this can affect the functioning of the AIM system and reduce its effectiveness in mitigating the risk of injury.

Response 7: Staff conducted tests with AIM-equipped table saws, and the results showed that the AIM system was effective without being connected to a properly grounded outlet.

Comment 8: PTI commented that UL and CPSC staff have recognized that there will be accidents where AIM technology cannot prevent severe injury. PTI questions how much the assumed effectiveness of AIM technology should be reduced in light of such accidents, and whether the Commission has taken this into account in its economic benefit-cost analysis.

Response 8: A performance requirement limiting the depth of cut to a test probe that contacts a saw blade to 3.5 mm will significantly reduce the number of severe injuries associated with operator blade-contact incidents on table saws. Lacerations less than 3.5 mm from the surface of the skin will not damage nerves or arteries, which would require surgery, and will not result in fractures, amputations, or avulsions. Consistent with the hazard patterns identified in the 2017 Special Study and data provided by SawStop demonstrating that over 7,000 activations of the SawStop AIM technology resulted in no severe injuries, CPSC assesses that nearly all severe injuries involving operator-blade contact from table saws can be mitigated by the proposed performance requirements. Accordingly, this supplemental NPR's preliminary regulatory analysis conservatively assumes AIM technology is 90 percent effective in reducing the societal costs of blade-contact injuries.

Comment 9: Several commenters, including Robert Witte, Rob Degagne, and Kenny Smith, stated that most table saw injuries are caused by kickback of the workpiece, but the SawStop system does not prevent kickback. Others stated that riving knives eliminate kickback and therefore can prevent or mitigate most injuries.

Response 9: The Commission's analysis of blade-contact incidents indicates that there are many scenarios in which an operator's finger or hand can contact a table saw blade, and there are certain cuts on table saws that require removal of the blade guard. Sudden movement of the workpiece from kickback can cause the operator to lose control of the workpiece and cause the hand to fall into or be pulled into the blade. However, contact is also possible without kickback, for instance when the operator's hand gets too close to the blade while feeding a small workpiece, when the operator is distracted, when the blade catches the operator's glove and pulls the operator's hand into the blade, when the operator reaches to regain control of a workpiece, or when the operator brushes debris from the table while the blade is still spinning after shutoff.

Based on incident information from the 2017 Special Study, PTI, and SawStop's activation data, CPSC staff assesses that most blade-contact injuries are not related to kickback, and in almost all instances AIM systems prevented serious injury, whether or not kickback was a factor.

In addition, although riving knives can reduce the potential for kickback, they do not eliminate table saw injuries. Information from the 2017 Special Study indicated that when blade guards were in use, 28 percent of the incidents occurred on table saws equipped with a riving knife. PTI's comments to the 2017 NPR indicate that only 17 percent of accidents reported to PTI members from 2007 to 2015 involved kickback. Finally, of the accidents reported to PTI, 49 percent of the table saws involved were equipped with riving knives.

C. Benefits and Costs

Comment 10: Many commenters stated that the costs associated with the proposed rule are not justified because the cost to consumers outweighs the benefit of increased table saw safety.

Response 10: As discussed in detail in section X of this preamble, the estimated benefits from the proposed rule far exceed the estimated costs. Using a 3 percent discount rate, aggregate net benefits range from approximately $1.28 billion to $2.32 billion.

Comment 11: Many commenters, including hobbyist woodworkers and owners of small woodworking businesses, asserted that a standard mandating the inclusion of AIM technology in table saws will increase the price of table saws and make them unaffordable for many individuals,

[16] Gass, S. (2012). Retrieved from: *https://www.regulations.gov/document?D=CPSC-2011-0074-1106.*

small businesses, and other groups of concern.

Response 11: As discussed in section X of this preamble, CPSC staff estimates that the prices for the least expensive bench saws now currently available will more than double to $400 or more. In general, the retail prices of bench saws could increase by as much as $285 to $700 per unit, and the retail prices of contractor and cabinet saws could rise by as much as $450 to $1,000 per unit. In addition, potential adverse impacts on the utility of table saws could come in the form of consumers who choose not to purchase table saws due to price increases, and a loss of portability due to the increased weight and (potentially) size of table saws to accommodate AIM technology. The Commission seeks comment on all aspects of the SNPR's proposal, including the effects of the expected price increases on consumers generally, or specific groups of consumers.

Comment 12: Some commenters, including hobbyist woodworkers, small business owners, and the Chief Counsel for Advocacy of the Small Business Administration, expressed concern with the potential effects of the proposed rule on small businesses, and in particular whether the proposed rule could dissuade the creation of small businesses.

Response 12: While the proposed rule has no direct effect on regulations or laws concerning small business creation, the rulemaking would affect small businesses that produce table saws by prohibiting the sale of table saws without an AIM system. This prohibition could cause some businesses to exit the table saw market and could indirectly act as a barrier to market entry. Should the holders of patents for AIM technologies refuse to license the technologies, firms would either have to develop their own technology or leave the table saw market. This could raise the general cost to start a small business, possibly to a significant extent. However, there appear to be multiple, competing AIM technologies already available, and adoption of the proposed rule could speed the development of additional AIM technology options, leading to greater licensing opportunities for table saw manufacturers.

Comment 13: Some commenters, including Nicholas Vanaria and Jarrett Maxwell, expressed concern that the proposed rule might incentivize U.S. table saw manufacturers to move their operations to other countries, resulting in domestic job loss.

Response 13: CPSC is not aware of any specific information or data supporting the speculative possibility that manufacturers might relocate to other countries in response to the proposed rule. In addition, the proposed rule would apply to all table saws imported into the United States, regardless of their place of manufacture, and relocating manufacturing operations to a different country would thus not exempt them from the rule. The Commission therefore finds it unlikely that the proposed rule would incentivize foreign relocation of U.S. businesses to any significant extent.

Comment 14: Several commenters, including Keith Nuttle, Scott Moore, Mark Strauch, and Christopher Fray, stated that the risk of injury as discussed in the 2017 NPR and the Special Study should have been expressed in terms of the number of cuts made or exposure to table saws, rather than the number of table saws. Commenters stated that millions of cuts are made every year without incident.

Response 14: CPSC analyzed the risk of injury using the estimated number of table saws in use for each year because that is relevant data to which the Commission staff has access. Commenters did not provide sufficient data on risks per cut or exposure for staff to perform an analysis using those metrics.

D. Consumer Choice and User Behavior

Comment 15: Numerous commenters, including hobbyists and professional woodworkers, stated that table saw users should apply common sense when operating a table saw and accept the risk of using the tool. The commenters stated that the federal government should not regulate consumer choice or behavior. While most of these commenters stated that they want table saws equipped with AIM technology to be available, and some even stated that they own a SawStop saw, they supported preserving consumers' ability to evaluate costs and benefits for themselves and choose between more expensive AIM-equipped table saws and less expensive table saws without AIM technology. The Chief Counsel for Advocacy of the Small Business Administration suggested an alternative approach whereby manufacturers could continue to produce and sell table saws without AIM technology as long as they also sell a model equipped with AIM technology.

Response 15: There are some situations in the workshop that require table saw operators to remove blade guards, and an operator's decision to use a table saw without all safety devices in operation does not necessarily reflect neglect or ignorance. There are also many situations in which an operator's finger or hand may contact a blade that do not result from operator irresponsibility or negligence. Sudden movement of the workpiece from kickback can cause the operator to lose control of the workpiece and a hand to fall into or be pulled into the blade. An operator may become distracted by events outside their control and inadvertently contact the blade. Many scenarios leading to blade contact become more likely if the consumer is tired or if the consumer's view of the blade or cut is impaired in some way. In these cases, which the proposed rule would likely address, operator neglect or ignorance would not be the primary factor causing the injury.

As discussed in more detail in section X of this preamble, the proposed rule is expected to reduce amputations and other serious blade-contact injuries with a net societal benefit exceeding $1 billion per year because it would not permit table saws on the market which are not equipped with AIM technology. While staff anticipates that some table saw models would be completely removed from the market as a result of the rule, the proposed rule would also substantially reduce the number of serious blade-contact injuries involving table saws, and their associated societal costs. In addressing the blade-contact risk, the CPSC considers the costs of blade-contact injuries, the utility of tables saws, and the impacts of limiting consumer choice. Further, the Commission has considered alternatives to the draft proposed rule that would not require all table saws to be produced with AIM technology. These alternatives are discussed in section X of this preamble.

Comment 16: Several commenters, including Robert Witte, Steven Schneider, and Bret Jacobsen, stated that adding AIM technology to table saws will give users a false sense of security and therefore increase unsafe user behavior with table saws that will also translate to injuries on other power tools. These commenters expressed concern that users will not learn to respect the dangers of table saws and power tools in general.

Response 16: While consumers who are aware that their table saws use AIM technology may react by taking less care to protect themselves from serious finger and hand injuries, people also tend to fear ''dread risks,'' which can be defined as ''low-probability, high-consequence events,'' and such risks have a substantial influence on risk perception. Severe injuries from blade contact on a table saw that employs an AIM system would fall under the

category of a ''dread risk'' because the consequences of such a system failing could be quite severe—involving possible amputation, which would likely evoke visceral feelings of dread or horror—even if the probability of such a failure is low. In addition, consumers likely would be motivated to avoid blade contact even if the consequences of such contact are not severe, because consumers are unlikely to be ambivalent about being cut by a spinning blade with sharp teeth, even if the resulting injury is minor.

The Commission is not able to predict whether consumers will take less care when using a table saw with an AIM system, relative to current table saws—much less whether users' behavior with other power tools might change for the worse. However, even if this does come to pass, if the AIM system is effective then the severity of an injury resulting from blade contact will be lessened, which would reduce the overall number of severe injuries associated with table saws.

Comment 17: Many commenters, including Douglas Allen and Robert Witte, suggested that, if AIM is required for all table saws, then some users might modify their saws to bypass the safety mechanism. In particular, commenters suggested that some users would engage in this behavior to avoid the nuisance of false activations.

Response 17: Because AIM technology is not expected to interfere with normal use of the table saw, most consumers would have little or no reason to bypass the AIM system once it is already on the saw.

Comment 18: Numerous commenters stated that, in order to avoid paying for a table saw with additional safety features, consumers will likely employ more dangerous methods to cut wood by using other tools such as circular saws, buying used table saws, or continuing to use older table saws that are less safe.

Response 18: The proposed rule will increase the price of table saws, and this increase is likely to reduce sales. Some consumers may hire professionals instead of doing projects themselves. Others might borrow or rent table saws, or use older table saws that they would have preferred to replace. Some might attempt to use other tools in the place of AIM-equipped table saws, as the commenters suggest. If the other tools and strategies used by consumers are more dangerous than table saws equipped with AIM technology, the effectiveness and societal benefits of the proposed rule would be reduced. However, as discussed in section X of this preamble, even if the proposed rule is assumed to be only 70 percent effective at mitigating or preventing serious injuries, the proposed rule's benefits still substantially exceed its costs.

E. Availability of AIM Technology

Comment 19: Several commenters, including businesses, trade associations, and individual table saw consumers, as well as the Chief Counsel for Advocacy of the Small Business Administration, stated in response to the 2017 NPR that the proposed rule would effectively create a monopoly, because it would require table saw manufacturers to either license the only known effective AIM system or exit the table saw market. PTI relatedly commented that various theoretical detection systems for AIM have not yet been invented in a practical form that can be integrated into table saws.

Response 19: The Commission is aware of three firms that supply, or have supplied, the U.S. market with table saws equipped with AIM technology. These are SawStop (now owned by TTS), which equips all of its table saw models with AIM technology; Bosch, which formerly sold one model that was equipped with AIM technology, but does not currently sell an AIM-equipped table saw in the United States; and the Felder Group, which offers a single AIM-equipped model.

However, the proposed rule does not specify a particular detection system that must be used to meet the performance requirement; it instead allows manufacturers to use any detection system that meets that requirement. The implementation of a performance requirement instead of a technology requirement will encourage innovation in the development of new technologies. Indeed, in the time since the 2017 NPR was published, the Felder Group has developed its new technology called the preventative contact system (PCS), which detects motion by creating a capacitive field around the blade and reacts to impending blade contact by retracting the blade below the table surface in milliseconds. Retraction of the blade is achieved by reversing the polarity of two strong electro-magnets that hold the blade arbor in place.

While we are mindful that the current suppliers of AIM technologies might be able to exert significant power in the U.S. table saw market for a period of time if the proposed rule is adopted, the unusually extended effective date proposed in this SNPR (36 months from publication of a final rule in the **Federal Register**), together with the encouragement of innovation in AIM that the rule should produce, sufficiently address this concern. We seek comment on this analysis.

F. Voluntary Standards and Other Alternatives to the Proposed Rule

Comment 20: Several commenters stated that table saw injuries are best reduced by training and educating users on safe practices and operation of table saws. Many commenters believed that mandatory training in the form of certification is needed.

Response 20: Warnings are less effective at eliminating or reducing exposure to hazards than designing the hazard out of a product or guarding the consumer from the hazard.[17] Warnings do not prevent consumer exposure to the hazard; they instead rely on educating consumers about the hazard and then persuading consumers to alter their behavior in some way to avoid the hazard. In addition, warnings rely on consumers behaving consistently, regardless of situational or contextual factors such as fatigue, stress, or social influences. Thus, warnings are most suitable to supplement, rather than replace, redesign or guarding, unless those higher-level hazard control efforts are not feasible.

Mandatory training for consumers who purchase or use table saws is not a solution the Commission would be able to implement under its current statutory authority.

Comment 21: PTI stated that the 2017 Special Study should be understood as confirming that the voluntary standards process for table saws is working. PTI suggests that the Study underestimated the benefits of the modular blade guard system required by the voluntary standard, and PTI believes that the risk of injury on a table saw equipped with a modular blade guard system is lower than reported in the Study. PTI states that its own estimates of table saw sales and populations, modular blade guard market penetration, and table saw lifespan differ from the estimates used in the Study.

Response 21: Since the 2017 Special Study was published, CPSC staff has conducted trend analyses of NEISS injuries associated with table saws. In every trend analysis, the latest of which spans from 2010 to 2021, there is no indication that table saw injuries have declined, even though table saws equipped with modular blade guard systems have come to represent the majority of the table saw population.

[17] Smith, Timothy P., 2016. Human factors assessment of blade-contact scenarios and responses to ANPR public comments (Tab E of NPR Staff Briefing Package). Bethesda, MD: U.S. Consumer Product Safety Commission (November 15, 2016).

This indicates that the voluntary standard's requirement that table saws be equipped with modular blade guards is not effective in reducing the number or severity of table saw injuries.

Comment 22: In their comments in response to the 2017 Special Study, Stephen Gass and David Pittle questioned whether the Study's conclusion that the risk of a blade-contact injury is seven times greater on a table saw equipped with a traditional blade guard system than with a modular blade guard system is inconsistent with CPSC staff's conclusion that there has been no statistically significant reduction in blade-contact injuries over the time period when table saws equipped with modular blade guards have saturated the market.

Response 22: If modular blade guard systems reduce the number or severity of blade-contact injuries in comparison to traditional blade guard systems, a detectable decreasing trend should exist within the NEISS data over the period during which table saws equipped with modular blade guards replaced in the market those equipped with traditional blade guards. In the 2017 NPR, the Commission preliminarily concluded that no such trend was detectable. This SNPR includes further trend analysis with data extending through 2021, and again identifies no statistically significant decreasing trend in the number or severity of blade-contact injuries. As discussed in section X of this preamble, the 2017 Special Study represents only a snapshot view of a single year, as opposed to the multiple trend analyses that were more comprehensive and longer-term, and there are other significant caveats to the Special Study's finding on this point. CPSC staff has determined that the voluntary standard has not effectively reduced the number or severity of blade-contact injuries, notwithstanding the results of the Special Study.

Furthermore, even taking at face value the Special Study's conclusion that blade-contact injuries are roughly seven times more likely on table saws equipped with traditional blade guard systems, tens of thousands of blade-contact injuries continue to occur each year, more than a decade after modular blade guard requirements were incorporated into the voluntary standards. Thus, there remains an unreasonable risk of serious injury associated with table saw use, regardless of which type of blade guard system is used.

We seek further comments on this issue.

Comment 23: Several commenters stated that CPSC should mandate AIM technology on table saws only in industrial or workshop settings or schools, provide an open license for AIM technology, and/or ensure that the price of table saws with AIM technology decreases as costs for manufactures decrease with economies of scale.

Response 23: The CPSA does not give the Commission authority to regulate the use of table saws in industrial settings, to license patents, or to control the cost of products.

IX. Description of the Proposed Rule

A. Scope, Purpose, and Effective Date—§ 1264.1

The proposed rule would apply to all table saws that are consumer products, as defined in the proposed rule, including bench saws, contractor saws, and cabinet saws. The proposed rule would include a requirement to mitigate the risk of blade-contact injuries on table saws.

Under section 9(g)(1) of the CPSA, 15 U.S.C. 2058(g)(1), the effective date for a consumer product safety standard must not exceed 180 days from the date the final rule is published, unless the Commission finds, for good cause, that a later effective date is in the public interest. As discussed in section XVI of this preamble, the Commission finds that 180 days is not adequate to allow for manufacturers to comply with the final rule, or for the rule to have its desired effect of promoting the development and commercial availability of additional AIM technologies. The Commission therefore proposes an effective date of 36 months following **Federal Register** publication of a final rule. The proposed rule clarifies that the rule would apply to all table saws manufactured after the effective date.

B. Definitions—§ 1264.2

The proposed rule would provide that the definitions in section 3 of the CPSA (15 U.S.C. 2051) apply. In addition, the proposed rule would define ''table saw'' as: ''a woodworking tool that has a motor-driven circular saw blade, which protrudes through the surface of a table.'' In order to more precisely define the scope of the rule and account for additional classifications used by some industry participants, the definition has been revised from the definition set out in § 1245.2 of the rule proposed in the NPR to specify that ''[t]able saws include bench saws, jobsite saws, contractor saws, hybrid saws, cabinet saws, and sliding saws,'' and that ''[t]able saws may be powered by alternating current from a wall outlet or direct current from a battery.'' The Commission seeks comment on this proposed definition of a table saw.

C. Requirements for Table Saw Blade Contact—§§ 1264.3 and 1264.4

The proposed rule would require table saws, when powered on, to limit the depth of cut to 3.5 mm when the center axis of the test probe, acting as a surrogate for a human finger or other body part, is moving parallel to, and is 15 ± 2 mm above the table top at a rate of 1 m/s and contacts the spinning blade that is set at its maximum height setting. The rule would require that the test probe allow for the accurate measurement of the depth of cut to assess compliance with the proposed requirement.

The composition and form of the test probe are not defined. However, any test probe that is used should have the appropriate properties (such as electrical, optical, thermal, electromagnetic, ultrasound, etc.) to indicate human body/finger contact with the saw blade, and the appropriate physical properties to accurately measure depth of cut. While the test probe and test method described in TAB A of staff's 2017 briefing package are considered appropriate for the evaluation of AIM systems using an electrical detection system, the Commission does not propose to make this test method mandatory, because other AIM systems may use a different detection approach. For AIM systems using a different detection approach, the method should be developed based on sound material science and engineering knowledge to accurately assess compliance with the proposed requirement.

A performance requirement that limits the depth of cut to 3.5 mm at an approach rate of 1 m/s will significantly reduce the severe lacerations, fractures, amputations, and avulsions associated with operator blade-contact incidents on table saws, because the probe will have the appropriate properties to indicate human contact with the saw blade and the equivalent injury mitigation on a real human finger will avoid most microsurgery.

The Commission recognizes there may be some scenarios, such as kickback, which can cause the operator's hand to be pulled into the blade at a high rate of speed or lead the operator to reach as fast as possible for a falling workpiece. In these and other scenarios, the speed of the operator's hand or finger may exceed 1 m/s when it contacts the saw blade. At approach speeds greater than 1 m/s, AIM system performance may not be sufficient to prevent injuries that require extensive

medical attention. The use of AIM technology may, however, limit injuries where an incident otherwise would have resulted in an amputation or involved injury to several digits or a wider area, to permit instead microsurgical repair of nerves, blood vessels, and tendons. Thus, the Commission concludes that nearly all operator blade-contact injuries from table saws would be eliminated or mitigated by the proposed performance requirement.

D. Prohibited Stockpiling—§ 1264.5

In accordance with section 9 of the CPSA, the proposed rule contains a provision that would prohibit a manufacturer from ''stockpiling,'' or substantially increasing the manufacture or importation of noncompliant table saws between the promulgation of the final rule and its effective date. The provision would prohibit a firm from manufacturing or importing noncompliant table saws at a rate that is greater than 115 percent of the rate at which the firm manufactured and/or imported table saws during the base period. The base period is the 12-month period immediately preceding the promulgation of the final rule. The cap on manufacture or importation has been reduced from the 120 percent cap proposed in the 2017 NPR to reflect the growth rate of the table saw market over recent years.

The Commission seeks comments on the proposed product manufacture or import limits and the base period with respect to the anti-stockpiling provision.

E. Findings in the Appendix to the Rule

The findings required by section 9 of the CPSA are discussed throughout the preamble of this proposed rule and specifically set forth in the appendix to the rule.

X. Updated Preliminary Regulatory Analysis

The Commission is proposing to issue a rule under sections 7 and 9 of the CPSA. The CPSA requires that the Commission prepare a preliminary regulatory analysis and that the preliminary regulatory analysis be published with the text of the proposed rule. 15 U.S.C. 2058(c).

The Commission's updated preliminary regulatory analysis is contained in TAB A of staff's briefing package,[18] and is summarized in this section.

A. Introduction

The CPSC is issuing a proposed rule to address the unreasonable risk of blade-contact injuries associated with table saws. This rulemaking proceeding was initiated by an ANPR published in the **Federal Register** on October 11, 2016. In 2015, to enhance CPSC's understanding of the table saw market, CPSC staff entered into two contracts with Industrial Economics, Inc. (IEc) to conduct market research and cost impact analysis on table saws. One report, titled ''*Revised Final Table Saws Market Research Report*'' (March 28, 2016) (referred to as IEc, 2016a), updates information relied upon in the ANPR. The report uses publicly available information and limited outreach to potentially affected entities. The other report, titled ''*Final Table Saws Cost Impact Analysis*'' (June 9, 2016) (referred to as IEc, 2016b), estimates the manufacturing and other costs of possible requirements intended to mitigate table saw blade-contact injuries based on previous information collected by the CPSC in the ANPR, public comments, limited interviews with table saw manufacturers, additional research, and the results of IEc, 2016a. In addition to CPSC staff's analysis of existing data, studies, and reports, staff relied on the IEc reports for additional data and information to support the preliminary regulatory analysis (TAB C of the staff NPR briefing package) and initial regulatory flexibility analysis (TAB D of the staff NPR briefing package). These reports are available on the CPSC website at *https://www.cpsc.gov/research-statistics/other-technical-reports*.

B. Market Information

1. Manufacturers

The Commission has identified 23 firms that supply table saws to the U. S. market.[19] PTI estimates that its member companies account for 80 percent of all table saws sold in the United States.[20] Most of these companies are large, diversified international corporations with billions of dollars in sales, such as Stanley Black and Decker, Robert Bosch, Makita, TTS, and Techtronic Industries Co., Ltd. These five large, diversified firms are currently supplying table saws to the U.S. market, but table saws make up a relatively small part of their revenues, probably less than one percent in each instance.

For smaller, more specialized firms, table saws are generally not a large percentage of firms' sales. One company reported that table saw sales contribute a negligible fraction of its $15 million annual revenue. IEc, 2016a. Another company with an annual revenue of $20 to $40 million stated that table saws represent approximately five percent of total sales. *Id.* A third business CPSC staff interviewed attributed seven to eight percent of total revenue to table saw sales. *Id.*

2. Types of Table Saws Commonly Used by Consumers

As discussed in section III of this preamble, table saws are generally grouped into three categories: bench saws, contractor saws, and cabinet saws. Bench saws (which include saws sometimes referred to as jobsite saws) tend to be lightweight and portable, and are the least expensive of the three categories. Contractor saws are larger, heavier, more powerful, and more expensive than bench saws. Cabinet saws are the heaviest, most powerful, and most expensive of the categories. Some manufacturers also categorize table saws as ''hybrid saws'' or ''sliding saws.'' Sliding saws are similar to cabinet saws, but typically are equipped with an extension that allows for the cutting of large panels, have advanced electronic features, and sometimes include a Graphical User Interface (GUI) for operation. Nearly all sliding saws weigh more than 900 pounds and require equipment to move or relocate.

3. Retail Prices of Table Saws

The range of prices for table saws generally overlaps for three products: bench, contractor, and hybrid saws. Bench saws are the least expensive, ranging in price from $139 to $1,399. Prices for contractor saws range from $599 to $1,999, and prices for hybrid saws range from $895 to $4,279. Generally, cabinet and sliding saws are more expensive. Prices for cabinet saws range from $1,399 to $4,999. The price range for sliding table saws is wide, with models priced below $3,400 and above $25,000. SawStop models containing AIM technology are consistently priced at the upper end of the price range for each of the three primary table saw categories (bench, contractor, and cabinet). The least expensive saw available from SawStop is the compact table saw priced at $900. The SawStop bench saw is the most expensive in the bench saw category at $1,599 to $1,799, depending on the distributor. Similarly, SawStop

[18] Available at *https://www.cpsc.gov/s3fs-public/Federal-Register-Notice-Safety-Standard-Addressing-Blade-Contact-Injuries-on-Table-Saws-SNPR.pdf?VersionId=Ce3FOVBmbG0_.8j.gd1h0k3VWHZZ.URw*.

[19] *See* TAB A of Staff Briefing Package.

[20] PTI, 2012. Comment by Susan M. Young for the Power Tool Institute, Inc., on ''U.S. Consumer Product Commission [Docket No. CPSC–2011–0074] Table saw blade contact injuries: Advance notice of proposed rulemaking,'' (March 16, 2012). (Comment CPSC–2011–0074–1081, available at: *regulations.gov*).

contractor saws, ranging in price from $1,999 to $2,398, represent some of the more expensive models in that product category. The SawStop cabinet models range in price from $2,899 to $5,949, depending on power and performance. The Felder Group model equipped with AIM technology is priced at the high end of the sliding saw price range, with prices exceeding $25,000 depending on model options/upgrades.

4. Sales and Numbers in Use

Although the design and engineering of table saws may occur in the United States, most table saws currently are manufactured overseas. Data from the U.S. International Trade Commission indicates that from 2014 to 2017 approximately 99 percent of imported table saw units were built in Taiwan and China. A small volume of expensive industrial saws was also imported from European and Canadian manufacturers.[21]

CPSC staff estimated the annual number of table saws in use with the CPSC's Product Population Model (PPM), a statistical model that projects the number of products in use given examples of annual product sales and product failure rates. Total annual shipments of all table saws to the U.S. market from 2002 to 2017 are estimated to have ranged from 429,000 to 825,000, and total annual shipments from 2018 to 2020 are estimated to have ranged from 746,000 to 995,000. Estimates of industry-wide sales value are not readily available. CPSC staff estimated that bench saws account for about 79 percent of the units sold, with contractor saws (including hybrids) and cabinet saws accounting for approximately 12 percent and 9 percent, respectively.

Staff calculated an average product life of 10 years for bench saws, 17 years for contractor saws, and 24 years for cabinet saws. Using these parameters, staff projected a total of about 8.2 million table saws in use in the United States in 2017, including about 5.35 million bench saws (about 65 percent), 1.4 million contractor saws (about 17 percent), and 1.46 million cabinet saws (about 18 percent).

C. Benefit-Cost Analysis

This section of the analysis consists of a comparison of the benefits and costs of the proposed rule and explains the Commission's preliminary conclusion that the expected benefits of the proposed rule exceeds its expected costs by a wide margin.[22] The benefits of the proposed rule are measured as the estimated reduction in the societal costs of injuries resulting from the use of saws containing the AIM technology. The costs of the proposed rule are defined as the added costs associated with the incorporation of the AIM technology in table saws, including the cost of the labor (at both the design and manufacturing stages) and materials required to manufacture table saws that comply with the rule. The rule would also have a cost to consumers in the form of consumer surplus loss resulting from higher prices on table saws. Staff calculated the benefits and costs of the proposed rule on a per-product-in-use basis. Benefits and costs are presented in 2021 dollars.

1. Baseline Risk and Conflicting Data

Beginning in 2010, the voluntary standards governing table saws (at that time UL 987; currently UL 62841–3–1) have required table saws to be equipped with modular blade guard systems, riving knives, and anti-kickback devices. To quantify the hazards associated with blade-contact injuries and to evaluate the effectiveness of the voluntary standards, CPSC staff conducted the 2017 Special Study. Of the 26,501 blade-contact injury cases analyzed for the Special Study, staff concluded that 12.2 percent involved saws that were compliant with the voluntary standard, 19.6 percent involved table saws with ''unknown'' blade guard types, and the remainder of incidents involved non-compliant saws. The Special Study found that the relative risk of a blade-contact injury was 7.19 times greater for a non-compliant saw than a complaint saw.

However, there are significant caveats to this finding. First, the Special Study is a snapshot analysis based on only one year of incidents. Second, there is a significant proportion of injuries associated with ''unknown'' blade guard types. Third, the study does not account for characteristics of the study group. For example, the study did not reveal if the consumers who purchased compliant saws were more risk-averse or safety-conscious. If this was the case, members of that group would be less likely to be involved in a table saw-related injury regardless of the type of blade guard in use. Notably, as discussed in more detail in section IV of this preamble, the NEISS data trend indicates that the rate of table saw blade contact injuries has not declined in more than a decade after the introduction of the modular blade guard requirement. Given this data, CPSC assesses that the voluntary standards have not been effective in the long run at reducing blade contact injuries.

2. Blade-Contact Injuries

The proposed rule is intended to address table saw injuries resulting from blade contact by requiring table saws to be equipped with AIM technology. According to the 2017 Special Study, there were an estimated 26,501 blade contact injuries initially treated in U.S. hospital emergency departments in 2017. The number of table saw injuries initially treated outside of hospital EDs is estimated with the CPSC's Injury Cost Model (ICM), which uses empirical relationships between the characteristics of injuries (diagnosis and body part) and victims (age and sex) initially treated in hospital EDs and the characteristics of those initially treated in other settings.[23] Based on the 2017 annual estimate of 26,501 blade contact injuries initially treated in hospital EDs, as determined in the 2017 Special Study, the ICM projects an additional 22,675 blade contact injuries treated in other treatment settings.

Thus, there was an estimated annual total of about 49,176 medically treated blade-contact injuries. About 60.9 percent of those injuries involved bench saws; 27.1 percent involved contractor saws; and 9.1 percent involved cabinet saws. About 3 percent involved table saws of unknown type. Staff estimates that approximately 21,504 injuries (about 43.7 percent) were treated in doctors' offices or clinics, and 1,171 injuries (about 2.4 percent) resulted in direct hospital admission, bypassing the ED. Overall, about 9.8 percent of the medically treated injuries resulted in hospitalization, either directly or following treatment in an ED.

An estimated 90.1 percent of the injuries involved fingers, with almost all of the remainder involving the hand. About 9.1 percent of the medically treated injuries involved amputations; 58.1 percent involved lacerations; and 23.5 percent involved fractures. About 33.4 percent of the amputations resulted in hospital admission, compared to about 5.9 percent of lacerations and 14.2

[21] Data compiled from tariff and trade data from the U.S. Department of Commerce and the ITC for Harmonized Tariff Schedule classification numbers 8465910036 (Tilting arbor table saw, woodworking) and 8465910078 (Sawing machines, woodworking, NESOI). *See https://hts.usitc.gov.*

[22] *See* TAB A of Staff's Briefing Package for a detailed analysis of the expected benefits and costs of the proposed rule.

[23] Lawrence, BA, Miller, TR, Waejrer, GM, Spicer, RS, Cohen, MA, Zamula, WW, 2018. The Consumer Product Safety Commission's Revised Injury Cost Model. Maryland: Pacific Institute for Research and Evaluation. (February 2018). Available at *https://www.cpsc.gov/s3fs-public/ICM-2018-Documentation.pdf?YWuW4Jn0eb2hExeA0z68B64cv6LIUYoE.*

percent of fractures. Only about 28.7 percent of the amputations were projected to be treated in doctors' offices, clinics, and other non-hospital settings, compared with about 42.0 percent of lacerations and 49.4 percent of fractures.

The blade-contact injury rate per 100,000 saws is calculated by dividing the number of medically-treated injuries by the estimated number of table saws in use. Using the data from the 2017 Special Study, there were approximately 559 bench saw-related injuries per 100,000 bench saws in use; 951 contractor saw-related injuries per 100,000 contractor saws in use; and 306 cabinet saw-related injuries per 100,000 cabinet saws in use.

3. Injury Costs of Blade Contact Injuries

The societal costs of blade-contact injuries are quantified using the ICM. The ICM's components for injury costs include medical costs, work losses, and the intangible costs associated with lost quality of life or pain and suffering.

Medical costs include three categories of expenditures: (1) medical and hospital costs associated with treating the injured victim during the initial recovery period and in the long run, including the costs associated with corrective surgery, the treatment of chronic injuries, and rehabilitation services; (2) ancillary costs, such as costs for prescriptions, medical equipment, and ambulance transport; and (3) costs of health insurance claims processing. Cost estimates for these expenditure categories were derived from a number of national and state databases, including the Medical Expenditure Panel Survey, the National Inpatient Sample of the Healthcare Cost and Utilization Project (HCUP–NIS), the Nationwide Emergency Department Sample (NEDS), the National Nursing Home Survey (NNHS), MarketScan® claims data, and a variety of other Federal, State, and private databases.

Work loss estimates include: (1) the forgone earnings of the victim, including lost wage work and household work; (2) the forgone earnings of parents and visitors, including lost wage work and household work; (3) imputed long term work losses of the victim that would be associated with permanent impairment; and (4) employer productivity losses, such as the costs incurred when employers spend time rearranging schedules or training replacement workers. Estimates are based on information from HCUP–NIS, NEDS, Detailed Claims Information (a workers' compensation database), the National Health Interview Survey, the U.S. Bureau of Labor Statistics, and other sources.

The intangible, or non-economic, costs of injury reflect the physical and emotional trauma of injury as well as the mental anguish of victims and caregivers. Intangible costs are difficult to quantify because they do not represent products or resources traded in the marketplace. Nevertheless, they typically represent the largest component of injury cost and must be accounted for in any benefit-cost analysis involving health outcomes.[24] The ICM develops a monetary estimate of these intangible costs from jury awards for pain and suffering. Estimates for the ICM were derived from regression analysis of jury awards in nonfatal product liability cases involving consumer products compiled by Jury Verdicts Research, Inc.

This regulatory analysis discounts future benefits and costs using a 3 percent discount rate. The 3 percent rate is intended to represent what is sometimes called the "social rate of time preference," which is consistent with the rate at which society discounts future consumption flows to their present value.[25]

Based on ICM estimates and utilizing the 3 percent discount rate, the present value of total injury costs associated with the estimated 49,176 medically treated table saw injuries amounted to $3.97 billion. This suggests injury costs of about $80,650 per injury (*i.e.,* $3.97 billion ÷ 49,176 injuries). This high estimate is largely driven by the costs associated with amputations. While amputations accounted for approximately 9.1 percent of injuries, they accounted for almost 55.3 percent of total estimated costs.

The distribution of injury costs by medical treatment setting is provided in table 5. Overall, medical costs and work losses accounted for 31 percent of the total, while the non-economic losses associated with pain and suffering accounted for 69 percent.

TABLE 5—ANNUAL SOCIETAL COSTS ASSOCIATED WITH TABLE SAW BLADE CONTACT INJURIES, BY MEDICAL TREATMENT SETTING AND INJURY COST COMPONENT

[2021 dollars; 3% discount rate]

Medical treatment setting	Average cost per injury, by cost component			
	Medical	Work loss	Pain and suffering	Total
Doctor/Clinic	$705	$1,982	$21,970	$24,657
Emergency Department (ED)	2,206	1,894	30,211	34,311
Hospital, Admitted via ED	18,548	197,213	308,001	523,761
Direct Hospital Admission	18,999	208,590	333,386	560,975

Estimates of the present value of these societal costs from blade-contact injuries, per table saw in use, and by saw type, are presented in table 6. Row (a) shows aggregate annual societal costs, by type of saw. Annual societal costs per saw are presented in row (c) and are calculated by dividing the aggregate annual societal costs, row (a), by table saws in use, row (b). The present value of annual societal costs at a 3 percent discount rate are presented

[24] Rice, Dorothy P., MacKenzie, Ellen J., and Associates, 1989. *Cost of injury in the United States: A report to Congress.* San Francisco, CA: Institute for Heath & Aging, University of California and Injury Prevention Center, The Johns Hopkins University; Haddix, Anne C., Teutch, Steven M., Corso, Phaedra S., 2003. *Prevention effectiveness: A guide to decision and economic evaluation* (2nd ed.). New York: Oxford University Press; Cohen, Mark A., Miller, Ted R., 2003. "Willingness to award" nonmonetary damages and implied value of life from jury awards. *International Journal of Law and Economics,* 23 at 165–184; Neumann, Peter J., Sanders, Gillian D., Russell, Louise B., Siegel, Joanna E., Ganiats, Theodore G., 2016. *Cost-effectiveness in health and medicine: Second Edition.* New York: Oxford University Press.

[25] OMB, 2003. *Circular A–4: Regulatory analysis.* Washington, DC: Office of Management and Budget. *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf*; Gold, Marthe R., Siegel, Joanna E., Russell, Louise B., Einsteinin, Milton C., 1996. *Cost-effectiveness in health and medicine.* New York: Oxford University Press; Haddix, et al., *supra* note 24.

in row (e) and range from $3,503 per bench saw to $12,865 per cabinet saw. These present value figures represent the maximum benefits that could be derived from a rule addressing blade-contact injuries if such a rule prevented 100 percent of all such injuries.

TABLE 6—PRESENT VALUE OF SOCIETAL COSTS OF INJURIES PER TABLE SAW IN USE, BY TABLE SAW TYPE

[Based on blade contact injuries in 2017]

	Table saw type		
	Bench	Contractor	Cabinet
(a) Aggregate Annual Societal Costs (Millions $)	$2,198. 29	$612. 49	$1,099. 81
(b) Table Saws in Use (Millions)	5. 35	1. 40	1. 45
(c) Annual Societal Costs per Table Saw [(a) ÷ (b)]	$411	$437	$760
(d) Expected Useful Product Life (years)	10	17	24
(e) Present Value of Societal Costs, Over Expected Product Life (3 percent discount rate)	$3,503	$5,750	$12,865

4. Effectiveness and Expected Benefits of the Proposed Rule

The effectiveness of AIM technology in preventing blade-contact injuries is expected to be high. However, not all injuries would be prevented, because the AIM system activates after the hand or finger comes into contact with an operating blade. Moreover, it will not mitigate all severe blade-contact injuries. For example, it will not mitigate potentially severe blade contact injuries that occur: (1) when the saw is not running; (2) when the blade is operating but the AIM system has been deactivated; (3) when the operator's hand is moving into the blade so quickly that contact with the blade cannot be reduced sufficiently to prevent serious injury; or (4) when the AIM technology leads to complacency or reductions in safety efforts on the part of users that result in injuries the AIM technology is unable to prevent, which may or may not involve blade contact. An example of the fourth category might be an operator's decision to remove other safety equipment on the table saw, such as an anti-kickback pawl, which might increase the likelihood of an injury involving wood thrown back at the operator.

While there is insufficient information to quantify the impact of these factors with precision, there is information to highlight their impact. The 2007–2008 table saw survey found that in 5.5 percent of table saw injuries, the motor was not running.[26] The 2014–2015 NEISS special study found that about 2.4 percent of the blade contact injuries involved saw blades that were not in operation at the time of injury or had just been turned off.[27] Additionally, the existing AIM technology cannot be used when cutting conductive materials, such as non-ferrous metals (*e.g.,* aluminum) or wood that is wet enough to conduct sufficient electricity to activate the AIM system. Consequently, table saws with existing AIM systems have a bypass mode that temporarily deactivates the AIM system to prevent nuisance tripping. Although the SawStop saws automatically reset to safety mode whenever restarted, some consumers might deactivate the AIM system even when it is not necessary to do so.

Given the factors discussed in this section, we assume that AIM technology is 90 percent effective in reducing the societal costs of blade contact injuries. Table 7 recalculates benefits with a 90 percent effective rate to estimate the benefits from the proposed rule.

TABLE 7—EXPECTED BENEFITS, PER TABLE SAW, ASSUMING 90% EFFECTIVENESS

Table saw type	PV of societal costs, over expected product life (3 percent discount rate) (a)	Benefits at 90% effectiveness, 3 percent discount rate (b) = a × 90%
Bench	$3,503	$3,153
Contractor	5,750	5,175
Cabinet	12,865	11,579

As discussed previously in this section of the preamble, there is inconsistent evidence whether table saws complying with the modular blade guard system requirement in UL 62841–3–1 are substantially less likely to cause severe injuries. If the voluntary standard is in fact effective in reducing the number or severity of blade-contact injuries, the proposed rule's expected reduction in societal costs would be reduced, because some of the injuries that an AIM system would be expected to prevent would already have been prevented by adherence to the voluntary standard. For an analysis of expected benefits under an assumption that the voluntary standard is in fact effective, see staff's revised preliminary regulatory analysis.[28]

5. Costs To Meet Performance Requirements

Table saw manufacturers are likely to incur three primary types of costs to incorporate AIM technology into their table saws:

Costs of AIM technology. Manufacturers would have to either design and develop their own AIM technology or license an AIM technology developed and owned by

[26] Chowdhury, Sadeq R., Paul, Caroleene, 2011. Survey of injuries involving stationary saws, table and bench saws, 2007–2008. Bethesda, MD: U.S. Consumer Product Safety Commission.

[27] Garland, Sarah, 2016. Table Saw blade contact injury analysis. Bethesda, MD: U.S. Consumer Product Safety Commission. (November 2016).

[28] TAB A of Staff's Briefing Package.

another party. As previously noted, there are currently at most three suppliers of AIM technology. The Commission considers the development of additional AIM technologies likely if the proposed rule is adopted, but additional competitive entry is not certain. While most manufacturers of table saws would likely continue production by licensing an AIM technology, some firms, especially smaller firms, would likely drop out of the market altogether, resulting in a loss of consumer surplus as well as increased prices due to lessened competition.

Redesign and retooling costs. Incorporating AIM technology into existing models would require manufacturers to redesign each model and retool the facilities where the saws are manufactured. For example, table saw models not currently incorporating AIM technology likely would require redesign to provide room for blade retraction, to allow access for users to change the cartridge and blade, and to withstand the force of the AIM system being triggered. PTI estimates that, on average, the cost to redesign and retool existing table saws would range from $2 million to $10 million per manufacturer.[29] Dr. Gass, however, has said that SawStop's tooling costs were approximately $200,000 for its first contractor/cabinet table saw, and approximately $700,000 for its first bench saw. He also emphasized some table saw models are minor variations on one another and share the same basic structure, which reduces costs of redesign and retooling.[30] Furthermore, foreign manufacturers may produce saws for multiple U.S. firms; the costs of retooling might be spread across several of their customers if the designs are similar enough.

Material and labor costs. The combination of adding a brake cartridge or other means of stopping or retracting the blade after contact with flesh, and redesigning the table saw to accommodate the additional electronic components and wiring, the required clearances, and the weight and dimensions of the AIM technology, would result in increased materials costs. For SawStop models in 2012, the additional cost associated with the AIM system was approximately $58.[31] An estimate from another firm, also in 2012, suggested $74 (including cartridge, electronics, and mechanical parts).

The structure of some bench saws may need to be strengthened to improve stability and withstand the shock of blade braking and/or retraction. This strengthening may increase the overall weight of some of the lightest saws, reducing their portability and utility.

The commission seeks comments on the impact this proposed rule would have on existing firms.

D. Manufacturing Cost Impact

To estimate the per-unit manufacturing cost of requiring AIM technology for table saws, CPSC staff assume that the costs associated with the rule are fully pushed forward to consumers, and that the expected price increases are reflective of all costs of production and supply. However, these cost impacts do not include royalty fees, which are payments that manufacturers would have to make if they license the AIM technology from other firms rather than developing their own AIM systems. From a societal perspective, royalties represent a transfer payment from one party or sector to another. Because royalties essentially move money from one party to another, and are not payments for goods or services, they are not costs for purposes of the benefit-cost analysis.[32] Nevertheless, the royalties will have distributional impacts on manufacturers and consumers that are discussed below.

1. Manufacturing Costs

In 2015, SawStop predicted that retail prices for bench saws would increase by no more than $150 per unit as result of the rule.[33] Inflated to 2021 dollars, this results in an estimated increase of $193. In the absence of more specific information about manufacturing costs, CPSC staff used this figure as the basis for the low-end estimate of manufacturing cost increases for bench saws.

For contractor and cabinet saws, the low-end expected cost impacts were based on discussions with other industry members. One manufacturer estimated that the retail price of a single table saw model that they produce would increase by about 30 percent as a result of the rule, including the cost of royalties. Excluding royalties, and inflated to 2021 dollars, this estimate suggests a cost increase associated with redesign, retooling, and materials of about $321. For this analysis, we assume that this $321 low-end cost increase can be applied to all contractor and cabinet saws.

For bench saws, the high-end cost increase is based on information provided by PTI, whose members produce primarily bench saws. In 2012, PTI estimated that the increase would be $100 to $800 per saw, excluding royalties.[34] Inflated to 2021 dollars, the midpoint of this range is $651.

For contractor and cabinet saw models, we apply the high end of the range estimated by PTI and other manufacturers. One table saw manufacturer provided an estimate ranging from $500 to $800 for ''larger saws,'' excluding royalties. Another manufacturer estimated that the retail price of saws would increase by 20 percent, excluding the cost of royalties. IEc, 2016b. Applying this percentage to the company's cabinet saw models results in added costs of about $260 to $800. CPSC assumes the high-end incremental cost increase is $1,002, which is the upper bound of each range suggested by PTI and these two manufacturers, inflated to 2021 dollars. These costs are for the first years following adoption of the proposed safety rule. In the longer term, after about 5 years, the incremental cost should decrease as AIM technology is better developed and deployed.

2. Replacement Parts Costs

In addition to the manufacturing costs just described, there will also be the added costs of replacement parts related to the AIM system. For purposes of this analysis, we base the cost of replacement parts on the SawStop system, which requires replacement of the brake cartridge and blade after activation of the system. Replacement part prices are estimated to include $95 for a replacement brake cartridge, and $30 to $90 for a replacement blade.[35] Based on sales of replacement brake cartridges, SawStop estimates that the AIM system may activate about once every 9 years of use.[36] At a replacement

[29] Grahan, J. 2010. Expert report of Dr. John D. Graham. (April 27). Submitted with PTI public comments (2012) CPSC–2011–0074–1106, available at: *regulations.gov.*

[30] IEc interview with Dr. Stephen Gass, Saw Stop, LLC, November 6, 2015.

[31] Gass, Stephen F., 2012. Comments and information responsive to ANPR for table saw blade contact injuries, by SawStop, LLC. (Mar. 16, 2012). Comment CPSC–2011–0074–1106, available at: *regulations.gov*.

[32] OMB, 2003, *supra* note 25.

[33] SawStop, LLC. 2009. Presentation to CPSC, December 8 & 9; *Osorio* v. *One World Technologies, Inc.,* 659 F3d 81, 83 (1st Cir 2011).

[34] PTI, 2012. Comment by Susan M. Young for the Power Tool Institute, Inc., on ''U.S. Consumer Product Commission [Docket No. CPSC–2011–0074] Table saw blade contact injuries: Advance notice of proposed rulemaking,'' (March 16, 2012). (Comment CPSC–2011–0074–1081, available at: *regulations.gov*).

[35] PTI, 2016. Table saw facts at a glance. Accessed June 20, 2016. Available at: *http://powertoolinstitute.com/pti-pages/it-table-saw-facts.asp*.

[36] SawStop, March 2011, Information Package for Petition CP–03–02. As cited in CPSC (2011). Table Saw Blade Contact Injuries; Advanced Notice of Proposed Rulemaking. September 14.

rate of once every 9 years (and assuming $95 per replacement blade), this results in an annual per-unit replacement part cost of approximately $17. However, because blades deteriorate and require periodic replacement even in the absence of an AIM activation, CPSC assumes that the need for replacement blades due to AIM activation costs an average of about $14 annually. The present value of this expected annual cost of $14 over the life of a typical table saw, and discounted at a rate of 3 percent, would amount to about $118 for bench saws (with a 10-year expected product life), $183 for contractor saws (with an estimated 17-year product life), and $235 for cabinet saws (with an expected 24-year product life).

The SawStop data, however, may overstate the costs of replacement parts. For instance, the AIM-equipped Bosch REAXX bench saw, which has since been withdrawn from the U.S. market, utilized a $100 cartridge that was usable for two activations. Because the blade was not destroyed by the activation, the Bosch system had lower replacement part costs.

The direct manufacturing and replacement costs are presented in table 8 and rely on the low- and high-end direct manufacturing costs and the SawStop replacement costs just described.

TABLE 8—DIRECT MANUFACTURING AND REPLACEMENT COSTS

Table saw type	Direct manufacturing costs		Replacement part cost	Total direct + replacement costs	
	Low-end estimates	High-end estimates		Low-end estimates	High-end estimates
Bench	$193	$651	$118	$311	$769
Contractor	321	1,002	183	504	1,185
Cabinet	321	1,002	235	556	1,237

E. Lost Consumer Surplus

The increased retail prices of table saws, as compliance costs are passed on to consumers, would result in a reduction in table saw sales. Consumers who decide not to purchase table saws because of the higher prices would experience a loss in consumer surplus. The assumptions used by Commission staff to estimate the lost consumer surplus are explained in TAB A of staff's briefing package. Applying those assumptions, table 9 shows the expected reduction in annual sales and the expected lost consumer surplus as a result of adopting the proposed rule. Reduced sales could range from about 110,800 table saws under the low-end cost estimates (column a), to about 329,900 under the high-end cost estimates (column d), representing a sales reduction of about 17 percent to 50 percent, respectively. The annual loss in consumer surplus ranges from about $13.9 million under the low-end estimates (column c), to about $120 million under the high-end estimates (column f).

TABLE 9—POST-REGULATORY ANNUAL TABLE SAW SALES, SALES REDUCTION, AND LOST CONSUMER SURPLUS

	Low-end cost estimate			High-end cost estimate		
	(a) Expected sales reduction	(b) Expected post-regulatory sales	(c) Aggregate lost consumer surplus (millions $)	(d) Expected sales reduction	(e) Expected post-regulatory sales	(f) Aggregate lost consumer surplus (millions $)
Bench	97,917	419,083	$11.02	297,231	219,769	$101.50
Contractor	9,098	69,902	1.91	23,885	55,115	13.14
Cabinet	3,813	51,187	1.00	8,758	46,242	5.28
Total	110,827	540,173	13.92	329,874	321,126	119.92

Table 10 presents the total costs per table saw, including the direct manufacturing costs, replacement part costs, and lost consumer surplus. The direct manufacturing and replacement part cost estimates, per table saw, are from table 8. The lost consumer surplus, per table saw, is calculated as the aggregate lost consumer surplus divided by the post-regulatory estimate of sales. Total per-unit costs range from roughly $388 to $1,210 per bench saw, from $531 to $1,376 per contractor saw, and from about $576 to $1,276 per cabinet saw.

TABLE 10—TOTAL COSTS PER SAW

Table saw type	Low-end cost estimate			High-end cost estimate		
	Direct + replacement (a)	Lost consumer surplus (b)	Total (c) = (a) + (b)	Direct + replacement (d)	Lost consumer surplus (e)	Total (f) = (d) + (e)
Bench	$311	$26	$338	$749	$462	$1,210
Contractor	504	27	531	1,138	238	1,376
Cabinet	556	20	576	1,161	114	1,276

The annual aggregate costs of the rule are estimated in columns (c) and (f) of table 11, and range from about $208 million, based on the low-end cost estimates, to about $400 million, based on the high-end cost estimates. Bench saws account for about 68 percent of the total under the low-end estimates, and about 66 percent of the total under the high-end estimates.

TABLE 11—ANNUAL POST-REGULATORY SALES, PER-UNIT COST ESTIMATES, AND AGGREGATE ANNUAL COSTS OF THE PROPOSED RULE, BY COST LEVEL AND TABLE SAW TYPE

Table saw type	Low-end cost estimates			High-end cost estimates		
	(a) Annual post-regulatory table saw sales	(b) Per unit rule cost	(c) Aggregate costs (millions $) (a × b)	(d) Annual post-regulatory table saw sales surplus)	(e) Per unit rule cost	(f) Aggregate costs (millions $) (d × e)
Bench	419,083	$338	$141.55	219,769	$1,210	$266.01
Contractor	69,902	531	37.13	55,115	1,376	75.84
Cabinet	51,187	576	29.47	46,242	1,276	58.98
Total	540,173		208.15	321,126		400.83

F. Relationship Between Benefits and Costs

Section 9(f)(3)(E) of the CPSA, 15 U.S.C. 2058(f)(3)(E), provides that before adopting a final rule under CPSA sections 7 and 9, the Commission must find ''that the benefits expected from the rule bear a reasonable relationship to its costs.'' Although this SNPR does not establish a final rule, we nevertheless address that issue here and preliminarily conclude that the expected benefits of the proposed rule comfortably exceed its expected costs. The expected benefits and costs of the proposed rule by table saw type are presented in table 12. The net benefit estimates suggest that the per-unit benefits exceed costs by a ratio of more than 3.5 to 1 using a 3 percent discount rate. Using a 3 percent discount rate, the estimated net benefits range from about $503 million to $1,326 million for bench saws, $241 million to $365 million for contractor saws, and $536 million to $629 million for cabinet saws.

TABLE 12—ESTIMATED NET BENEFITS

Table saw type	Benefits per saw (a)	Cost per saw (low est—top, hi est.—bottom) (b)	Net benefit per saw (c) = (a) − (b)	Est. annual sales (d)	Aggregate net benefits (millions, $) (e) = (c) × (d)
Bench	$3,503	$338	$3,165	419,083	$1,327
		1,210	2,293		504
Contractor	5,750	531	5,218	69,902	365
		1,376	4,374		241
Cabinet	12,865	576	12,289	51,187	629
		1,276	11,590		536

This general relationship is not altered with variations in some of the key parameters of the analysis, including variations in the expected product life of table saws, table saw sales, injury rates, and significant variations in the estimated costs of injuries. Furthermore, even if the Commission were to assume that the voluntary standards have been effective in reducing the number and severity of injuries, based on the findings from the 2017 Special Study, benefits would not be strongly negative and could be positive. The Regulatory Analysis Memo contains a discussion of costs and benefits under this assumption.[37]

G. Sensitivity Analysis

The results of the regulatory analysis demonstrate that the benefits of AIM technology substantially exceed costs under most plausible scenarios. This sensitivity analysis varies several of the key parameters to show the impact on per-unit net benefits.

1. Lower AIM Effectiveness

Net benefits decline modestly if it is assumed that AIM technology is only 70 percent effective at mitigating the societal costs of blade-contact injuries, rather than 90 percent. Net benefits under this assumption are $272.92 per bench saw, $145.98 per contractor saw, and $357.45 per cabinet saw. Benefits remain substantially greater than costs.

2. Higher Replacement Parts Costs

PTI's comments in response to the 2017 NPR stated that CPSC staff substantially underestimated replacement part costs (*i.e.,* replacement of blade and brake cartridge following activation of an AIM system), and suggested that such costs were more likely to amount to about $36 annually, as opposed to the $11 per year estimated in the NPR.[38] The PTI estimates would increase the cost per table saw, and would also result in the costs of the proposed rule exceeding the benefits. Specifically, net benefits could result in amounts as low as −$270.24 per bench saw, −$70.26 per contractor saw, and −$82.86 per cabinet saw. Nevertheless, given that estimated gross benefits per saw range from approximately $3,500 to nearly $13,000, even the higher replacement parts costs suggested by PTI—which are not consistent with CPSC staff's analysis—result in total costs that bear a reasonable relationship to total benefits.

[37] TAB A to Staff's Briefing Package.

[38] Comment by Susan M. Young for the Power Tool Institute, Inc., on U.S. Consumer Product Safety Commission, Table saw blade contact injuries: Notice of proposed rulemaking, (July 26, 2017), available at: *regulations.gov.*

3. Variations in the Expected Product Life of Bench Saws

PTI commented in response to the 2017 NPR that staff's estimate that the expected product life of bench saws was 10 years was an overestimate; PTI stated that bench saws' actual expected product life was 7.5 years. *Id.* However, a shorter product life reduces the estimated number of bench saws in use while the number and cost of injuries remain the same, thereby increasing the per-unit annual benefit of reduced social costs. The combined effect is a small increase in per-saw benefits and net benefits.

H. Regulatory Alternatives

The Commission considered several alternatives to the proposed rule. These alternatives would mitigate the proposed rule's costs and potential disruptions in the marketplace. However, these alternatives would also reduce the expected benefits of the proposed rule.

1. Take No Regulatory Action

The Commission could end the regulatory proceeding for table saws if it concludes that a mandatory rule is no longer needed to address an unreasonable risk. We cannot estimate the benefits and costs that would be associated with this alternative, because the estimates would be affected by factors such as the extent to which manufacturers would introduce new AIM-equipped table saws in the absence of a requirement that they do so, the prices of any such table saws, and the rate at which consumers would choose to purchase such table saws. However, because the rate at which AIM technology would be adopted in the absence of a mandatory rule would probably be substantially lower than the rate under a mandatory rule, both the benefits and the costs of this alternative would be much lower than estimated for the proposed rule.

2. Later Effective Dates

The proposed rule includes an effective date of 36 months after the final rule is published in the **Federal Register**. This is a lengthy period of time, particularly given Congress's instruction that consumer product safety rules adopted under sections 7 and 9 of the CPSA ordinarily should take effect within 30 to 180 days. 15 U.S.C. 2058(g)(1). Nevertheless, an effective date even later than 36 months could help reduce the impact of the rule on manufacturers by allowing them additional time to spread the costs of the redesign, and would also allow additional time for new entrants into the market. A later effective date might especially benefit manufacturers of bench saws because of the added technical difficulties in engineering small bench saws to incorporate AIM technology.

Although later effective dates could mitigate the impact of the proposed rule for some manufacturers, it could also delay a market-wide distribution of table saws with AIM technology. Given the net benefits per unit expected from incorporating AIM technology, delaying the effective date of the proposed rule would also delay the expected benefits of the rule.

3. Exempt Contractor and Cabinet Saws From a Product Safety Rule

The Commission could exempt cabinet and contractor saws on the grounds that, while widely purchased and used by consumers, they are generally intended for professional, commercial, or industrial users. Exempting cabinet and contractor saws could substantially reduce the adverse impact of the rule on small manufacturers because most small manufacturers market contractor and cabinet saws. Under this alternative, however, the benefits and costs would be limited to those associated with bench saws, which account for approximately 60.9 percent of medically treated blade-contact injuries. Thus, more than a third of medically treated blade-contact injuries would remain unaddressed under this alternative.

4. Limiting Applicability of Performance Requirements to Some, But Not All, Table Saws

Rather than requiring all table saws of each manufacturer to meet the requirements of the proposed standard, the Commission could require that only a subset of table saws do so. For example, if a firm produces bench saws and contractor saws, the Commission might require the firm to produce at least one bench saw model and one contractor saw model that meet the requirements of the standard. However, this option would only address a portion of total injuries. In addition, a rule of this sort might be somewhat more difficult to enforce than a requirement that all table saws contain the AIM technology.

5. Information and Education Campaign

The Commission could conduct an information and education campaign informing consumers about blade contact hazards and blade contact injuries, and the benefits of AIM technology. The Commission could also strongly encourage consumers to always use the passive safety devices required under the voluntary standard, especially if they choose not to purchase a table saw with the AIM technology. This alternative could be implemented on its own, in the absence of other regulatory options, or it could be implemented in combination with any of the alternative options.

However, the effectiveness of warnings and instructions is limited, because they depend on consumers not only receiving and understanding the message, but also being persuaded to heed the message. Although such a campaign could help inform consumers, the Commission preliminarily concludes based on the severity of injuries and recurring hazard patterns of blade-contact injuries, coupled with the high societal costs of these injuries, that a performance requirement is necessary to reduce the unreasonable risk of blade-contact injuries.

XI. Updated Initial Regulatory Flexibility Analysis

This section provides an analysis of the impact the proposed rule would have on small businesses. Whenever an agency is required to publish a proposed rule, section 603 of the Regulatory Flexibility Act (RFA) requires that the agency prepare an initial regulatory flexibility analysis (IRFA) that describes the impact that the rule would have on small businesses and other entities. 5 U.S.C. 603. An IRFA is not required if the head of an agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. The IRFA must contain:

(1) a description of why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(5) identification to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.

An IRFA must also contain a description of any significant alternatives that would accomplish the stated objectives of the applicable statutes and that would minimize any

significant economic impact of the proposed rule on small entities. According to the IRFA, alternatives could include: (1) differing compliance or reporting requirements that take into account the resources available to small businesses; (2) clarification, consolidation, or simplification of compliance and reporting requirements for small entities; (3) use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part of the rule thereof, for small entities. The alternatives the Commission considered are discussed in section X of this preamble.

The IRFA prepared by CPSA staff is contained in TAB B of staff's briefing package, and is summarized below.

A. Reason for Agency Action

The proposed rule for table saws would reduce an unreasonable risk of injury associated with blade-contact injuries on table saws. CPSC staff estimate that there were an average of approximately 32,000 emergency department-treated blade-contact injuries annually from 2004 to 2020. AIM technology has been shown to significantly mitigate the severity of injuries caused by a victim's finger, hand, or other body part contacting the blade while the table saw is in operation. Accordingly, the proposed rule would establish a mandatory performance requirement to address the risk of injuries associated with blade-contact injuries on table saws.

B. Objective of and Legal Basis for the Proposed Rule

The objective of the proposed rule is to reduce the risk of serious injuries resulting from blade contact on table saws. The Commission published an ANPR in October 2011, which initiated this proceeding to evaluate regulatory options and potentially develop a mandatory standard to address the risks of blade-contact injuries associated with the use of table saws, and the Commission published an NPR in 2017. The proposed rule would be promulgated under the authority of the CPSA.

C. Small Entities to Which the Proposed Rule Will Apply

The proposed rule would apply to manufacturers, importers, and private labelers of table saws that are sold in the United States. As of March 2023, CPSC is aware of 23 firms that supply table saws to the U.S. market. Of these 23 firms, seven are small according to criteria established by the Small Business Administration (SBA). According to the SBA criteria, a table saw manufacturer is considered small if it has fewer than 500 employees, and a table saw importer is considered small if it has fewer than 100 employees. Private labelers of table saws are considered small if their annual revenue does not exceed $41.5 million in the case of home centers, $35 million in the case of department stores, and $8 million in the case of hardware stores.

Although the design and engineering of table saws may occur in the United States, most U.S. based suppliers contract the production of table saws to foreign manufacturers, generally in Taiwan or China. Shopsmith, the manufacturer of a multipurpose machine that includes a table saw, is the only small business believed to manufacture its product in the United States.

D. Compliance, Reporting, and Record Keeping Requirements of the Proposed Rule

The proposed rule would require that all table saws incorporate an AIM technology that will reduce the risk of severe injury if the finger, hand, or other body part comes into contact with the blade while the saw is in operation. In particular, the rulemaking would require that a table saw cut no deeper than 3.5 mm into a test probe that approaches a spinning saw blade at a rate of 1 m/s before contacting the blade. The proposed rule sets out a performance requirement rather than a design standard; it does not specify the manner in which the table saw must meet this safety requirement. If a final rule is issued, manufacturers must certify pursuant to section 14 of the CPSA that the product conforms to the standard, based on either a test of each product or any reasonable method to demonstrate compliance with the requirements of the standard. For products that manufacturers certify, manufacturers would issue a general certificate of conformity (GCC).

Section 14 of the CPSA sets forth the requirements for GCCs. Among other requirements, each certificate must identify the manufacturer or private labeler issuing the certificate and any third party conformity assessment body on whose testing the certificate depends, the place of manufacture, the date and place where the product was tested, each party's name, full mailing address, telephone number, and contact information for the individual responsible for maintaining records of test results. The certificate must be in English. Certificates must be furnished to each distributor or retailer of the product and to the CPSC, if requested.[39]

1. Costs of Proposed Rule That Would Be Incurred by Small Manufacturers

To comply with the proposed rule, table saw manufacturers would need to license or develop an AIM technology. To license a technology, manufacturers typically pay a royalty or license fee to the owner of the patents on the technology. At this time CPSC is not able to estimate the royalty cost for licensing an AIM technology.

If a manufacturer wished to avoid fees, the manufacturer would have the challenge of developing its own AIM technology that does not infringe on an existing patent. At a minimum, such an effort would likely cost at least several hundred thousand dollars and perhaps several million dollars, based on the estimated costs of developing the existing technologies.

According to several manufacturers, incorporating AIM technology would require a redesign of each table saw model. Estimates of the redesign and retooling costs ranged from about $100,000 to $700,000 per model. The redesign and retooling process would be expected to take 1 to 3 years depending on the number and severity of problems encountered in the process. The redesign and retooling costs for subsequent models could be less than the costs associated with the first model.

In addition to the redesign and retooling costs, there would be costs for the additional components needed to incorporate an AIM technology. Depending upon the specific system, additional parts may include a brake cartridge; cables, parts, or brackets to secure the brake cartridge; electrodes and assemblies; and a power supply or motor control. CPSC estimates that these additional components would increase the manufacturing cost of a table saw by between $58 and $74.

2. Impacts on Small Businesses

Most small manufacturers are expected to license an AIM technology instead of developing their own technology. The costs of developing their own AIM technology would likely be too high for most small manufacturers, especially given the challenge of developing a technology that did not infringe upon an existing patent. However, there is no certainty that small manufacturers would be able to negotiate acceptable licensing agreements with TTS or another patent

[39] The regulations governing the content, form, and availability of the certificates of compliance are codified at 16 CFR 1110.

holder. If small manufacturers are unable to negotiate acceptable licensing agreements for AIM technology, it is likely they would exit the U.S. table saw market.

If a small table saw manufacturer is able to license AIM technology, it would have to determine whether each table saw model would remain profitable after redesigning it with AIM technology. Further, small table saw manufacturers that are able to license the AIM technology from TTS or another table saw manufacturer would pay royalties to a competitor. This could reduce their competitiveness in the table saw market.

Most small manufacturers of table saws also supply other types of woodworking or metal working equipment. Information provided by firms suggests that U.S. sales of table saws account for a small percentage of the total revenue of most small firms. One manufacturer suggested that U.S. table saw sales accounted for about 1 percent of the firm's total revenue. Two other firms estimated that U.S. table saw sales accounted for between 5 and 8 percent of their total revenue. IEc, 2016a. Actions that impact a firm's revenue by more than 1 percent are potentially significant. Given that small table saw manufacturers have expressed they may drop one or more table saw models or leave the market entirely if the proposed rule is adopted, the proposed rule could have a significant impact on small manufacturers.

E. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

The Occupational Safety and Health Administration (OSHA) has established standards that cover woodworking equipment used in workplace settings, rather than by consumers. These standards are codified at 29 CFR 1910. Generally, these requirements cover workplace safety and the use of safety devices such as blade guards and hoods. Currently, OSHA standards do not mandate performance requirements that would use AIM technology on table saws that are used by consumers. Accordingly, the Commission has not identified any Federal rules that duplicate or conflict with the proposed rule.

F. Alternatives Considered To Reduce the Burden on Small Entities

Under section 603(c) of the Regulatory Flexibility Act, an initial regulatory flexibility analysis must ''contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of the applicable statutes and which minimize any significant impact of the proposed rule on small entities.'' CPSC examined several alternatives to the proposed rule that could reduce the impact on small entities. These alternatives are discussed in section X of this preamble.

G. Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in Response to 2017 NPR

Pursuant to 5 U.S.C. 604, a final regulatory flexibility analysis contained in a final rule must include the agency's response to any comments filed by the Chief Counsel for Advocacy of the SBA in response to a proposed rule, and a detailed statement of any change made to the proposed rule as a response to the comments. Although there is no such requirement for an IRFA, staff's separate regulatory flexibility analysis memorandum [40] includes a summary of the significant issues raised in the Chief Counsel's comments on the 2017 NPR. None of the comments by SBAA resulted in CPSC staff recommending changes to the proposed rule.

XII. Environmental Considerations

Generally, the Commission's regulations are considered to have little or no potential for affecting the human environment, and environmental assessments and impact statements are not usually required. *See* 16 CFR 1021.5(a). The final rule is not expected to have an adverse impact on the environment and is considered to fall within the ''categorical exclusion'' for purposes of the National Environmental Policy Act. 16 CFR 1021.5(c).

XIII. Preemption

In accordance with Executive Order 12988 (February 5, 1996), the CPSC states the preemptive effect of the proposed rule, as follows:

The regulation for addressing blade-contact injuries on table saws is proposed under authority of the CPSA. 15 U.S.C. 2051–2089. Section 26 of the CPSA provides that:

> whenever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal Standard.

15 U.S.C. 2075(a). Thus, this proposed rule would preempt non-identical state or local requirements for table saws that are designed to protect against the same risk of injury, *i.e.,* injuries associated with blade contact.

Upon application to the Commission, a state or local standard may be excepted from this preemptive effect if the state or local standard: (1) provides a higher degree of protection from the risk of injury or illness than the CPSA standard, and (2) does not unduly burden interstate commerce. In addition, the Federal Government, or a state or local government, may establish or continue in effect a non-identical requirement for its own use that is designed to protect against the same risk of injury as the CPSC standard if the Federal, State, or local requirement provides a higher degree of protection than the CPSA requirement. 15 U.S.C. 2075(b).

XIV. Certification

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). A final rule addressing blade-contact injuries on table saws would subject table saws to this certification requirement.

XV. Paperwork Reduction Act

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA). 44 U.S.C. 3501–3520. We describe the provisions in this section of the document with an estimate of the annual reporting burden. Our estimate includes the time for gathering certificate data and creating General Certificates of Conformity (GCC), keeping and maintaining records associated with the GCCs, and disclosure of GCCs to third parties.

CPSC particularly invites comments on: (1) whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility; (2) the accuracy of the CPSC'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

[40] TAB B of Staff's Briefing Package.

collected; (4) ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and (5) estimated burden hours associated with label modification, including any alternative estimates.

Title: Safety Standard Addressing Blade-Contact Injuries on Table Saws.

Description: The proposed rule would require table saws, when powered on, to limit the depth of cut to 3.5 millimeters when a test probe, acting as a surrogate for a human body part, contacts the spinning blade at an approach rate of 1 meter per second.

Description of Respondents: Persons who manufacture or import table saws.

Staff estimates the burden of this collection of information as follows in table 13:

TABLE 13—ESTIMATED ANNUAL REPORTING BURDEN

Burden type	Number of respondents	Frequency of response	Total annual responses	Minutes per response	Total burden hours	Annual cost
GCC Creation	23	7	161	5	13.42	$921.28
Recordkeeping	23	7	161	1.25	3.35	105.36
Third Party Disclosure	23	7	161	15	40.25	1,265.86
Total Burden	69		483		57.02	2,292.50

The proposed rule would require that manufacturers certify that their products conform to the rule and issue a GCC. As of March 2023, CPSC is aware of 23 firms that supply table saws to the U.S. market. Accordingly, we estimate there are 23 respondents that will respond to the collection annually. On average, each respondent may gather certificate data and create 7 certificates for complying table saws in the market. The time required to issue a GCC is conservatively estimated as about 5 minutes (although the actual time required is often substantially less). Therefore, the estimated burden associated with issuance of GCCs is 13.42 hours (161 responses × 5 minutes per response = 805 minutes or 13.42 hours). Staff estimates the hourly compensation for the time required to issue GCCs is $68.65 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2023, table 4, Private industry management, professional and related occupations: *https://www.bls.gov/news.release/archives/ecec_06162023.pdf*). Therefore, the estimated annual cost to industry associated with issuance of a GCC is $921.28 ($68.65 per hour × 13.42 hours = $921.283).

For purposes of this burden analysis, we assume that the records supporting GCC creation, including testing records, would be maintained for a five-year period. Staff estimates burden of 1.25 minutes per year in routine recordkeeping. This adds up to approximately 3.35 hours (161 responses × 1.25 minutes per response = 201.25 minutes or 3.35 hours). Staff estimates the hourly compensation for the time required to maintain records is $31.45 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2023, table 4, Private industry sales and office occupations: *https://www.bls.gov/news.release/archives/ecec_06162023.pdf*). Therefore, the estimated annual burden cost associated with recordkeeping of GCCs is $105.36 ($31.45 per hour × 3.35 hours = $105.3575).

The rule would also require that GCCs be disclosed to third party retailers and distributors. Staff estimates another 161 third party disclosure responses, each one of which requires 15 minutes per year. This adds up to 2,415 minutes (161 responses × 15 minutes per response = 2,415 minutes) or 40.25 hours. Staff uses an hourly compensation for the time required to disclose certificates to third parties of $31.45 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2023, table 4, Private industry sales and office occupations: *https://www.bls.gov/news.release/archives/ecec_06162023.pdf*). Therefore, the estimated annual burden cost associated with third party disclosure of GCCs is $1,265.86 ($31.45 per hour × 40.25 hours = $1,265.8625).

Based on this analysis, CPSC estimates the annual PRA burden associated with the rule at 57.02 hours (13.42 hours + 3.35 hours + 40.25 hours) with a total burden cost of $2,292.50 ($921.28 + $105.36 + $1,265.86). There are no operating, maintenance, or capital costs associated with the collection.

As required under the PRA (44 U.S.C. 3507(d)), CPSC has submitted the information collection requirements of this proposed rule to the OMB for review. Interested persons are requested to submit comments regarding information collection by December 1, 2023, to the Office of Information and Regulatory Affairs, OMB as described under the **ADDRESSES** section of this document.

XVI. Effective Date

Section 9(f)(3) of the CPSA provides that a rule issued under sections 7 and 9, ''including its effective date,'' must be ''reasonably necessary to eliminate or reduce an unreasonable risk injury associated with such product.'' 15 U.S.C. 2058(f)(3). Section 9(g)(1) addresses effective dates in greater detail and requires that the effective date shall not exceed 180 days from the date the rule is promulgated, ''unless the Commission finds, for good cause shown, that a later effective date is in the public interest and publishes its reasons for such finding.'' 15 U.S.C. 2058(g)(1). Similarly, the effective date must not be less than 30 days after promulgation ''unless the Commission for good cause shown determines that an earlier effective date is in the public interest.''

The Commission here proposes to find good cause in the public interest to extend the effective date of this rulemaking beyond the statutory range of 30 to 180 days, and to make the rulemaking effective 36 months from the date of publication of the final rule. The rule would apply to all table saws manufactured after the effective date. 15 U.S.C. 2058(g)(1). This effective date is being proposed in light of the unusual market conditions presented here, where the proposed safety rule requires use of advanced technologies that are capable of being supplied competitively, but currently are dominated by a single supplier. The proposed effective date is intended to allow time for development of both existing and new AIM technologies and establishment of commercial arrangements for licensing those technologies. It thereby addresses the concerns about potential unavailability of AIM solutions at affordable cost that some commenters raised in response to the NPR. In addition, this extended effective date

would allow manufacturers to spread over a 36-month period the costs of modifying the design of their table saws to incorporate AIM technology, and retooling their factories to produce table saws with the new technology. Finally, it would allow additional time for new entrants into the U.S. table saw market.

XVII. Proposed Findings

The CPSA requires the Commission to make certain findings when issuing a consumer product safety standard. 15 U.S.C. 2058(f)(1), (f)(3). The proposed findings for this proposed rule are stated in the appendix for proposed part 1264 and are based on information provided throughout this preamble. While the proposed findings are largely similar to those proposed in the 2017 NPR, they reflect newly available information.

XVIII. Request for Comments

We invite all interested persons to submit comments on any aspect of the proposed rule. The Commission specifically seeks comments on the following topics:

A. Scope

- Whether certain types of table saws, such as mini or micro tables saws, or table saws that are used primarily for commercial or industrial use, should be excluded from the scope of the rule;
- Whether the scope of the rule should be expanded to include types of saws other than table saws that may present a similar blade-contact hazard (*e.g.,* tile saws);
- Whether the definition of table saws should be revised, or whether other definitions are necessary; and
- Home-made table saws or other dangerous alternatives consumers may pursue if they are unwilling or are unable to purchase a table saw with AIM capabilities.

B. Market Information

- Table saw sales by table saw type (bench, contractor, and cabinet), and information on the expected product life of each type of table saw;
- Opportunities to develop or otherwise obtain access to AIM technology for table saws, the time required to realize those opportunities, related barriers to access, and the anticipated cost of obtaining access to AIM technology; and
- The cost of AIM components, estimates of development and retooling costs, and expected time requirements to complete the development and retooling processes, including with respect to battery powered table saws.

C. Utility

- What impacts AIM technology may have on the utility of table saws for consumers.

D. Effectiveness

- The effectiveness of AIM technologies. CPSC estimates that the requirements of the proposed rule would reduce the societal costs of blade-contact injuries by approximately 90 percent. The Commission seeks comments from the public on this estimate;
- The extent to which table saws are used for cutting wet wood or conductive materials such as non-ferrous metals;
- The extent to which the AIM technology may be bypassed; and
- The extent to which consumers may switch to alternative, potentially unsafe methods to cut wood if table saws are required to be equipped with AIM technology.

E. Manufacturing Costs

- Information on manufacturing costs. The Commission seeks comments that would allow us to make more precise estimates with respect to the cost impact of a rule requiring the use of AIM technology on table saws; and
- The feasibility of incorporating AIM technology into the design of small benchtop table saws, including battery powered benchtop table saws.

F. Test Requirements

- How different detection methods may be applied as part of an AIM system, and appropriate test methods to properly evaluate the triggering of AIM systems employing these detection methods;
- Studies or tests that have been conducted to evaluate AIM technology in table saws; and
- Studies, research, or tests on the speed of the human hand/finger while woodworking and during actual blade-contact incidents, in particular.

G. Regulatory Alternatives

- Whether a 36-month effective date for the proposed rule is reasonable, or whether a longer or shorter effective date is warranted;
- The feasibility of limiting or exempting a type or subset of table saws from the proposed rule; and
- The potential impact of the proposed rule on small entities, especially small businesses.

H. Anti-Stockpiling

- The limits on manufacturing or exporting contained in the proposed rule's anti-stockpiling provision; and
- The anti-stockpiling provision's base period.

Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this document.

XIX. Notice of Opportunity for Oral Presentation

Section 9 of the CPSA requires the Commission to provide interested parties ''an opportunity for oral presentation of data, views, or arguments.'' 15 U.S.C. 2058(d)(2). The Commission must keep a transcript of such oral presentations. *Id.* Any person interested in making an oral presentation must contact the Commission, as described under the **DATES** and **ADDRESSES** section of this document.

XX. Promulgation of a Final Rule

Section 9(d)(1) of the CPSA requires the Commission to promulgate a final consumer product safety rule within 60 days of publishing a proposed rule. 15 U.S.C. 2058(d)(1). Otherwise, the Commission must withdraw the proposed rule if it determines that the rule is not reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product or is not in the public interest. *Id.* However, the Commission can extend the 60-day period, for good cause shown, if it publishes the reasons for doing so in the **Federal Register**. *Id.*

The Commission finds that there is good cause to extend the 60-day period for this rulemaking. Under both the APA and the CPSA, the Commission must provide an opportunity for interested parties to submit written comments on a proposed rule. 5 U.S.C. 553; 15 U.S.C. 2058(d)(2). The Commission is providing 60 days for interested parties to submit written comments. A shorter comment period may limit the quality and utility of information CPSC receives in comments, particularly for areas where it seeks data and other detailed information that may take time for commenters to compile. Additionally, the CPSA requires the Commission to provide interested parties with an opportunity to make oral presentations of data, views, or arguments. 15 U.S.C. 2058. This requires time for the Commission to arrange a public meeting for this purpose and provide notice to interested parties in advance of that meeting, if any interested party requests the opportunity to present such comments. After receiving written and oral comments, CPSC staff must have time to review and evaluate those comments.

These factors make it impractical for the Commission to issue a final rule

within 60 days of this proposed rule. Moreover, issuing a final rule within 60 days of the NPR may limit commenters' ability to provide useful input on the rule, as well as CPSC's ability to evaluate and take that information into consideration in developing a final rule. Accordingly, the Commission finds that there is good cause to extend the 60-day period for promulgating the final rule after publication of the proposed rule.

XXI. Conclusion

For the reasons stated in this preamble, the Commission proposes requirements to address an unreasonable risk of injury associated with table saws.

List of Subjects in 16 CFR Part 1264

Consumer protection, Imports, Information, Safety, Table saws.

For the reasons discussed in the preamble, the Commission proposes to add part 1264 to title 16 of the Code of Federal Regulations as follows:

PART 1264—SAFETY STANDARD FOR BLADE–CONTACT INJURIES ON TABLE SAWS

Sec.
1264.1 Scope, purpose and effective date.
1264.2 Definitions.
1264.3 Requirements.
1264.4 Test procedures.
1264.5 Prohibited stockpiling.
Appendix to Part 1264—Findings Under the Consumer Product Safety Act

Authority: 15 U.S.C. 2056, 2058 and 2076.

§ 1264.1 Scope, purpose and effective date.

(a) This part, a consumer product safety standard, establishes requirements for table saws, as defined in § 1264.2. These requirements are intended to reduce an unreasonable risk of injury associated with blade-contact injuries on table saws.

(b) Any table saw manufactured after [effective date of final rule] shall comply with the requirements stated in § 1264.3.

§ 1264.2 Definitions.

In addition to the definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2051), the following definition applies for purposes of this part:

Table saw means a woodworking tool that has a motor-driven circular saw blade, which protrudes through the surface of a table. Table saws include bench saws, jobsite saws, contractor saws, hybrid saws, cabinet saws, and sliding saws. Table saws may be powered by alternating current from a wall outlet or direct current from a battery.

§ 1264.3 Requirements.

(a) *General.* All table saws covered by this standard shall meet the requirements stated in paragraph (b) of this section.

(b) *Test.* All table saws, when powered on, must limit the depth of cut to no more than 3.5 mm when the center axis of a test probe is moving parallel to, and 15 ± 2 mm above, the tabletop at a rate of 1 meter per second, and contacts a spinning saw blade that is set at its maximum height setting.

(c) *Test Probe.* The test probe shall act as the surrogate for a human body/finger and allow for the accurate measurement of the depth of cut to assess compliance with paragraph (b) of this section.

§ 1264.4 Test procedures.

Any test procedure that will accurately determine compliance with the standard may be used.

§ 1264.5 Prohibited stockpiling.

(a) *Base period.* The base period for table saws is the 12-month period immediately preceding the promulgation of the final rule.

(b) *Prohibited acts.* Manufacturers and importers of table saws shall not manufacture or import table saws that do not comply with the requirements of this part in any 12-month period between [date of promulgation of the final rule] and [effective date of the final rule] at a rate that is greater than 115 percent of the rate at which they manufactured or imported table saws during the base period.

Appendix to Part 1264—Findings Under the Consumer Product Safety Act

The Consumer Product Safety Act requires that the Commission, in order to issue a standard, make the following findings and include them in the rule. 15 U.S.C. 2058(f)(3).

(a) Degree and Nature of the Risk of Injury

In 2017, there were an estimated 26,500 table saw blade-contact, emergency department treated injuries. Of these, an estimated 25,600 injuries (96. 4 percent) involved the finger. The most common diagnoses in blade-contact injuries were lacerations (approximately 16,100 injuries, or 60.9 percent of total injuries), fractures (approximately 5,500 injuries, or 20.6 percent), and amputations (approximately 2,800 injuries, or 10.7 percent).

On a broader scale, NEISS data collected by CPSC staff indicates that, from 2010 to 2021, there were an average of approximately 30,600 table saw blade-contact injuries per year. Staff determined that there was no discernible change in the pattern of blade-contact injuries or types of injuries over this period and detected no statistically significant downward trend over the period. Staff also conducted a trend analysis to include the rate of injury per 10,000 table saws in use for each year in the analysis. The analysis suggested that there was no discernible change in the risk of injury associated with blade contact related to table saws over this period, despite the transition of the market to modular blade guards and riving knives to meet voluntary standard requirements intended to reduce blade-contact injuries.

(b) Number of Consumer Products Subject to the Rule

The number of table saws in use was estimated with the CPSC's Product Population Model (PPM), a statistical model that projects the number of products in use given examples of annual product sales and product failure rates. Total annual shipments of all table saws to the U.S. market from 2002 to 2017 ranged from 429,000 to 825,000, and total annual shipments from 2018 to 2020 are estimated to have ranged from 746,000 to 995,000. CPSC staff estimated that bench saws account for about 79 percent of the units sold and have an average product life of 10 years; contractor saws (including hybrids) account for 12 percent of the units sold and have an average product life of 17 years; and cabinet saws account for approximately 9 percent of the units sold and have an average product life of 24 years. Based on this information, staff projected that a total of about 8.2 million table saws were in use in the United States in 2017, including about 5.35 million bench saws (about 65.25 percent), 1.4 million contractor saws (about 17.1 percent), and 1.46 million cabinet saws (about 17.65 percent).

(c) Need of the Public for the Product and Probable Effect on Utility, Cost, and Availability

Consumers commonly purchase table saws for the straight sawing of wood and other materials, and more specifically, to perform rip cuts, cross cuts, and non-through cuts. Because operator finger/hand contact with the table saw blade is a dominant hazard pattern, the performance requirement would limit the depth of cut and significantly reduce the frequency and severity of blade-contact injuries on table saws.

However, the rule will increase table saw production costs. CPSC expects that the prices for the least expensive bench saws now available would more than double, to $400 or more. In general, the retail prices of bench saws could increase by as much as $285 to $700 per unit, and the retail prices of contractor and cabinet saws could rise by as much as $450 to $1,080 per unit. These higher prices may be mitigated in the longer run, but the extent of any future mitigation is unknown.

Because of the likely decline in sales following the promulgation of a rule, consumers who choose not to purchase a new table saw due to the higher price will experience a loss in utility by forgoing the use of table saws, or because they will continue to use older saws that they would have preferred to replace. There may also be some other impacts on utility, such as an increase in the weight and (potentially) the

size of table saws. This factor may have a relatively small impact on the heavier and larger contractor and cabinet saws but could reduce the portability of some of the smaller and lighter bench saws.

(d) Other Means To Achieve the Objective of the Rule, While Minimizing the Impact on Competition and Manufacturing

The Commission considered alternatives to the rule. For example, the Commission considered not taking regulatory action, deferring to the voluntary standard development process, exempting or limiting certain table saws from regulation, extending the rule's effective date, and relying on information and education campaigns. However, the Commission finds that these alternatives would not adequately mitigate the unreasonable risk of blade-contact injuries on table saws.

(e) Rule and Effective Date are Reasonably Necessary To Eliminate or Reduce Unreasonable Risk of Injury

CPSC estimates that 26,500 table saw-related injuries involving blade contact were treated in hospital emergency departments in 2017. Based on this estimate of blade-contact injuries initially treated in hospital EDs, CPSC's injury cost model projects an additional 22,675 blade-contact injuries treated in other treatment settings. Thus, there was an estimated annual total of about 49,176 medically treated blade-contact injuries in 2017. An estimated 96.4 percent of these injuries involved the finger. The most common diagnoses in blade-contact injuries are laceration injuries, fractures, amputations, and avulsion. Thousands of amputations (an estimated 2,800 injuries in 2017 alone) occur each year on table saws. When compared to all other workshop products, table saws account for an estimated 52.4 percent of all amputations related to workshop products in 2015.

Existing safety devices, such as the blade guard and riving knife, do not adequately reduce the number or severity of blade-contact injuries on table saws. Table saws have been equipped with these passive safety devices since 2010, and there is no evidence that these safety devices have adequately reduced or mitigated blade-contact injuries. In CPSC's 2017 Special Study, an analysis of each individual case provided anecdotal information on the usage of modular and traditional blade guards. Overall, of the estimated 26,500 table saw blade-contact injuries treated in emergency departments in 2017, the blade guard was not in use in an estimated 88.9 percent of injuries (23,600). Anecdotally, the blade guard was not in use for 89.2 percent of the cases (91 of 102 cases) involving table saws equipped with traditional blade guards, and the blade guard was not in use in 88.0 percent of the cases (22 of 25 cases) involving table saws equipped with modular blade guards.

CPSC's trend analysis of the annual estimated number of emergency department-treated injuries associated with table saws covered two timespans after the voluntary standard implemented the requirement for riving knives and modular blade guards on table saws (2010 to 2021 and 2015 to 2021). The data showed that there was no discernible change in the number of injuries or types of injuries associated with table saw blade contact over either of the analyzed periods. A trend analysis to assess the risk of injury per 10,000 table saws in use also showed there was no discernible change in the risk of injury associated with table saw blade contact over the analyzed time periods.

The net benefits for the proposed rule would range from approximately $3,153 per bench saw to approximately $11,597 per cabinet saw over each unit's expected product life. Aggregate net benefits over approximately 1 year's production and sale of table saws could, across all categories of table saws, range from about $1.28 billion to $2.32 billion.

The proposed rule includes an effective date of 36 months. The Commission considered a later effective date to mitigate the impact of the proposed rule for some manufacturers, but a later date could also delay a market-wide distribution of table saws with AIM technology. Given the net benefits expected from incorporating AIM technology, delaying the effective date of the proposed rule would also delay the expected benefits of the rule.

The Commission concludes that there is an unreasonable risk of injury associated with blade-contact injuries on table saws and finds that the rule and the effective date is reasonably necessary to reduce that unreasonable risk of injury.

(f) Public Interest

This rule is intended to address an unreasonable risk of blade-contact injuries on table saws. The rule would reduce and mitigate the severity of blade-contact injuries on table saws in the future; thus, the rule is in the public interest.

(g) Voluntary Standards

The current voluntary standard for table saws is Underwriters Laboratories Inc. (UL) 62841–3–1, *Electric Motor-Operated Hand-Held Tools, Transportable Tools and Lawn and Garden Machinery Part 3–1: Particular Requirements for Transportable Table Saws.* This standard specifies that table saws shall be provided with a modular blade guard and riving knife.

The voluntary standard does not adequately address blade-contact injuries on table saws. There has been no statistically significant reduction in the number or severity of blade-contact injuries from 2008 to 2021. The relevant voluntary standards began requiring tables saws to include modular blade guard systems in 2010. In addition, available data indicates that a large percentage of table saw users encounter circumstances in which blade guards must be removed in order to effectively use their saws, and at least 100 known blade-contact injuries involving table saws equipped with modular blade guard systems have occurred.

(h) Reasonable Relationship of Benefits to Costs

Based on CPSC staff's analysis of NEISS data and the CPSC's Injury Cost Model (ICM), the Commission finds that the rule would address an estimated 49,176 medically treated blade-contact injuries annually. The societal costs of these injuries (in 2021 dollars and using a 3 percent discount rate) amounted to about $3.97 billion in 2021. Overall, medical costs and work losses account for about 31 percent of these costs, or about $1.2 billion. The intangible costs associated with pain and suffering account for the remaining 69 percent of injury costs.

Increased manufacturing costs, as well as the expected costs of replacement parts for the AIM system, would range from about $338 to $1,210 per bench saw, about $531 to $1,376 per contractor saw, and about $576 to $1,276 per cabinet saw. These costs likely would be mitigated somewhat over time, but the extent of any future mitigation is unknown. Based on one year's production and sale of table saws, aggregate gross costs could range from about $208 million to $400 million annually. In addition to these direct manufacturing and replacement parts costs, many firms would likely need to pay royalty fees to patent holders for the AIM technology, which CPSC estimates could amount to approximately 8 percent of saws' wholesale price.

Additionally, some consumers who would have purchased table saws at the lower pre-regulatory prices will likely choose not to purchase new table saws due to price increases. The cost impact of the proposed rule on market sales may reduce aggregate sales by as much as 17 percent to 50 percent annually. The decline in sales would result in lost utility to consumers who choose not to purchase table saws because of the higher prices. Further reductions in consumer utility may result from the added weight, and hence, reduced portability associated with addition the AIM technology on table saws.

Nevertheless, because of the substantial societal costs attributable to blade-contact injuries (nearly $4 billion annually), and the expected high rate of effectiveness of the rule in preventing those injuries, the estimated aggregate net benefits are expected to range from about $1.28 billion to $2.32 billion annually. Therefore, the Commission concludes that the benefits expected from the rule bear a reasonable relationship to its costs.

(i) Least Burdensome Requirement That Would Adequately Reduce the Risk of Injury

The Commission considered less burdensome alternatives to the proposed rule addressing blade-contact injuries on table saws and concluded that none of these alternatives would adequately reduce the risk of injury.

(1) *Take no regulatory action.* The Commission considered not taking any regulatory action. Under this alternative, table saws would continue to use existing passive safety devices, such as blade guards, riving knives, and anti-kickback pawls. Additionally, table saws with the AIM technology are already available for consumers who want and can afford them, albeit to a limited extent. However, not taking any action would leave the unreasonable risk of blade-contact injuries on table saws unaddressed. Based on the severity of injuries and recurring hazard patterns of blade-contact injuries, the absence of any statistically significant decline in

those injuries over time, inaction by voluntary standards organizations to address the blade-contact hazard effectively, and the high societal costs of these injuries, the Commission believes a performance requirement is necessary to reduce the unreasonable risk of blade-contact injuries on all table saws.

(2) *Later effective date.* The proposed rule would require an effective date that is 36 months after the final rule is published in the **Federal Register**. An effective date later than 36 months could further reduce the impact of the rule on manufacturers because it would allow them additional time to benefit from the development of new AIM technologies by diverse suppliers, spread the costs of developing or negotiating for the rights to use AIM technology, modify the design of their table saws to incorporate the AIM technology, and retool their factories for production. However, almost certainly, a later effective date would also delay the ubiquitous availability of table saws with AIM technology into the market. Because we anticipate that a longer period will not be necessary for commercial availability of AIM technologies from diverse suppliers, the Commission finds that a 36-month effective date from the issuance of a final rule is an appropriate length of time.

(3) *Exempt contractor and cabinet saws, or industrial saws, from a product safety rule.* The Commission considered whether to exempt certain types of saws commonly used by professional, commercial, or industrial users, based on their size, weight, power, or electrical specifications. Based on the severity of injuries and recurring hazard patterns of blade-contact injuries, coupled with the high societal costs of these injuries, though, a performance requirement is necessary to reduce the unreasonable risk of blade-contact injuries on all table saws. Moreover, there is no clear dividing line between consumer and professional saws.

(4) *Limit the applicability of the rule to some, but not all, table saws.* The Commission considered limiting the scope of the rule to a subset of table saws to allow manufacturers to produce both table saw models with AIM technology, and models without AIM technology. However, based on the severity of injuries and recurring hazard patterns of blade-contact injuries, coupled with the high societal costs of these injuries, the Commission finds that a performance requirement is necessary to reduce the unreasonable risk of blade-contact injuries on all table saws.

(5) *Information and education campaign.* The Commission considered whether to conduct an information and education campaign informing consumers about the dangers of blade-contact hazards, and the benefits of AIM technology. Although such a campaign could help inform consumers, without a performance requirement this approach would not be sufficient to address the unreasonable risk of blade-contact injuries on table saws.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023–23898 Filed 10–31–23; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2011–N–0179]

RIN 0910–AI75

Prior Notice: Adding Requirement To Submit Mail Tracking Number for Articles of Food Arriving by International Mail and Timeframe for Post-Refusal and Post-Hold Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is proposing to amend its prior notice regulations to add a requirement that the prior notice for articles of food arriving by international mail include the name of the mail service and a mail tracking number and add a requirement that prior notice and food facility registration information be submitted within a certain timeframe, after certain notices of refusal or hold have been issued (''post-refusal'' and ''post-hold'' submission). We are also proposing certain technical changes, including those that reflect expanded capabilities of the Automated Broker Interface/Automated Commercial Environment/International Trade Data System (ABI/ACE/ITDS) and the Prior Notice Systems Interface (PNSI). These amendments, if finalized, will improve program efficiency and better enable FDA to protect the U.S. food supply and public health.

DATES: Either electronic or written comments on the proposed rule must be submitted by January 30, 2024. Submit written comments (including recommendations) on the collection of information under the Paperwork Reduction Act of 1995 (PRA) by January 2, 2024.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 30, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Comments

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed below (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2011–N–0179 for ''Information Required in Prior Notice of Imported Food.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, at 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the

information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

Submit comments on the information collection under the PRA to the Office of Management and Budget (OMB) at *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 title of this proposed collection is ''Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.''

FOR FURTHER INFORMATION CONTACT:

With regard to the proposed rule: Peter Ajuonuma, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20852, 301–796–2277, *Peter.Ajuonuma@fda.hhs.gov*.

With regard to the information collection: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–706–5733, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary
A. Purpose of the Proposed Rule
B. Summary of the Major Provisions of the Proposed Rule
C. Legal Authority
D. Costs and Benefits
II. Table of Abbreviations/Commonly Used Acronyms in This Document
III. Background
A. Introduction
B. Need for the Regulation
C. History of the Rulemaking
IV. Legal Authority
V. Description of the Proposed Rule
VI. Proposed Effective Date
VII. Preliminary Economic Analysis of Impacts
A. Introduction
B. Summary of Costs and Benefits
VIII. Analysis of Environmental Impact
IX. Paperwork Reduction Act of 1995
X. Federalism
XI. Consultation and Coordination With Indian Tribal Governments
XII. Reference

I. Executive Summary

A. Purpose of the Proposed Rule

FDA uses prior notice information to, among other things, determine what products should be inspected upon arrival into the United States. The proposed rule, if finalized, would: (1) amend § 1.281(b)(10) (21 CFR 1.281(b)(10)) to add a requirement for people submitting prior notice for articles of food arriving by international mail to provide the name of the mail service and the mail tracking number; [1] (2) amend §§ 1.283 and 1.285 (21 CFR 1.283 and 1.285) to add a requirement that prior notice be submitted within 10 calendar days from the date a notice of refusal or hold was issued and that food facility registration be submitted within 30 calendar days from the date a notice of refusal or hold was issued; and (3) make certain technical amendments.

To effectively carry out its responsibility to detect food articles offered for import that are adulterated or pose a public health risk, FDA must be able to identify and inspect food items that are imported by international mail. Receiving the name of the mail service and a mail tracking number for articles of food arriving by international mail would enable FDA to better coordinate with the U.S. Postal Service (USPS), U.S. Customs and Border Protection (CBP), and other Agencies, to track and inspect articles that have been identified as a possible bioterrorism risk. Currently, FDA does not receive the name of the mail service or tracking numbers for articles of food arriving by international mail. This makes it difficult for FDA to stop articles from being delivered to U.S. recipients that FDA believes pose a bioterrorism risk. Having the name of the mail service and tracking numbers for articles of food arriving by international mail would help FDA better plan its operations and stop such articles from being delivered.

Many foods are regularly imported by mail, and in FDA's experience, these foods can present similar risks to the U.S. food supply as other imported foods. Further, FDA's presence at international mail facilities supports that people are increasingly using the mail system to import foods, including foods that could pose a significant risk to public health. The use of the mail system to import food highlights the need for FDA to have the name of the mail service and tracking number to adequately monitor and refuse or hold specific food shipments.

Additionally, requiring a reasonable timeframe for post-refusal and post-hold submissions of prior notice and food facility registration may reduce the amount of time articles subject to refusal or holds are held at ports of entry, thus reducing associated monetary charges. It would also enable FDA to utilize its resources more effectively by delineating the post-refusal and post-hold submission timeframe. Without a date by which such submissions must be made, FDA has spent longer periods of time (*e.g.,* weeks and months) reviewing multiple replacement non-compliant prior notice or registration submissions.

Finally, regarding the technical changes to the regulations, FDA's PNSI was developed to receive prior notice information for import submissions that could not be accommodated in the Automated Commercial System (ACS), mainly mail and baggage submissions, and prior notice for foods refused under section 801(m) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 381(m)). ACE, ACS's successor system, can now accommodate such submissions. Therefore, we also propose to amend § 1.280(a)(2) (21 CFR 1.280(a)(2)) to remove the requirement that prior notice of foods arriving by international mail be submitted through FDA PNSI. If finalized as proposed, prior notice for food arriving by international mail can be submitted through the PNSI or through the U.S. CBP ABI/ACE/ITDS. Further, we propose to amend § 1.281(a)(5)(iv),

[1] Note that FDA intends to consider enforcement discretion when there is no prior notice if the food is offered for import for non-commercial purposes with a non-commercial shipper. See Compliance Policy Guide ''Sec. 110.310 Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002,'' announced in the **Federal Register** on May 6, 2009 (74 FR 20955).

(b)(4)(iv), and (c)(5)(iv) to cross-reference product coding requirements for infant formula under § 106.80 (21 CFR 106.80). These regulations currently cross-reference § 106.90 (21 CFR 106.90) when referring to lot or code number requirements for infant formula. Section 106.90 establishes requirements related to current good manufacturing practice, while § 106.80 establishes product coding requirements for infant formula. Therefore, if finalized as proposed, § 1.281(a)(5)(iv), (b)(4)(iv), and (c)(5)(iv) will be amended to refer to § 106.80 instead of § 106.90.

B. Summary of the Major Provisions of the Proposed Rule

FDA proposes to amend §§ 1.281(b)(10), 1.283(a)(6) and (c), 1.285(g) and (i), and 1.280(a)(2). Currently, § 1.281(b)(10), which applies to articles arriving by international mail, requires only the submission of the anticipated date of mailing. If this amendment is finalized as proposed, § 1.281(b)(10) will include an additional requirement to submit the name of the mail service and mail tracking number in the prior notice to FDA for food articles arriving by international mail.

Sections 1.283(a)(6) and (c) and 1.285(g) and (i), with few exceptions and if other requirements are met, require an article of food that has been refused under section 801(m) of the FD&C Act (no prior notice or inaccurate prior notice) or held under section 801(1) of the FD&C Act (importation from unregistered foreign facility that is required to register) to be treated as general order merchandise under CBP regulations if no prior notice is submitted or resubmitted, or no registration is provided. However, these sections do not provide a timeframe within which such submissions must be made. If this amendment is finalized as proposed, § 1.283(c)(1) and (2) will require submission or resubmission of prior notice within 10 calendar days from the date the notice of refusal was issued. We believe that 10 days is an appropriate timeframe because it allows time for certain persons who want to file a request for FDA review pursuant to § 1.283(d), to file their request, receive a response of the review decision, and submit or resubmit prior notice if necessary.

In addition, if finalized as proposed, § 1.285(i)(1) will require submission of a valid registration within 30 calendar days from the date a notice of hold was issued. We believe that 30 days is an appropriate timeframe in this context because it allows time to obtain and submit a valid registration if necessary. It also allows time to file a request for FDA review pursuant to § 1.285(j), receive a response of the review decision, and submit or resubmit registration if necessary. If a prior notice is not submitted or resubmitted, or a registration is not provided within the timeframe, these changes will require the article to be dealt with as set forth in CBP regulations relating to general order merchandise. Unless otherwise agreed to by CBP and FDA, the article may only be sold for export or destroyed.

FDA also proposes to amend § 1.280(a)(2). This regulation currently requires prior notice of articles of food imported or offered for import by international mail, and other transaction types that cannot be made through ABI/ACE/ITDS, to be submitted through FDA PNSI. At this time, there are no longer any transaction types that cannot be made through ABI/ACE/ITDS. Therefore, this proposed amendment would remove the requirement that only the FDA PNSI be used for the submission of prior notice for articles of food arriving by international mail. Finally, FDA proposes to amend § 1.281(a)(5)(iv), (b)(4)(iv), and (c)(5)(iv) to refer to § 106.80 instead of § 106.90.

C. Legal Authority

Section 801(m) of the FD&C Act directs FDA to issue regulations requiring prior notice to FDA of an article of food that is imported or offered for import into the United States for the purpose of enabling such article to be inspected at ports of entry into the United States. Section 801(l) of the FD&C Act requires that an article of food that is imported or offered for import into the United States and that is from a foreign facility for which a registration has not been submitted to FDA under section 415 of the FD&C Act (21 U.S.C. 350d) be held at the port of entry for the article until the foreign facility is so registered. Additionally, section 701(b) of the FD&C Act (21 U.S.C. 371(b)) authorizes FDA and CBP to prescribe regulations for the efficient enforcement of section 801 of the FD&C Act.[2]

D. Costs and Benefits

We estimate the costs of the proposed rule, as accrued to submitters or transmitters of prior notices to read and understand the rule, and to gather and provide international mail tracking information, to be negligible. The proposed rule, if finalized, would not significantly increase costs to small entities. See the Preliminary Economic Analysis of Impacts for a detailed cost and benefit analysis.

[2] In 2003, the U.S. Treasury Department transferred to the Department of Homeland Security its regulatory authority relating to the requirements for prior notice. See Department of Treasury Order No. 100–16.

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

Abbreviation/acronym	What it means
ABI	Automated Broker Interface.
ACE	Automated Commercial Environment.
CBP	U.S. Customs and Border Protection.
CPG	Compliance Policy Guide.
E.O.	Executive Order.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
FSMA	FDA Food Safety Modernization Act.
GMP	Good Manufacturing Practice.
OMB	Office of Management and Budget.
PNSI	Prior Notice System Interface.
USPS	U.S. Postal Service.

III. Background

A. Introduction

FDA proposes to amend the prior notice regulation as follows: (1) amend § 1.281(b)(10) to add a requirement to provide the name of the mail service and mail tracking number for articles of food imported or offered for import by international mail;[3] (2) amend § 1.283(c) to require submission or resubmission of prior notice within 10 calendar days from the date the notice of refusal under section 801(m) of the FD&C Act was issued and § 1.285(i) to require submission of food facility registration within 30 calendar days from the date the notice of hold under section 801(l) of the FD&C Act was issued; and (3) amend § 1.280(a)(2) to remove the requirement that articles of food imported or offered for import by international mail, and other transaction types that cannot be made through ACE,[4] be submitted through FDA PNSI, and amend § 1.281(a)(5)(iv), (b)(4)(iv), and (c)(5)(iv) to cross-reference § 106.80 instead of § 106.90. Section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) (Pub. L. 107–188) added section 801(m) to the FD&C Act and requires FDA to establish regulations requiring the submission of prior notice of food that is imported or offered for import into the United States.

[3] The prior notice regulation specifies that ''international mail'' means foreign national mail services and does not include express consignment operators or carriers or other private delivery services unless such service is operating under contract as an agent or extension of a foreign mail service (21 CFR 1.276(b)(8)).

[4] There are no longer any transaction types that cannot be made through ACE.

B. Need for the Regulation

The information in a prior notice enables FDA to target import inspections more effectively, thereby helping to protect our nation's food supply against terrorist acts and other public health emergencies. FDA regulations require that specific information about food articles imported or offered for import into the United States be submitted in advance of arrival of the food.

Currently, FDA does not require submission of the name of the international mail service or the mail tracking number for food articles imported by international mail; therefore, FDA has limited ability to track or locate the movement of food articles imported by international mail, which could pose a public health risk. Receiving the name of the mail carrier and the mail tracking number for food articles imported by international mail would assist FDA in conducting investigations and surveillance operations in response to a food-related emergency. Access to the name of the mail service and the tracking number would also enable FDA to act quickly to identify the affected food articles and prevent contamination of the food supply. It would also help to improve emergency response time, as FDA and other Agencies would be better equipped to identify, alert, and secure those facilities or entities that could be potentially impacted by a bioterrorism incident. Requiring the submission of this information would bolster FDA's efforts to prevent violative and potentially dangerous food shipments from entering the United States at international mail facilities, and also could help FDA to track, identify, inspect, and contain such shipments. With this information available, FDA could better utilize its resources and plan its operations, given its knowledge of the movement, location, and time of the food's arrival to the U.S. port of entry.

Providing the name of the international mail service and the tracking number in the prior notice will also enable FDA to effectively coordinate a quicker response with other Agencies in the event of any suspected act of bioterrorism or public health emergency. For instance, if FDA receives information indicating that a particular international mail package contains a food article that could be affected by a bioterrorist incident or other food-related public health emergencies, FDA alerts CBP and USPS about the food article and the potential risk it may pose. Knowing the tracking number of that suspected contaminated food and the mail service carrier would help FDA, CBP, and USPS to track the origin and location of the international mail. The mail package could then be more easily identified and separated from other foods or incoming mail to safely conduct inspection to determine the degree of risk the article of food poses. This would enable FDA to prevent the article of food from entering the U.S. food supply chain more swiftly.

Moreover, articles of food imported or offered for import without a prior notice or with inadequate prior notice are subject to refusal of admission or hold under section 801(m) of the FD&C Act. Articles of food imported or offered for import from an unregistered foreign food facility that is required to register are subject to being held under section 801(l) of the FD&C Act. If an article of food is refused admission under section 801(m) or held under section 801(l), certain persons may submit a request, within 5 calendar days of the refusal or hold, asking FDA to review whether the article is subject to the prior notice requirements, whether the information submitted in a prior notice is complete and accurate, or whether the facility associated with the article is subject to food facility registration requirements (§§ 1.283(d) and 1.285(j)). Alternatively, submitters or transmitters can attempt to come into compliance by submitting or resubmitting prior notice after refusal of admission (§ 1.283(c)), or by obtaining and providing a registration number for post-hold submissions (§ 1.285(i)). Requests for review under §§ 1.283(d) and 1.285(j) may not be used to submit or resubmit prior notice or obtain a registration number.

Currently, FDA regulations do not require a timeframe within which an article of food must be brought into compliance by submitting or resubmitting prior notice or submitting a registration number if the article of food is refused or held. As a result, when articles of food are refused or held under section 801(m)(1) or section 801(l) of the FD&C Act, they may be refused or held for several weeks while submitters or transmitters submit multiple replacement non-compliant prior notice or registration submissions to be reviewed by FDA. This practice consumes significant amounts of FDA reviewers' time and may lead to importers incurring large demurrage charges (*i.e.,* monetary charges due to a failure of goods to leave port).

C. History of the Rulemaking

The Bioterrorism Act amended the FD&C Act and created the requirement that FDA receive certain information about imported foods before their arrival in the United States. On February 3, 2003, FDA and the Department of Treasury (U.S. Customs Service) [5] issued a joint notice of proposed rulemaking (68 FR 5428), requiring submission to FDA of prior notice of human and animal food that is imported or offered for import into the United States. On October 10, 2003, FDA issued an interim final rule (68 FR 58974) that requires the submission to FDA of prior notice of food, including animal food, that is imported or offered for import into the United States. In 2008, 2011, and 2017, FDA finalized and issued amendments to the prior notice regulation (see 73 FR 66294, November 7, 2008, as amended at 76 FR 25542, May 5, 2011; 82 FR 15627, March 30, 2017) to further improve the implementation of the prior notice requirement.

For articles not arriving by international mail, the prior notice rule requires the submission of anticipated arrival information and planned shipment information to provide FDA with information necessary for planning examinations and communicating with CBP for enforcement and examination purposes (see § 1.281(a)(11) and (17), 68 FR 58974 at 59009 and 59011). Further, FDA requires the identification of the carrier because the information is necessary to enable FDA and CBP to identify the appropriate article of food for inspection or holding when the food arrives in the United States (see § 1.281(a)(16), 68 FR 58974 at 59011). The 2008 final rule added the ability, under § 1.281(a)(11), to submit the tracking number for food articles arriving by express consignment operator or carrier, as part of the anticipated arrival information of the food or planned shipment information (73 FR 66294 at 66297). In the 2017 amendment to the prior notice rule, we removed certain limitations regarding the submission of a tracking number (82 FR 15627 at 15628). In doing so, we reiterated the importance of the tracking number to learn the information that FDA needs to make entry determinations, such as port, date, and time of arrival. In the 2017 amendment, we also eliminated some requirements for submitting prior notice due to the expanded capabilities of ACE, such as the requirement to submit articles that have been refused under section 801(m)(1) of the FD&C Act or subpart I

[5] In March 2003, U.S. Customs Service was subsumed by the newly formed CBP (see Homeland Security Act of 2002, Pub. L. 107–296 (2002)) (*https://www.cbp.gov/about/history#:~:text=On%20March%201%2C%202003%2C%20U.S.,boundaries%20and%20ports%20of%20entry*).

in FDA PNSI. ACE can now accommodate this type of entry and others it previously could not, such as articles of food arriving through international mail and baggage entries. The amendments described in this proposed rule would further align the prior notice rule with requirements that exist for food not arriving by international mail and better reflect ACE's expanded capabilities.

In addition, in the 2003 interim final rule, we stated that under § 1.283(a)(6), if no prior notice, correction (*i.e.,* prior notice resubmission), or request for FDA review is submitted in a timely fashion, following a refusal under section 801(m) of the FD&C Act, the food will be dealt with as set forth in CBP regulations relating to general order merchandise, except that it may only be sold for export or destroyed as agreed to by CBP and FDA (68 FR 58974 at 59020 and 59021). Similarly, we stated that under § 1.285(g), if an article of food is placed under hold under section 801(l) of the FD&C Act and no registration or request for FDA review is submitted in a timely fashion, the food will be dealt with as set forth in CBP regulations relating to general order merchandise, except that it may only be sold for export or destroyed as agreed to by CBP and FDA (68 FR 58974 at 59076).

In the 2008 final rule, we ''made a minor change in the text of § 1.283(a)(6) by replacing the phrase, 'in a timely fashion,' with the phrase, 'in accordance with paragraph (d) [of § 1.283],' to clarify that the timeliness of a request for FDA review is found at paragraph (d) [of that section]. We made a similar change in § 1.285(g)'' (73 FR 66294 at 66370). That change requires requests for FDA review under §§ 1.283(d) and 1.285(j) to be submitted within 5 calendar days of the refusal or hold and removes the requirement that post-refusal and post-hold submissions be submitted in a timely fashion or be subject to any timeframe. However, §§ 1.283(a)(6) and 1.285(g) state that, if an article of food is refused or held under section 801(m) or (l) of the FD&C Act, and no prior notice is submitted or resubmitted, or no registration is provided, the food must be dealt with as set forth in CBP regulations relating to general order merchandise.

It is difficult for FDA to administer these provisions without a requirement for when the prior notice must be submitted or resubmitted or for when registration must be provided. There is currently no uniform and predictable date by which such submissions must be made before the article is treated as CBP general order merchandise. As such, there have been instances where articles are refused or held for prolonged periods of time (*e.g.,* weeks and months) while submitters or transmitters submit multiple replacement non-compliant prior notice or registration submissions that must be reviewed by FDA. This is not an effective use of FDA resources and personnel and can lead to the accumulation of large demurrage charges for those articles that are subject to hold or refusal. This proposed rule would amend such provisions by imposing a timeframe for post-refusal and post-hold submissions.

IV. Legal Authority

We are issuing this proposed rule under section 801(m) of the FD&C Act, which directs FDA to implement a regulation requiring prior notification to FDA of food that is imported or offered for import into the United States; section 801(l) of the FD&C Act, which requires that a food article being imported or offered for import into the United States that is from a foreign facility for which a registration has not been submitted under section 415 of the FD&C Act be held at the port of entry until the foreign facility is so registered; and section 701(b) of the FD&C Act, which authorizes FDA and CBP to jointly issue regulations for the efficient enforcement of section 801 of the FD&C Act.

In the 2003 interim final rule, we stated that the planned shipment information is necessary to ensure the effective enforcement of section 801(m) of the FD&C Act (68 FR 58974 at 59012). The tracking information is considered part of the planned shipment information as it is currently allowed to be submitted under § 1.281(a)(17). In both the 2003 and 2008 final rules, we explained that certain information not explicitly mentioned in section 801(m) of the FD&C Act is required for the efficient enforcement of the Bioterrorism Act (68 FR 58974 at 59001 and 73 FR 66294 at 66340). We now tentatively determine that, for articles of food arriving by international mail, the name of the mail service and the mail tracking number is necessary for the efficient enforcement of section 801(m) of the FD&C Act. Additionally, we tentatively determine that imposing a timeframe on post-refusal and post-hold submissions of prior notice and food facility registration is necessary for the efficient enforcement of sections 801(m) and 801(l) of the FD&C Act.

V. Description of the Proposed Rule

The proposed rule, if finalized, will amend §§ 1.281(b)(10) to require the submission of the name of the mail service and mail tracking number in the prior notice for articles of food sent by international mail. Currently, § 1.281(b)(10) requires only the submission of the anticipated date of mailing. If the proposed rule is finalized, § 1.281(b)(10) will include an additional requirement to submit the name of the international mail service used in mailing the article and the mail tracking number in the prior notice of the article to FDA, for food articles arriving by international mail. We believe international mail packages usually bear tracking numbers that could be used to track the mail or identify its country of origin. We welcome comments regarding any country where a tracking number is not issued for international mail.

The proposed rule will also amend §§ 1.283(a)(6) and (c), and 1.285(g) and (i)(1) to require post-refusal and post-hold submissions of prior notice to be submitted within 10 calendar days and post-refusal and post-hold submissions of registration be submitted within 30 calendar days from the date the notice of refusal or hold was issued. If the prior notice or registration requirements are not met within these timeframes, the article shall be dealt with as set forth in CBP regulations relating to general order merchandise. Unless otherwise agreed to by CBP and FDA, the article may only be sold for export or destroyed. We believe that 30 calendar days is an appropriate timeframe for registration submissions because it gives time to obtain and submit a valid registration, as well as time to file a request for review by FDA and receive a response of the review decision, and to submit the required information, if necessary. However, we are willing to consider other timeframes. Therefore, FDA invites public comment on whether 30 calendar days would be an appropriate timeframe for registration submission or if a different timeframe would be more appropriate. For comments suggesting a timeframe, we request an explanation of the reason.

If finalized, the proposed change to § 1.280(a)(2) will remove the requirement that articles of food arriving by international mail be submitted in FDA PNSI. This change will allow a prior notice submitter to use CBP's ABI/ACE/ITDS as an alternative to FDA PNSI to submit prior notice of articles of food imported or offered for import by international mail.

This proposal would also make technical amendments to § 1.281(a)(5)(iv), (b)(4)(iv), and (c)(5)(iv) to correct a cross-reference in the regulation to § 106.80 instead of § 106.90.

VI. Proposed Effective Date

FDA is proposing that the final rule based on this proposal become effective 30 days after the date of publication in the **Federal Register**.

VII. Preliminary Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 14094, 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, 13563, and 14094 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Rules are ''significant'' under Executive Order 12866 Section 3(f)(1) (as amended by Executive Order 14094) if they ''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.'' OIRA has determined that this proposed rule is not a significant regulatory action under Executive Order 12866 Section 3(f)(1).

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed change to prior notice requirements would not significantly increase costs to small entities, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated impacts, 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 an expenditure in any year that meets or exceeds this amount.

B. Summary of Costs and Benefits

This proposed rule would amend existing prior notice regulations to require the submission of tracking information for food articles imported using international mail. To estimate costs and benefits associated with the proposed rule, we assume that the appropriate baseline is the state of the world with current prior notice regulations. We then compare the likely impacts of the proposed rule against this baseline. The costs of the proposed rule, if finalized, accrue to submitters or transmitters of prior notices for reading and understanding the rule and the additional time needed to gather and provide the tracking information. When annualized over a period of 10 years, we estimate these costs range from approximately $0.04 million to $0.50 million at a 3 percent rate of discount. At a 7 percent rate of discount, these costs range from approximately $0.04 million to $0.52 million. Our primary annualized estimates are approximately $0.27 million and $0.28 million at 3 and 7 percent rates of discount, respectively.

We estimate benefits in the form of cost-savings which accrue to transmitters of prior notices and to FDA. These cost-savings range in annualized value from approximately $0.04 million to $0.18 million for both 3 and 7 percent rates of discount. The primary annualized value is $0.09 million for both rates of discount. These estimates are summarized in table 1.

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

Category	Primary estimate	Low estimate	High estimate	Units: Year dollars	Units: Discount rate (%)	Units: Period covered (years)	Notes
Benefits:							
Annualized Monetized $millions/year	$0.09	$0.04	$0.18	2021	7	10	
	0.09	0.04	0.18	2021	3	10	
Annualized Quantified					7		
					3		
Qualitative							
Costs:							
Annualized Monetized $millions/year	0.28	0.04	0.52	2021	7	10	
	0.27	0.04	0.50	2021	3	10	
Annualized Quantified					7		
					3		
Qualitative							
Transfers:							
Federal Annualized Monetized $millions/year					7		
					3		
From/To	From:			To:			
Other Annualized Monetized $millions/year					7		
					3		
From/To	From:			To:			

Effects:

State, Local or Tribal Government: None.

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

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Small Business: None. Wages: Growth:							

We have developed a comprehensive Preliminary Economic Analysis of Impacts that assesses the impacts of the proposed rule. The full preliminary analysis of economic impacts is available in the docket for this proposed rule (Ref. 1) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the PRA (44 U.S.C. 3501–3521). A description of these provisions is given in the *Description* section of this document with an estimate of the annual reporting. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; OMB Control No. 0910–0520—Revision.

Description: FDA is amending its regulations governing notification requirements for articles of food being imported or offered for import into the United States and is making corresponding changes to the information collection. Specifically, we are revising the data elements required in prior notice notifications under section 801(m) of the FD&C Act to include mail service name and mail tracking number.

FDA intends to use the information to better identify, track, contain, and inspect articles of food sent through international mail that it has reason to believe present a bioterrorism threat or public health concern. We believe having the name of the mail service and the mail tracking number will improve our ability to identify and prevent such food articles from entering the U.S. food supply, as well as reduce challenges associated with locating articles without this information.

Description of Respondents: Persons submitting prior notice for articles of food imported or offered for import into the United States.

Burden: FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR section	Number of respondents	Average number of responses per respondent	Total annual responses	Average one-time burden per respondent (in minutes)	Average burden per response (in minutes)	Total annual hours
1.281(b)(10)	5,460	143	781,219	30	4	54,811

Based on 2021 fiscal year data from our Online Reporting Analysis Decision Support System, we estimate that 26,200 persons submit prior notice through PNSI. We assume 5,460, or roughly 20 percent, are importing or offering for import articles of food by international mail. The proposed requirement to submit tracking information applies only to persons importing or offering for import articles of food by international mail. The number of prior notices for international mail entries per respondent per year ranges from 1 to approximately 5,000. The average number of prior notice submissions for international mail entries per person per year is approximately 143. Of the more than 18 million prior notices received by FDA per year, approximately 781,219 are identified as "mail."

We estimate a one-time average burden of 30 minutes per respondent to learn the new requirement and coordinate with mail services to establish best practices for receiving and providing the information. In addition to the one-time burden, we estimate an average recurring annual burden of 4 minutes per prior notice mail submission. The one-time total burden for all the 5,460 respondents amounts to 163,800 minutes (5,460 × 30). The total recurring burden for all the 781,219 mail entries is 3,124,876 minutes (781,219 × 4). Therefore, we estimate the average total annual recurring burden in hours to be 54,811 (163,800 + 3,124,876 ÷ 60).

To ensure that comments on information collection are received, OMB recommends that written comments be submitted through *https://www.reginfo.gov/public/do/PRAMain* (see **ADDRESSES**). All comments should be identified with the title of the information collection.

In compliance with the PRA (44 U.S.C. 3407(d)), we have submitted the information collection provisions of this proposed rule to OMB for review. These

information collection requirements will not be effective until FDA publishes a final rule, OMB approves the information collection requirements, and the rule goes into effect. FDA will announce OMB approval of these requirements in the **Federal Register**.

X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that this proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the rule does not contain policies that would have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. FDA solicits comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

XII. Reference

The following reference is on display in the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m. Monday through Friday; it is also available electronically at *https://www.regulations.gov.* FDA has verified the website address, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Preliminary Regulatory Impact Analysis, Requirement for Submission of Mail Tracking Number or Tracking Code for Food Articles Arriving by International Mail; available at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA proposes to amend 21 CFR part 1 as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

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

Authority: 15 U.S.C. 1333, 1453, 1454, 1455, 4402; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 342, 343, 350c, 350d, 350j, 352, 355, 360b, 360ccc, 360ccc–1, 360ccc–2, 362, 371, 374, 381, 382, 384a, 387, 387a, 387c, 393, and 2223; 42 U.S.C. 216, 241, 243, 262, 264, 271.

■ 2. In § 1.280 revise paragraph (a)(2) to read as follows:

§ 1.280 How must you submit prior notice?

(a) * * *

(2) The FDA Prior Notice System Interface (FDA PNSI) at *https://www.access.fda.gov/.*

* * * * *

■ 3. In § 1.281 revise paragraphs (a)(5)(iv), (b)(4)(iv), (10), and (11), and (c)(5)(iv) to read as follows:

§ 1.281 What information must be in a prior notice?

(a) * * *

(5) * * *

(iv) The lot or code numbers or other identifier of the food if required by the act or FDA regulations, *e.g.,* low-acid canned foods, by § 113.60(c) of this chapter; acidified foods, by § 114.80(b) of this chapter; and infant formula, by § 106.80 of this chapter;

* * * * *

(b) * * *

(4) * * *

(iv) The lot or code numbers or other identifier of the food if required by the act or FDA regulations, *e.g.,* low-acid canned foods, by § 113.60(c) of this chapter; acidified foods, by § 114.80(b) of this chapter; and infant formula, by § 106.80 of this chapter;

* * * * *

(10) The anticipated date of mailing, the name of the mail service, and the mail tracking number;

(11) The name and address of the U.S. recipient; and

* * * * *

(c) * * *

(5) * * *

(iv) The lot or code numbers or other identifier of the food if required by the act or FDA regulations, *e.g.,* low-acid canned foods, by § 113.60(c) of this chapter; acidified foods, by § 114.80(b) of this chapter; and infant formula, by § 106.80 of this chapter;

* * * * *

■ 4. In § 1.283 revise paragraphs (a)(6), (c)(1), and (c)(2) to read as follows:

§ 1.283 What happens to food that is imported or offered for import without adequate prior notice?

(a) * * *

(6) *No post-refusal submission or request for review.* If an article of food is refused under section 801(m)(1) of the act and no prior notice is submitted or resubmitted in accordance with paragraph (c) of this section, no request for FDA review is submitted in accordance with paragraph (d) of this section, or export has not occurred in accordance with paragraph (a)(5) of this section, the article of food shall be dealt with as set forth in CBP regulations relating to general order merchandise (19 CFR part 127), except that, unless otherwise agreed to by CBP and FDA, the article may only be sold for export or destroyed.

* * * * *

(c) * * *

(1) If an article of food is refused under paragraph (a)(1)(i) of this section (no prior notice) and the food is not exported, prior notice must be submitted in accordance with §§ 1.280 and 1.281(c) within 10 calendar days from the date the notice of refusal was issued.

(2) If an article of food is refused under paragraph (a)(1)(ii) of this section (inaccurate prior notice) and the food is not exported, the prior notice should be canceled in accordance with § 1.282 and you must resubmit prior notice in accordance with §§ 1.280 and 1.281(c) within 10 calendar days from the date the notice of refusal was issued.

* * * * *

■ 5. In § 1.285 revise paragraphs (g) and (i)(1) to read as follows:

§ 1.285 What happens to food that is imported or offered for import from unregistered facilities that are required to register under subpart H of this part?

* * * * *

(g) *No registration or request for review.* If an article of food is placed under hold under section 801(l) of the act and no registration number is submitted in accordance with paragraph (i) of this section, or no request for FDA review is submitted in accordance with paragraph (j) of this section, or export has not occurred in accordance with paragraph (f) of this section, the food shall be dealt with as set forth in CBP regulations relating to general order merchandise. Unless otherwise agreed to by CBP and FDA, the article may only be sold for export or destroyed.

* * * * *

(i) * * *

(1) To resolve a hold, if an article of food is held under paragraph (b) of this section because it is from a foreign facility that is not registered, the facility must be registered, and a valid registration number must be obtained and submitted to the FDA Division of Food Defense Targeting within 30 calendar days from the date the notice of hold was issued.

* * * * *

Dated: October 26, 2023.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2023–24086 Filed 10–31–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 414, 425, and 495

Office of the Secretary

45 CFR Part 171

RIN 0955–AA05

21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking

AGENCY: Centers for Medicare & Medicaid Services (CMS) and Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the provision of the 21st Century Cures Act specifying that a health care provider determined by the HHS Inspector General to have committed information blocking shall be referred to the appropriate agency to be subject to appropriate disincentives set forth through notice and comment rulemaking. In particular, this rulemaking would establish for such health care providers a set of appropriate disincentives using authorities under applicable Federal law.

DATES: To be assured consideration, written or electronic comments must be received at one of the addresses provided below, no later than 5 p.m. on January 2, 2024.

ADDRESSES: You may submit comments, identified by RIN 0955–AA05, by any of the following methods (please do not submit duplicate comments). Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

- *Federal eRulemaking Portal:* Follow the instructions for submitting comments. Attachments should be in Microsoft Word, Microsoft Excel, or Adobe PDF; however, we prefer Microsoft Word. *https://www.regulations.gov.*
- *Regular, Express, or Overnight Mail:* Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, Attention: 21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking Proposed Rule, Mary E. Switzer Building, Mail Stop: 7033A, 330 C Street SW, Washington, DC 20201. Please submit one original and two copies.
- *Inspection of Public Comments:* All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. Please do not include anything in your comment submission that you do not wish to share with the general public. For example, people typically do not wish to, and generally should not, share with the general public information such as: any person's social security number; date of birth; driver's license number; state identification number or foreign country equivalent; passport number; financial account number; credit or debit card number; individually identifiable health information; or any business information that could be considered proprietary. We will post all comments that are received before the close of the comment period at *https://www.regulations.gov.*
- *Docket:* For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Alexander Baker, Office of Policy, Office of the National Coordinator for Health Information Technology (ONC), (202) 690–7151, for general issues.

Elizabeth Holland, Centers for Medicare & Medicaid Services (CMS), (443) 934–2532, for issues related to the Promoting Interoperability Program and the Promoting Interoperability performance category of the Merit-Based Incentive Payment System.

Aryanna Abouzari, Centers for Medicare & Medicaid Services (CMS), (415) 744–3668 or *SharedSavingsProgram@cms.hhs.gov,* for issues related to the Medicare Shared Savings Program.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary
A. Purpose of Regulatory Action
B. Summary of Major Provisions
C. Costs and Benefits
II. Background
A. Statutory Basis
B. Regulatory History
1. ONC Cures Act Final Rule
2. Office of Inspector General (OIG) Civil Money Penalties (CMP) Final Rule
III. Provisions of the Proposed Regulation
A. Relevant Statutory Terms and Provisions
1. Appropriate Agency
2. Authorities Under Applicable Federal Law
3. Appropriate Disincentives
B. Approach To Determination of Information Blocking and Application of Disincentives
1. OIG Investigation and Referral
2. General Provisions for Application of Disincentives
3. Transparency for Information Blocking Determinations, Disincentives, and Penalties
C. Appropriate Disincentives for Health Care Providers
1. Background
2. Medicare Promoting Interoperability Program for Eligible Hospitals and Critical Access Hospitals (CAHs)
3. Promoting Interoperability Performance Category of the Medicare Merit-Based Incentive Payment System (MIPS)
4. Medicare Shared Savings Program
IV. Request for Information
V. Collection of Information Requirements
VI. Regulatory Impact Statement
A. Executive Order No. 12866
B. Regulatory Flexibility Act
C. Unfunded Mandates Reform Act
D. Executive Order 13132

I. Executive Summary

A. Purpose of Regulatory Action

This proposed rule would implement the 21st Century Cures Act (Cures Act) provision for referral of a health care provider (individual or entity) determined by the HHS Office of Inspector General (OIG) to have committed information blocking ''to the appropriate agency to be subject to appropriate disincentives using authorities under applicable Federal law, as the Secretary sets forth through notice and comment rulemaking'' (42 U.S.C. 300jj–52(b)(2)(B), Public Health Service Act (PHSA) section 3022(b)(2)(B), as added by section 4004 of the Cures Act (Pub. L. 114–255, Dec. 13, 2016)). The proposals in this rule would establish disincentives for certain health care providers (as defined in 45 CFR 171.102) that are also Medicare-enrolled providers or suppliers.

B. Summary of Major Provisions

This proposed rule would establish disincentives applicable to certain health care providers (as defined in 45 CFR 171.102) determined by OIG to have committed information blocking (as defined in 45 CFR 171.103) that are also Medicare-enrolled providers or suppliers. The proposed rule also provides information related to OIG's investigation of claims of information blocking and referral of a health care provider to an appropriate agency to be subject to appropriate disincentives. Finally, the rule proposes to establish a process by which information would be shared with the public about health care providers that OIG determines have committed information blocking.

Although the proposals in this rule would not establish disincentives for all of the health care providers included in the 45 CFR 171.102 definition, the health care providers to whom these disincentives would apply furnish a broad array of services to a significant number of both Medicare beneficiaries and other patients. Thus, this set of disincentives would directly advance HHS priorities for deterring information blocking, while also advancing appropriate sharing of electronic health information (EHI) by health care providers [1] to support safer, more coordinated care for all patients.

We believe it is important to establish appropriate disincentives that account for all health care providers that fall within the definition of health care provider (45 CFR 171.102). While effective deterrence of information blocking can benefit patients by reducing the degree to which health care providers engage in this practice, fewer patients will benefit from these deterrent effects if disincentives have not been established for all of the health care providers within the definition of health care provider at 45 CFR 171.102. In section IV. of this proposed rule, we request information on how we can build on the proposals in this rule to establish disincentives for other health care providers, particularly those health care providers not participating in the CMS programs identified in this rule.

Consistent with PHSA section 3022(b)(2)(B), the proposals in this rule to establish disincentives use authorities under applicable Federal law, as follows:

- Under the authority for the Medicare Promoting Interoperability Program in the Social Security Act (SSA), at sections 1886(b)(3)(B)(ix) and 1886(n) for eligible hospitals, and at section 1814(l)(4) for critical access hospitals (CAHs), CMS proposes that an eligible hospital or CAH would not be a meaningful electronic health record (EHR) user in an EHR reporting period if OIG refers, during the calendar year of the reporting period, a determination that the eligible hospital or CAH committed information blocking as defined at 45 CFR 171.103. As a result, an eligible hospital subject to this disincentive would not be able to earn the three quarters of the annual market basket increase associated with qualifying as a meaningful EHR user, while a CAH subject to this disincentive would have its payment reduced to 100 percent of reasonable costs, from the 101 percent of reasonable costs it might have otherwise earned, in an applicable year.
- Under the authority in SSA sections 1848(o)(2)(A) and (D) and 1848(q)(2)(A)(iv) and (B)(iv), for the Promoting Interoperability performance category of the Merit-based Incentive Payment System (MIPS), CMS proposes that a health care provider defined in 45 CFR 171.102 that is a MIPS eligible clinician (as defined in 42 CFR 414.1305 and including groups) would not be a meaningful EHR user in a performance period if OIG refers, during the calendar year of the reporting period, a determination that the MIPS eligible clinician committed information blocking as defined at 45 CFR 171.103. CMS also proposes that the determination by OIG that a MIPS eligible clinician committed information blocking would result in the MIPS eligible clinician, if required to report on the Promoting Interoperability performance category of MIPS, not earning a score in the performance category (a zero score), which is typically a quarter of the total final composite performance score (a ''final score'' as defined at 42 CFR 414.1305). CMS proposes to codify this proposal under the definition of meaningful EHR user for MIPS at 42 CFR 414.1305 and add it to the requirements for earning a score for the MIPS Promoting Interoperability performance category at 42 CFR 414.1375(b).
- Under the authority in SSA section 1899(b)(2)(G) for the Medicare Shared Savings Program (Shared Savings Program), CMS proposes that a health care provider as defined in 45 CFR 171.102 that is an accountable care organization (ACO), ACO participant, or ACO provider/supplier, if determined by OIG to have committed information blocking as defined at 45 CFR 171.103, would be barred from participating in the Shared Savings Program for at least 1 year. This may result in a health care provider being removed from an ACO or prevented from joining an ACO; and in the instance where a health care provider is an ACO, this would prevent the ACO's participation in the Shared Savings Program.

C. Costs and Benefits

Executive Order 12866 on Regulatory Planning and Review and Executive Order 13563 on Improving Regulation and Regulatory Review 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). Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines 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 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 impact 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 Executive Order, as specifically authorized in a timely manner by the Administrator of OIRA in each case. The Office of Management and Budget (OMB) has determined that this proposed rule is not a significant regulatory action, as the potential costs associated with this proposed rule would not be greater than $200 million per year and it does not meet any of the other requirements to be a significant regulatory action.

[1] Except if or as necessitated by the specific terminology of a particular statutory authority or CFR section, we use in this rule ''health care provider,'' ''provider,'' and ''provider type'' as inclusive of individuals and entities that may be characterized for purposes of Medicare enrollment or particular reimbursement policies as providers or suppliers—or both across different contexts such as specific services furnished in particular settings.

II. Background

A. Statutory Basis

The Cures Act was enacted on December 13, 2016, ''[t]o accelerate the discovery, development, and delivery of 21st century cures, and for other purposes.'' Section 4004 of the Cures Act added section 3022 to the PHSA. Section 3022(a)(1) of the PHSA defines information blocking as practice that, except as required by law or specified by the Secretary pursuant to rulemaking, is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information. If the practice is conducted by a health information technology developer, exchange, or network, such developer, exchange, or network knows, or should know, that such practice is likely to interfere with, prevent, or materially discourage the access, exchange, or use of electronic health information. If the practice is conducted by a health care provider, such provider knows that such practice is unreasonable and is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information. Section 3022(a)(3) of the PHSA further provides that the Secretary shall, through rulemaking, identify reasonable and necessary activities that do not constitute information blocking. Section 3022(a)(4) of the PHSA states that the term ''information blocking'' does not include any practice or conduct occurring prior to the date that is 30 days after December 13, 2016 (the date of the enactment of the Cures Act).[2] Section 3022(a)(2) of the PHSA describes certain practices that may constitute information blocking.

Section 3022(b)(1) of the PHSA authorizes OIG to investigate information blocking claims. Section 3022(b)(1)(B) of the PHSA authorizes OIG to investigate claims that ''a health care provider engaged in information blocking.'' Section 3022(b)(2)(B) of the PHSA provides that any health care provider OIG determines to have committed information blocking shall be referred to the appropriate agency to be subject to appropriate disincentives using authorities under applicable Federal law, as the Secretary sets forth through notice and comment rulemaking. Sections 3022(b)(1)(A) and (C) of the PHSA authorize OIG to investigate health information technology (IT) developers of certified health IT or other entities offering certified health IT, health information exchanges, and health information networks. Section 3022(b)(2)(A) of the PHSA authorizes the imposition of civil money penalties (CMPs)[3] not to exceed $1 million per violation on those individuals and entities set forth in sections 3022(b)(1)(A) and (C) of the PHSA.

PHSA section 3022 also authorizes ONC, the HHS Office for Civil Rights (OCR), and OIG to consult, refer, and coordinate to resolve claims of information blocking. PHSA section 3022(b)(3)(A) authorizes OIG to refer claims of information blocking to OCR if OIG determines a consultation regarding the health privacy and security rules promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. 1320d–2 note) will resolve such claims. PHSA section 3022(d)(1) specifies that the National Coordinator may serve as a technical consultant to OIG and the Federal Trade Commission (FTC) for purposes of carrying out section 3022 and may share information related to claims or investigations of information blocking with the FTC for purposes of such investigations, in addition to requiring the National Coordinator to share information with OIG, as required by law.

PHSA section 3022(d)(4) requires the Secretary, in carrying out section 3022 and to the extent possible, to ensure that information blocking penalties do not duplicate penalty structures that would otherwise apply with respect to information blocking and the type of individual or entity involved as of the day before the date of enactment of the Cures Act. Section 3022(a)(7) of the PHSA states that, in carrying out section 3022, the Secretary shall ensure that health care providers are not penalized for the failure of developers of health information technology or other entities offering health information technology to such providers to ensure that such technology meets the requirements to be certified under Title XXX of the PHSA.

We address the statutory basis for each proposed disincentive in greater detail in section III.C. of this proposed rule.

B. Regulatory History

1. ONC Cures Act Final Rule

On March 4, 2019, a proposed rule titled ''21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program'' (ONC Cures Act Proposed Rule) appeared in the **Federal Register** (84 FR 7424). The rule proposed to implement certain provisions of the Cures Act to advance interoperability and support the access, exchange, and use of electronic health information. The ONC Cures Act Proposed Rule included a request for information regarding potential disincentives for health care providers that have committed information blocking and asked whether modifying disincentives already available under existing Department programs and regulations would provide for more effective deterrence (84 FR 7553).

On May 1, 2020, a final rule titled ''21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program'' (ONC Cures Act Final Rule) appeared in the **Federal Register** (85 FR 25642). The final rule identified eight reasonable and necessary activities that do not constitute information blocking, consistent with the requirement in PHSA section 3022(a)(3). Such reasonable and necessary activities are often referred to as ''exceptions'' to the definition of information blocking, or ''information blocking exceptions,'' as specified in 45 CFR part 171.

The ONC Cures Act Final Rule finalized definitions that are necessary to implement the statutory information blocking provision in PHSA section 3022, including definitions related to the four classes of individuals and entities covered by the statutory information blocking provision: health care providers, health IT developers, health IT networks, and health IT exchanges.

As the term ''health care provider'' is not explicitly defined in section 3022 of the PHSA as added by section 4004 of the Cures Act, the ONC Cures Act Final Rule adopted in 45 CFR 171.102 the definition of health care provider in section 3000(3) of the PHSA[4] for

[2] As January 12, 2017, was the thirtieth day after December 13, 2016, conduct occurring on or after January 13, 2017, that otherwise meets the PHSA section 3022(a) definition of ''information blocking,'' would be included in that definition.

[3] ONC uses the term ''civil money penalty'' here, rather than ''civil monetary penalty'' as used in PHSA section 3022(b)(2)(A) for consistency with OIG's usage in the OIG CMP Final Rule (88 FR 42820).

[4] As defined in 42 U.S.C 300–jj, the term ''health care provider'' includes a hospital, skilled nursing facility, nursing facility, home health entity or other long term care facility, health care clinic, community mental health center (as defined in section 300x–2(b)(1) of this title), renal dialysis facility, blood center, ambulatory surgical center described in section 1395l(i) of this title, emergency medical services provider, Federally qualified health center, group practice, a pharmacist, a pharmacy, a laboratory, a physician (as defined in

Continued

purposes of the information blocking regulations in 45 CFR part 171. ONC noted that the definitions listed in section 3000 of the PHSA apply ''[i]n this title,'' which refers to Title XXX of the PHSA (85 FR 25795). Section 3022 of the PHSA is included in Title XXX. Since adopting a definition of health care provider in the ONC Cures Act Final Rule, the Secretary has not proposed to modify the definition for purposes of the information blocking regulations.

The ONC Cures Act Final Rule also established in 45 CFR 171.102 regulatory definitions for ''health information network or health information exchange'' and ''health IT developer of certified health IT,'' [5] among other terms.[6] The preamble text of the ONC Cures Act Final Rule makes clear that an individual or entity could meet both the definition of a health care provider and the definition of a health IT developer of certified health IT (85 FR 25798 through 25799) or could meet both the definition of a health care provider and a health information exchange or network (85 FR 25801). We mention these potential scenarios so that health care providers are aware that they would not necessarily only be subject to the disincentives proposed in this rule (should they be finalized), but depending on the specific facts and circumstances, they could meet the definition of a health information network or exchange, and therefore be subject to civil money penalties, if found by OIG to have committed information blocking.

On November 4, 2020, an interim final rule with comment period titled ''Information Blocking and the ONC Health IT Certification Program: Extension of Compliance Dates and Timeframes in Response to the COVID–19 Public Health Emergency'' (ONC Cures Act Interim Final Rule) appeared in the **Federal Register** (85 FR 70064). The ONC Cures Act Interim Final Rule extended certain compliance dates and timeframes adopted in the ONC Cures Act Final Rule to offer the healthcare system additional flexibilities in furnishing services to combat the COVID–19 pandemic, including extending the applicability date for the information blocking provisions to April 5, 2021 (85 FR 70068). The ONC Cures Act Interim Final Rule also extended from May 2, 2022, to October 6, 2022, the date on which electronic health information as defined in 45 CFR 171.102 for purposes of the information blocking definition in 45 CFR 171.103 would no longer be limited to the subset of EHI that is identified by data elements represented in the United States Core Data for Interoperability (USCDI) standard adopted in 45 CFR 170.213 (85 FR 70069).[7] On and after October 6, 2022, practices likely to interfere with access, exchange, or use of any information falling within the definition of EHI in 45 CFR 171.102 may constitute information blocking as defined in 45 CFR 171.103.

2. Office of Inspector General (OIG) Civil Money Penalties (CMP) Final Rule

On April 24, 2020, a proposed rule titled ''Grants, Contracts, and Other Agreements: Fraud and Abuse; Information Blocking; Revisions to the Office of Inspector General's Civil Money Penalty Rules'' (OIG CMP Proposed Rule) appeared in the **Federal Register** (85 FR 22979). The OIG CMP Proposed Rule set forth proposed regulations to incorporate new CMP authority for information blocking and related procedures at PHSA sections 3022(b)(2)(A) and (C) (88 FR 42825). Specific to information blocking, OIG also provided information on—but did not propose regulations for—expected enforcement priorities, the investigation process, and OIG's experience with investigating conduct that includes an intent element (88 FR 42822).

OIG subsequently addressed these proposals in a final rule, ''Grants, Contracts, and Other Agreements: Fraud and Abuse; Information Blocking; Office of Inspector General's Civil Money Penalty Rules,'' which appeared in the **Federal Register** on July 3, 2023 (OIG CMP Final Rule) (88 FR 42820). This rulemaking addressed imposition of CMPs for information blocking by health IT developers or other entities offering certified health IT, health information exchanges, and health information networks. The OIG CMP Final Rule did not establish appropriate disincentives for health care providers that OIG has determined have committed information blocking.

As mentioned above, a health care provider that also meets the definition of health IT developer of certified health IT, or health information network or health information exchange, or both, under 45 CFR 171.102, may be subject to information blocking CMPs (88 FR 42828). OIG has stated that as part of its assessment of whether a health care provider is a health information network or exchange that could be subject to civil money penalties for information blocking, OIG anticipates engaging with the health care provider to better understand its functions and to offer the provider an opportunity to explain why it is not a health information network or exchange (88 FR 42828).

III. Provisions of the Proposed Regulation

A. Relevant Statutory Terms and Provisions

In this section, we discuss certain statutory terms and provisions in PHSA sections 3022(a) and (b) related to the establishment of appropriate disincentives for health care providers as defined in 45 CFR 171.102. For brevity, we refer to PHSA section 3022(b)(2)(B), which states that health care providers that OIG has determined to have committed information blocking ''shall be referred to the appropriate agency to be subject to appropriate disincentives using authorities under applicable Federal law, as the Secretary sets forth through notice and comment rulemaking,'' as the ''disincentives provision'' throughout this section.

---

section 1395x(r) of the title), a practitioner (as described in section 1395u(b)(18)(C) of the title), a provider operated by, or under contract with, the Indian Health Service or by an Indian tribe (as defined in the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5301 *et seq.*]), tribal organization, or urban Indian organization (as defined in section 1603 of title 5), a rural health clinic, a covered entity under section 256b of this title, an ambulatory surgical center described in section 1395l(i) of this title, a therapist (as defined in section 1395w–4(k)(3)(B)(iii) of the title), and any other category of health care facility, entity, practitioner, or clinician determined appropriate by the Secretary. See also this guidance document: *https://www.healthit.gov/sites/default/files/page2/2020-08/Health_Care_Provider_Definitions_v3.pdf.*

[5] In the ONC Cures Act Final Rule, ONC defined the term ''health IT developer of certified health IT'' in 45 CFR 171.102, instead of using the term that appears in PHSA 3022(a)(1): ''health IT developer.'' ONC explained that, because title XXX of the PHSA does not define ''health information technology developer,'' ONC interpreted section 3022(a)(1)(B) in light of the specific authority provided to OIG in section 3022(b)(1)(A) and (b)(2). ONC noted that section 3022(b)(2) discusses developers, networks, and exchanges by referencing any individual or entity described in section 3022(b)(1)(A) or (C). Section 3022(b)(1)(A) states, in relevant part, that OIG may investigate any claim that *a health information technology developer of certified health information technology* or other entity offering certified health information technology engaged in information blocking (85 FR 25795, emphasis added).

[6] In 2023, ONC has proposed to establish a definition of what it means to ''offer'' certified health IT, and to make a corresponding update to the health IT developer of certified health IT definition. These proposals are part of a proposed rule titled ''Health Data, Technology, and Interoperability: Certification Program Updates, Algorithm Transparency, and Information Sharing'' (88 FR 23746) (HTI–1 Proposed Rule). The comment period on the HTI–1 Proposed Rule ended June 20, 2023. Public Comments are posted as part of docket HHS–ONC–2023–0007, see *https://www.regulations.gov/docket/HHS-ONC-2023-0007/comments.*

[7] For more information about the USCDI, see *https://www.healthit.gov/isa/united-states-core-data-interoperability-uscdi.*

1. Appropriate Agency

The disincentives provision states that an individual or entity that is a health care provider determined by OIG to have committed information blocking shall be referred to the ''appropriate agency'' to be subject to appropriate disincentives. Accordingly, we propose to define ''appropriate agency'' in 45 CFR 171.102 to mean a government agency that has established disincentives for health care providers that OIG determines have committed information blocking. We note that, under the disincentives provision, an ''agency'' may be any component of HHS that has established a disincentive or disincentives on behalf of the Secretary of HHS, including any of the Staff or Operating Divisions of HHS. For example, the disincentives proposed in section III.C. of this proposed rule are proposed under authorities held by CMS, which is an Operating Division of HHS. Under our proposals, CMS would be the ''appropriate agency'' to which OIG would refer a health care provider to be subject to disincentives.

We invite public comments on our proposed definition of ''appropriate agency.''

2. Authorities Under Applicable Federal Law

We propose to interpret the phrase ''authorities under applicable Federal law'' in the disincentives provision to mean that an appropriate agency may only subject a health care provider to a disincentive established using authorities that could apply to information blocking by a health care provider subject to the authority, such as health care providers participating in a program supported by the authority. In section III.C. of this proposed rule, CMS identifies the authority under which each disincentive is proposed.

3. Appropriate Disincentives

The Cures Act does not specify or provide illustrations for the types of disincentives that should be established. As such, we propose to define the term ''disincentive'' in 45 CFR 171.102 to mean a condition that may be imposed by an appropriate agency on a health care provider that OIG determines has committed information blocking and is specifically identified in 45 CFR 171.1001(a). In section III.B.2 of this proposed rule, we propose to identify in 45 CFR 171.1001(a) those disincentives that have been established pursuant to the statute for the express purpose of deterring information blocking practices.

The term ''appropriate'' for disincentives is likewise not defined in PHSA section 3022, nor are illustrations provided. Under this proposal, a disincentive for a health care provider that OIG has determined to have committed information blocking may be any condition, established through notice and comment rulemaking, that would, in our estimation, deter information blocking practices among health care providers subject to the information blocking regulations. In section III.C. of this proposed rule, we describe the potential impact that each proposed disincentive would have on a health care provider.

We note that the disincentives provision does not limit the number of disincentives that an appropriate agency can impose on a health care provider. Accordingly, we propose that a health care provider would be subject to each appropriate disincentive that an agency has established through notice and comment rulemaking and is applicable to the health care provider. Imposing cumulative disincentives, where applicable, would further deter health care providers from engaging in information blocking.

We invite public comments on our proposals to establish disincentives in section III.C. of this proposed rule.

B. Approach To Determination of Information Blocking and Application of Disincentives

In this section we provide additional detail about the process by which a health care provider that has committed information blocking would be subject to appropriate disincentives for information blocking. We begin with a discussion of an OIG investigation of a claim of information blocking, which may result in OIG determining that the health care provider committed information blocking. We then discuss how OIG would refer the health care provider to an appropriate agency. Next, we address certain general issues related to the application of a disincentive by an appropriate agency. Finally, we propose an approach to make information available to the public about health care providers that have been subject to an appropriate disincentive for information blocking, and about health information networks/health information exchanges and health IT developers of certified health IT that have been determined by OIG to have committed information blocking.

1. OIG Investigation and Referral

The following information regarding OIG's anticipated approach to information blocking investigations of health care providers is not a regulatory proposal and is provided for information purposes only. This preamble discussion of investigation priorities for health care provider information blocking claims is not binding on OIG and HHS. It does not impose any legal restrictions related to OIG's discretion to choose which health care provider information blocking complaints to investigate.

a. Anticipated Priorities

As with other conduct that OIG has authority to investigate, OIG has discretion to choose which information blocking complaints to investigate. To maximize efficient use of resources, OIG generally focuses on selecting cases for investigation that are consistent with its enforcement priorities and intends to apply that rationale to its approach for selecting information blocking complaints for investigation. In the OIG CMP Final Rule, OIG described its enforcement priorities for health IT developers of certified health IT or other entities offering certified health IT, health information exchanges, and health information networks that have committed information blocking and are subject to CMPs. OIG stated that its information blocking CMP enforcement priorities will include practices that: (i) resulted in, are causing, or have the potential to cause patient harm; (ii) significantly impacted a provider's ability to care for patients; (iii) were of long duration; (iv) caused financial loss to Federal healthcare programs, or other government or private entities; or (v) were performed with actual knowledge. OIG stated that it expected these priorities will evolve as it gains more experience investigating information blocking (88 FR 42822).

For investigations of health care providers, OIG expects to use four of these priorities: (i) resulted in, are causing, or have the potential to cause patient harm; (ii) significantly impacted a provider's ability to care for patients; (iii) were of long duration; and (iv) caused financial loss to Federal health care programs, or other government or private entities. Again, although not a regulatory proposal, OIG welcomes comments on these priorities, including comments on whether other issues specific to information blocking by health care providers should warrant changing these priorities or adding others.

OIG emphasizes that information blocking, as defined in PHSA section 3022(a)(1) and in 45 CFR 171.103, includes an element of intent. The standard of intent for health care providers was established by the Cures Act in PHSA section 3022(a)(1)(B)(ii): ''if conducted by a health care provider,

such provider knows that such practice is unreasonable and is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information.'' This is different from the standard of intent in PHSA section 3022(a)(1)(B)(i): ''if conducted by a health information technology developer, exchange, or network, such developer, exchange, or network knows, or should know, that such practice is likely to interfere with, prevent, or materially discourage the access, exchange, or use of electronic health information.'' The different intent standard for information blocking by a health care provider is why OIG does not expect to use ''actual knowledge'' as an enforcement priority. OIG has significant experience and expertise investigating and determining whether to take an enforcement action based on other laws that are intent-based (for example, the Federal anti-kickback statute, and Civil Monetary Penalties Law, 42 U.S.C. 1320a–7b(b) and 1320a–7a). This history will inform the use of OIG's discretion to investigate health care providers that OIG believes may have the requisite intent.

As noted in the OIG CMP Final Rule (88 FR 42822), explanation of OIG's priorities can provide the public with a better understanding of how OIG anticipates allocating its resources for information blocking enforcement. Applicable to this proposed rule, explanation of OIG's priorities can provide the public with a better understanding of how OIG anticipates allocating its resources to investigate claims that health care providers engaged in information blocking. Prioritization ensures OIG can effectively allocate its resources to target information blocking claims that have more negative effects on patients, providers, and healthcare programs. OIG's enforcement priorities will inform its decisions about which information blocking allegations to pursue, but these priorities are not dispositive. Each allegation will present unique facts and circumstances that must be assessed individually. Each allegation will be assessed to determine whether it implicates one or more of the enforcement priorities, or otherwise merits further investigation and potential enforcement action. Although OIG's anticipated priorities are framed around individual allegations, OIG may evaluate allegations and prioritize investigations based in part on the volume of claims relating to the same (or similar) practices by the same entity or individual (for example, a health care provider or health information network). There is no specific formula OIG can apply to every allegation that allows it to effectively evaluate and prioritize which claims merit investigation.

b. Coordination With Other Agencies

In this section we summarize the discussion in the OIG CMP Final Rule of the ways ONC, OCR, and OIG will consult, refer, and coordinate on information blocking claims as permitted by the Cures Act (88 FR 42823).

PHSA section 3022(d)(1) states that the National Coordinator may serve as a technical consultant to the Inspector General. OIG will accordingly consult with ONC throughout the investigative process. Additionally, PHSA section 3022(b)(3)(A) provides the option for OIG to refer claims of information blocking to OCR when a consultation regarding the health privacy and security rules promulgated under section 264(c) of HIPAA will resolve such claims. Depending on the facts and circumstances of the claim, OIG will exercise this statutory discretion as appropriate to refer information blocking claims to OCR for resolution. There is no set of facts or circumstances that will always be referred to OCR. OIG will work with OCR to determine which claims should be referred to OCR under the authority provided in PHSA section 3022(b)(3)(A). In addition to section 3022(b)(3)(A), OIG may request technical assistance from OCR during an information blocking investigation. It is important to note that while section 3022(b)(3)(A) of the PHSA specifically provides OIG with the authority to refer information blocking claims to OCR, OIG's statutory authority to refer to OCR allegations of violations of the HIPAA Privacy, Security, or Breach Notification Rules [8] is not solely based on PHSA section 3022(b)(3)(A). Thus, OIG's authority to refer to OCR such allegations against health care providers is not limited to claims of information blocking.

Finally, OIG stated that it anticipates coordinating with other HHS agencies to avoid duplicate penalties as identified in section 3022(d)(4) of the PHSA. Depending on the facts and circumstances, OIG stated that it might also consult or coordinate with a range of other government agencies, including CMS, FTC, or others (88 FR 42824).

c. Anticipated Approach to Referral

During an investigation of information blocking by a health care provider, but prior to making a referral, OIG will coordinate with the appropriate agency to which OIG plans to refer its determination of information blocking. This coordination will ensure that the appropriate agency is aware of a potential referral and that OIG provides the information the agency needs to take appropriate action. OIG's referral to the appropriate agency will explain its determination that a health care provider committed information blocking, including meeting the requirements of the intent element of PHSA section 3022(a)(1)(B)(ii).

We note that PHSA section 3022 authorizes OIG to investigate claims of information blocking and requires OIG to refer health care providers to an appropriate agency when it determines a health care provider has committed information blocking, to be subject to appropriate disincentives. Once OIG has concluded its investigation and is prepared to make a referral, it will send information to the appropriate agency indicating that the referral is made pursuant to the statutory requirement in PHSA section 3022(b)(2)(B). As part of the referral, OIG will provide information to explain its determination, which may include: the dates when OIG has determined the information blocking violation(s) occurred; analysis to explain how the evidence demonstrates the health care provider committed information blocking (for instance, that the health care provider's ''practice'' [9] meets each element of the information blocking definition); copies of evidence collected during the investigation (regardless of whether it was collected by subpoena or voluntarily provided to OIG); copies of transcripts and video recordings (if applicable) of any witness and affected party testimony; and copies of documents OIG relied upon to make its determination that information blocking occurred. OIG may provide additional information as part of its referral based on consultation with the appropriate agency, to the extent permitted by applicable law.

2. General Provisions for Application of Disincentives

Following an investigation through which OIG determines a health care provider has committed information blocking, and OIG's referral of this determination to an appropriate agency, the health care provider would be subject to disincentives that have been

[8] 45 CFR parts 160 and 164, subparts A, C, D, and E.

[9] *Practice,* as defined in 45 CFR 171.102, means an act or omission by an actor (health care provider, health IT developer of certified health IT, health information network or health information exchange).

established under applicable Federal law through notice and comment rulemaking. In this section, we include general proposals and information related to the application of disincentives. For information on the specific disincentives proposed in this rule and further discussion about how each disincentive would be applied, we refer readers to section III.C.

We propose to add a new subpart J to 45 CFR part 171, entitled ''Disincentives for Information Blocking by Health Care Providers.'' As proposed in 45 CFR 171.1000, this subpart would set forth disincentives that an appropriate agency would impose on a health care provider based on a determination of information blocking referred to that agency by OIG, and certain procedures related to those disincentives. We propose in 45 CFR 171.1001(a) that health care providers that commit information blocking would be subject to the following disincentives from an appropriate agency based on a determination of information blocking referred by OIG, where applicable. The disincentives proposed for inclusion in 45 CFR 171.1001(a)(1) through (3) correspond to the appropriate disincentives proposed in section III.C. of this proposed rule, which include:

- An eligible hospital or CAH as defined in 42 CFR 495.4 is not a meaningful EHR user as also defined in that section;
- A MIPS eligible clinician as defined in 42 CFR 414.1305, who is also a health care provider as defined in 45 CFR 171.102, is not a meaningful EHR user for MIPS as also defined in 42 CFR 414.1305; and
- ACOs who are health care providers as defined in 45 CFR 171.102, ACO participants, and ACO providers/supplies will be removed from, or denied approval to participate, in the Medicare Shared Savings Program as defined in 42 CFR part 425 for at least 1 year.

In the future, if we propose to establish additional disincentives, we intend to add such disincentives to the disincentives listed in 45 CFR 171.1001(a).

We propose in 45 CFR 171.1002(a) through (d) that an appropriate agency that imposes a disincentive or disincentives in § 171.1001(a) would send a notice (using usual methods of communication for the program or payment system) to the health care provider subject to the disincentive or disincentives. This notice would include:

- A description of the practice or practices that formed the basis for the determination of information blocking referred by OIG;
- The basis for the application of the disincentive or disincentives being imposed;
- The effect of each disincentive; and
- Any other information necessary for a health care provider to understand how each disincentive will be implemented.

The information in this notice would be based upon the authority used to establish the disincentive and policy finalized by the agency establishing the disincentive. For instance, the notice may contain specific information regarding when a disincentive would be imposed, which may be contingent on both the authority used to establish the disincentive and the specific policy under which the disincentive is established. We note that, where a health care provider that has been determined to have committed information blocking is subject to multiple disincentives established by an appropriate agency, nothing in this proposal would prevent the appropriate agency from combining these notices into a single communication.

Following the application of a disincentive, a health care provider, as defined in 45 CFR 171.102, may have the right to appeal administratively a disincentive if the authority used to establish the disincentive provides for such an appeal. We note that PHSA section 3022(b)(2)(C) requires that the imposition of CMPs that apply to health IT developers of certified health IT, and health information networks or health information exchanges, that have committed information blocking, follow the procedures of SSA section 1128A, which includes procedures for appeals. However, the Cures Act did not provide similar instruction regarding appeals of disincentives for health care providers established under PHSA section 3022(b)(2)(B). Therefore, any right to appeal administratively a disincentive, if available, would be provided under the authorities used by the Secretary to establish the disincentive through notice and comment rulemaking.

3. Transparency for Information Blocking Determinations, Disincentives, and Penalties

We believe that it is important to promote transparency about how and where information blocking is impacting the nationwide health information technology infrastructure. Publicly releasing information, including applicable public settlements, penalties, and disincentives, about actors that have been determined by OIG to have committed information blocking can inform the public about how and where information blocking is occurring within the broader health information technology infrastructure.

PHSA section 3001(c)(4) requires that the National Coordinator maintain an internet website ''to ensure transparency in promotion of a nationwide health information technology infrastructure.'' We believe this provision provides the National Coordinator with the authority to post information on ONC's website if that information has an impact on issues relating to transparency in the promotion of a nationwide health information technology infrastructure. We propose to add a new subpart K to 45 CFR part 171, entitled ''Transparency for Information Blocking Determinations, Disincentives, and Penalties.'' As proposed in 45 CFR 171.1100, this subpart would set forth the information that would be publicly posted on ONC's website about actors that have been determined by OIG to have committed information blocking.

We propose in 45 CFR 171.1101 that, in order to provide insight into how and where information blocking conduct is impacting the broader nationwide health information technology infrastructure, ONC would post on its public website information about actors that have been determined by OIG to have committed information blocking. For health care providers that are subject to a disincentive, we propose in 45 CFR 171.1101(a)(1) that the following information would be posted: health care provider's name, business address (to ensure accurate provider identification), the practice found to have been information blocking, the disincentive(s) applied, and where to find additional information, where available, about the determination of information blocking that is publicly available via HHS or another part of the U.S. Government. We propose in 45 CFR 171.1101(a)(2) that the information specified in 45 CFR 171.1101(a)(1) would not be posted prior to a disincentive being imposed and would not include information about a disincentive that has not been applied. We also recognize that under the authorities for the disincentives proposed in section III.C. of this proposed rule, an appropriate agency may have other obligations related to release of information about a participant that is a health care provider (as defined in 45 CFR 171.102) in programs under that authority. For instance, under SSA section 1848(q)(9)(C), MIPS eligible clinicians have a right to review information about their performance in MIPS prior to having this information publicly posted

on the Compare Tool in accordance with 42 CFR 414.1395. Therefore, we propose in 45 CFR 171.1101(a)(3) that posting of the information about health care providers that have been determined to have committed information blocking and have been subject to a disincentive would be conducted in accordance with existing rights to review information that may be associated with a disincentive specified in 45 CFR 171.1001. For instance, where a health care provider, as defined in 45 CFR 171.102, has a statutory right to review performance information, this existing right would be exercised prior to public posting of information regarding information blocking on the website described above.

In order to provide insight into how and where information blocking conduct is impacting the broader nationwide health information technology infrastructure, we also propose in 45 CFR 171.1101(b)(1) to post on ONC's public website information specified in 45 CFR 171.1101(b)(1) about health information networks (HINs)/health information exchanges (HIEs) and health IT developers of certified health IT that have been determined by OIG to have committed information blocking and have either resolved their civil money penalty (CMP) liability with OIG or had a CMP imposed by OIG for information blocking under subpart N of 42 CFR part 1003. To ensure accurate identification of actors, we propose in 45 CFR 171.1101(b)(1) to post the type of actor (*e.g.,* HIN/HIE or health IT developers of certified health IT) and the actor's legal name, including any alternative or additional trade name(s) under which the actor operates.

The last information we propose to post on our public website, for all actors, would be the two types of information mentioned above regarding health care providers. First, in 45 CFR 171.1101(a)(1)(iii) and (b)(1)(iii), we propose to post, a description of the practice, as the term is defined in 45 CFR 171.102 and referenced in 45 CFR 171.103, found to have been information blocking. In the case of a resolved CMP liability, we would post the practice alleged to be information blocking. This information will help provide transparency into how information blocking conduct is impacting the nationwide health information technology infrastructure, and in particular, specific practices that are impacting the infrastructure. Second, in 45 CFR 171.1101(a)(1)(v) and (b)(1)(iv), we propose to post where to find additional information about the determination (or resolution of CMP liability) of information blocking that is publicly available via HHS or, where applicable, another part of the U.S. Government. This information could include hyperlinks and other information, to help interested persons find any additional information about the determination, settlement, penalty, or disincentive that has been made publicly available by the U.S. Government. Such publicly available information would include any summaries or media releases that may be posted by OIG, or another part of HHS, on their internet website(s). It could also include additional information that may be made publicly available about the determination by or other parts of the U.S. Government. For example, if an actor who has exhausted applicable administrative appeal procedures and brought action in a Federal court for review of the decision that has become final, we could post information on our website about the existence of the court action and where or how to access information about the determination, or resulting court action, that has been made publicly available by the court. This information would provide additional context for how information blocking conduct is impacting the nationwide health information technology infrastructure.

Publicly posting information about actors that have been determined by OIG to have committed information blocking is important for providing transparency into how and where information blocking conduct is occurring within and impacting the broader nationwide health information technology infrastructure. Between April 5, 2021, and September 30, 2023, we received over 800 claims of information blocking through the Report Information Blocking Portal.[10] We have publicly posted information about these claims, which we update monthly. Beyond posting the number of claims, the posted information includes claim counts by type of claimant and claim counts by potential actor.[11] While OIG has not necessarily evaluated whether these claims qualify as information blocking, this information provides transparency about how participants in the nationwide health IT infrastructure perceive actions by actors that are part of the same infrastructure, which is intended to support the access, exchange, and use of EHI. A natural progression of the posting of such information is the posting of information about actual information blocking determinations by OIG, including any settlements of liability, civil money penalties, and disincentives. This information can help the public understand how the information blocking regulations, which seek to prevent and address practices that unreasonably or unnecessarily interfere with lawful access, exchange, or use of EHI through the nationwide health IT infrastructure, are being enforced. It would also provide clarity regarding how and where actors are engaging in information blocking practices within the nationwide health IT infrastructure. Based on this information, participants in the nationwide health IT infrastructure and the public can confirm or dispel perceptions of information blocking within that infrastructure. Additionally, the combined transparency of the processes Congress authorized and instructed HHS to implement (*i.e.,* ONC implementing a claims reporting process, as well as civil money penalties and disincentives for applicable actors found to have committed information blocking by OIG) would foster public confidence in the information blocking enforcement framework and potentially encourage public participation in that framework, whether by submitting a claim of information blocking or participating in an OIG information blocking investigation. We invite public comments on these proposals, including comments on whether we should publicly post additional information (and why) about health care providers, health IT developers, or health information networks/health information exchanges that have been determined by OIG to have committed information blocking.

C. Appropriate Disincentives for Health Care Providers

In this section (III.C.), we propose to establish a set of disincentives for health care providers that have committed information blocking. These disincentives would be imposed following a referral of a determination of information blocking by OIG. Each of the proposed disincentives is being established using authorities under applicable Federal law, consistent with PHSA section 3022(b)(2)(B).

1. Background

a. Impacted Health Care Providers

The disincentives proposed in this section would apply to a subset of the individuals and entities meeting the information blocking regulations'

[10] See ''Information Blocking Claims: By the Numbers,'' *https://www.healthit.gov/data/quickstats/information-blocking-claims-numbers.*

[11] *https://www.healthit.gov/data/quickstats/information-blocking-claims-numbers.*

definition of health care provider at 45 CFR 171.102. Specifically, the proposals in this rule would provide disincentives for health care providers (as defined in 45 CFR 171.102) that are also eligible to participate in certain Federal programs: the Medicare Promoting Interoperability Program and the MIPS Promoting Interoperability performance category (previously the EHR Incentive Programs); and the Medicare Shared Savings Program.

We recognize that the disincentives proposed in this rule would only apply to certain health care providers and that the information blocking regulations are also applicable to health care providers that are not eligible to participate in these programs. However, this proposed rule is a first step that focuses on authorities which pertain to certain health care providers that furnish a broad array of health care services to large numbers of Medicare beneficiaries and other patients. We believe optimal deterrence of information blocking calls for imposing appropriate disincentives on all health care providers (as defined at 45 CFR 171.102) determined by OIG to have committed information blocking. In section IV. of this proposed rule, we request public comment on establishing disincentives, using applicable Federal law, that could be imposed on a broader range of health care providers.

b. Impact of Disincentives

We believe the disincentives proposed in this rule would deter information blocking by health care providers. However, we recognize that the actual monetary impact resulting from the application of the disincentives proposed in this section may vary across health care providers subject to the disincentive.

For example, the disincentive proposed in section III.C.3. of this proposed rule for the MIPS Promoting Interoperability performance category would result in an adjustment to payments under Medicare Part B to MIPS eligible clinicians (as defined in 42 CFR 414.1305). This disincentive would reduce to zero the Promoting Interoperability performance category score of any MIPS eligible clinician that has been determined by OIG to have committed information blocking (as defined at 45 CFR 171.103) during the calendar year (CY) of the referral of a determination from OIG. However, the actual financial impact experienced by a health care provider as a result of this proposed disincentive being applied in MIPS would vary. For example, Part B payments to the MIPS eligible clinician are subject to a MIPS payment adjustment factor, which CMS determines based on the MIPS eligible clinician's final score. In determining each MIPS eligible clinician's final score, CMS takes into account the assigned weight of, and the MIPS eligible clinician's performance in, the four MIPS performance categories, including the Promoting Interoperability performance category. The MIPS eligible clinician's final score then determines whether the eligible clinician earns a negative, neutral, or positive payment adjustment factor that will be applied to the amounts otherwise paid to the MIPS eligible clinician under Medicare Part B for covered professional services during the applicable MIPS payment year.

In the interest of addressing this variability, we considered whether we could propose an alternative approach under which we would tailor the monetary impact of a disincentive imposed on a health care provider to the severity of the conduct in which the health care provider engaged. However, we do not believe it would be feasible to develop such an approach for the disincentives we propose for health care providers. Because disincentives must be established using authorities under applicable Federal law, the statute under which a disincentive is being established would need to specifically authorize or provide sufficient discretion for an appropriate agency to be able to adjust the monetary impact of the disincentive to fit the gravity or severity of the information blocking the health care provider has been determined to have committed. Based on our review of potential authorities under which to establish disincentives, we believe many authorities do not provide discretion to adjust the monetary impact of a potential disincentive in this fashion. For instance, in section III.C.2. of this proposed rule, CMS proposes to establish a disincentive through the Medicare Promoting Interoperability Program utilizing authority in SSA section 1886. Under this authority, CMS, as specified in section 1886(b)(3)(B)(ix)(I) of the SSA, adjusts payments for eligible hospitals by a fixed proportion, on the basis of whether or not an eligible hospital (as defined in section 1886(n)(6)(B) of the SSA) is a meaningful EHR user.

2. Medicare Promoting Interoperability Program for Eligible Hospitals and Critical Access Hospitals (CAHs)

a. Background

We intend to use existing Medicare Promoting Interoperability Program authority concerning the meaningful use of certified EHR technology (CEHRT) to impose disincentives on eligible hospitals and CAHs that OIG determines have committed information blocking (defined in 45 CFR 171.103) where OIG refers a determination that the eligible hospital or CAH committed information blocking. Under section 1886(n)(3)(A) of the SSA, an eligible hospital or CAH [12] is treated as a meaningful EHR user for the EHR reporting period for a payment year if it demonstrates to the satisfaction of the Secretary, and among other requirements, that during the EHR reporting period: (1) the eligible hospital used CEHRT in a meaningful manner; and (2) the CEHRT is connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information. As discussed further in section III.C.2.b. of this proposed rule, these requirements for an eligible hospital or CAH to be a meaningful EHR user would be substantially undermined and frustrated if the eligible hospital or CAH commits information blocking, such that application of an appropriate disincentive is warranted.

Under section 1886(b)(3)(B)(ix) of the SSA, if an eligible hospital does not demonstrate that it has met the requirements to be a meaningful EHR user under section 1886(n)(3)(A), CMS will reduce the eligible hospital's payment by three quarters of the applicable percentage increase in the market basket update or rate-of-increase for hospitals. Under section 1814(l)(4) of the SSA, if the Secretary determines that a CAH has not been a meaningful EHR user for a given EHR reporting period, CMS will pay that CAH 100 percent of its reasonable costs, instead of 101 percent of reasonable costs, which is the amount that the CAH would have received as a meaningful EHR user under the Medicare Promoting Interoperability Program.

HHS has authority to apply disincentives to both eligible hospitals and CAHs. PHSA section 3022(b)(2)(B) authorizes HHS to apply disincentives to health care providers OIG determines have committed information blocking. As discussed in section II.B.1 of this proposed rule, HHS has adopted, for purposes of the information blocking regulations in 45 CFR part 171, the definition of health care provider in section 3000(3) of the PHSA, which includes health care providers that are eligible for participation in the Medicare Promoting Interoperability Program. The

[12] Section 1814(l)(3) of the SSA applies to critical access hospitals the standard for determining a meaningful EHR user in section 1886(n)(3).

definition of ''health care provider'' in section 3000(3) of the PHSA includes ''hospital'' as a health care provider. Section 1886(n)(6)(B) of the SSA defines the term ''eligible hospital'' for the purposes of the Medicare Promoting Interoperability Program (75 FR 44316 through 44317) as ''a hospital that is a subsection (d) hospital or a subsection (d) Puerto Rico hospital.'' Eligible hospitals are located in one of the fifty States or the District of Columbia (75 FR 44448). Hospitals in Puerto Rico became eligible hospitals for the Medicare Promoting Interoperability Program with the passage of the Consolidated Appropriations Act of 2016 (Pub. L. 114–113, Dec. 18, 2015). A CAH is defined in section 1861(mm) of the SSA as ''a facility that has been certified as a critical access hospital under section 1820(e).'' ''Hospital'' is not further defined under the PHSA definition in section 3000(3). Therefore, CMS interprets the term ''hospital'' in section 3000(3) of the PHSA to include both eligible hospitals and CAHs that can participate in the Medicare Promoting Interoperability Program.

b. The Medicare Promoting Interoperability Program as an Appropriate Disincentive for Information Blocking Under the PHSA

As discussed previously, the requirements under SSA section 1886(n)(3)(A) that an eligible hospital or CAH must meet to a be meaningful EHR user, particularly the first two requirements under SSA section 1886(n)(3)(A)(i) and (ii), would be substantially undermined and frustrated if the eligible hospital or CAH commits information blocking, such that application of an appropriate disincentive is warranted. To be considered a meaningful EHR user under section 1886(n)(3)(A) of the SSA, an eligible hospital or CAH must, in brief: (1) demonstrate to the satisfaction of the Secretary the use of CEHRT in a meaningful manner, (2) demonstrate to the satisfaction of the Secretary that their CEHRT is connected in a manner that provides for electronic exchange of health information to improve the quality of health care, and (3) use CEHRT to submit information concerning quality measures and other measures as specified. With respect to the electronic exchange of health information requirement in SSA section 1886(n)(3)(A)(ii), an eligible hospital or CAH must demonstrate to the satisfaction of the Secretary that its CEHRT is ''connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care, such as promoting care coordination, and . . . demonstrates . . . that the hospital has not knowingly and willfully taken action (such as to disable functionality) to limit or restrict the compatibility or interoperability of the certified EHR technology.'' Two examples of the CMS requirements for health information exchange include the requirement for eligible hospitals and CAHs to report on the Health Information Exchange Objective and the Provider to Patient Exchange Objective, both of which are part of the requirements for demonstrating the meaningful use of CEHRT, in accordance with SSA section 1886(n)(3).

By establishing a disincentive for information blocking under the Medicare Promoting Interoperability Program, we are using an authority under applicable Federal law as required in section 3022(b)(2)(B) of the PHSA. Health care providers OIG determines have committed information blocking, and for which OIG refers its determination to CMS, would be subject to a disincentive under applicable law as they are participating in the Medicare Promoting Interoperability Program authorized by that applicable law. In addition, the Medicare Promoting Interoperability Program already requires eligible hospitals and CAHs to engage in practices that encourage the access, exchange, and use of electronic health information to avoid a downward payment adjustment. The requirements an eligible hospital or CAH must meet to be treated as a meaningful EHR user in section 1886(n)(3)(A)(i) and (ii) of the SSA specify that an eligible hospital or CAH must demonstrate that it meets these requirements ''to the satisfaction of the Secretary.'' CMS believes these provisions authorize the Secretary to interpret these requirements through rulemaking as necessary to ensure that an eligible hospital or CAH satisfies the requirements to be a meaningful EHR user as defined by the Secretary. Specifically, CMS believes it is appropriate for the Secretary to interpret these requirements through rulemaking to determine that an eligible hospital or CAH that has committed information blocking, and for which OIG refers its determination of information blocking to CMS, has not met the definition of a meaningful EHR user. This proposal is consistent with the goals of the Medicare Promoting Interoperability Program, which include the advancement of CEHRT utilization, focusing on interoperability and data sharing (81 FR 79837). Information blocking by eligible hospitals and CAHs would frustrate both these goals.

CMS also believes the proposed disincentive under the Medicare Promoting Interoperability Program would be an appropriate disincentive that would similarly deter information blocking by other eligible hospitals and CAHs, consistent with the discussion in section III.A.3. of this proposed rule. While the exact monetary impact of the disincentive would vary based on the specific eligible hospital, CMS believes a reduction of three quarters of the annual market basket update would deter eligible hospitals from engaging in information blocking because it would reduce the inpatient prospective payment system (IPPS) payment that an eligible hospital could have earned had it met other requirements under the Medicare Promoting Interoperability Program. Similarly, though the exact dollar amount would vary based on the specific CAH, CMS believes that receiving 100 percent of reasonable costs instead of the 101 percent of reasonable costs that a CAH may have earned for successful participation in the Medicare Promoting Interoperability Program would deter information blocking by CAHs because it would reduce the reimbursement a CAH could have received had it met other requirements under the Medicare Promoting Interoperability Program.

HHS analyzed the range of potential disincentive amounts an eligible hospital could be subject to if the proposed disincentive was imposed, in order to illustrate the degree to which this disincentive could deter eligible hospitals from engaging in information blocking. We used payment data for IPPS eligible hospitals from the CMS Medicare Inpatient Hospitals dataset for 2021, the latest year of publicly available data.[13] We considered the Medicare total payment amounts for each hospital, which consist of several variables, including Base, Medicare Severity Diagnosis Related Groups (MS–DRG), and adjustments such as Indirect Medical Education (IME)/Graduate Medical Education (GME), disproportionate share hospital (DSH), and outlier payments. We attempted to estimate the portion of hospitals' total payments subject to the market basket increase by excluding adjustments not subject to the increase, using data from CMS Hospital Cost Reports to subtract out DSH and IME/GME payments, which account for a large portion of

[13] Available at *https://data.cms.gov/provider-summary-by-type-of-service/medicare-inpatient-hospitals/medicare-inpatient-hospitals-by-provider.*

these adjustments.[14] Since we did not account for other adjustments such as outlier payments, the remaining payment amount may overestimate the payment subject to the market basket increase.

We then conducted a simulation that applied the proposed disincentive amount to a market basket adjustment factor. We simulated a hypothetical scenario of a 3.2 percent market basket increase and a reduction of three quarters of that percentage increase if the proposed information blocking disincentive were applied.[15] Under this scenario, a hospital that lost three quarters of the market basket increase due to the proposed information blocking disincentive would be left with a 0.8 percent market basket increase. Based on this calculation, we estimated a median disincentive amount of $394,353, and a 95 percent range of $30,406 to $2,430,766 across eligible hospitals. The value of the reduction in the market basket increase would be larger in dollar terms for hospitals with greater base IPPS payments.

c. Proposals

CMS is proposing to revise the definition of ''Meaningful EHR User'' in 42 CFR 495.4 to state that an eligible hospital or CAH is not a meaningful EHR user in a calendar year if OIG refers a determination that the eligible hospital or CAH committed information blocking, as defined at 45 CFR 171.103, during the calendar year of the EHR reporting period. As a result of the proposal, CMS would apply a downward payment adjustment under the Medicare Promoting Interoperability Program to any such eligible hospital or CAH because the eligible hospital or CAH would not be a meaningful EHR user, as required under SSA sections 1886(b)(3)(B)(ix) and 1814(l)(4). For eligible hospitals, CMS would apply the downward adjustment to the payment adjustment year that occurs 2 years after the calendar year when the OIG referral occurs. For CAHs, CMS would apply the downward adjustment to the payment adjustment year that is the same as the calendar year when the OIG referral occurs.

As a result of these proposals, an eligible hospital or CAH that otherwise fulfilled the required objectives and measures to demonstrate that it is a meaningful EHR user for an EHR reporting period would nevertheless not be a meaningful EHR user for that EHR reporting period if OIG refers a determination of information blocking to CMS during the calendar year in which the EHR reporting period falls. CMS considered applying this proposed disincentive based on the date that the eligible hospital or CAH committed the information blocking as determined by OIG, instead of the date OIG refers its determination to CMS. However, a significant period of time could pass between the date when the eligible hospital or CAH is determined to have committed information blocking, and the date when OIG makes a referral to CMS, due to the time required for OIG to fully investigate a claim of information blocking. Such delay between the date the information blocking occurred and OIG's referral could complicate the application of the disincentive and would likely necessitate reprocessing of a significant number of claims. Therefore, CMS proposes to use the date of the OIG referral instead of the date of the information blocking occurrence to apply the proposed disincentive. Accordingly, CMS would apply the proposed disincentive to the payment adjustment year associated with the calendar year in which the OIG referred its determination to CMS.

CMS further notes that if an eligible hospital or CAH received the applicable downward payment adjustment because CMS had already determined the eligible hospital or CAH had otherwise not been a meaningful EHR user during the applicable EHR reporting period due to its performance in the Medicare Promoting Interoperability Program, imposition of the proposed disincentive would result in no additional impact on the eligible hospital or CAH during that payment adjustment year. Finally, CMS clarifies that, even if multiple information blocking violations were identified as part of OIG's determination (including over multiple years) and referred to CMS, each referral of an information blocking determination by OIG would only affect an eligible hospital's or CAH's status as a meaningful EHR user in a single EHR reporting period during the calendar year when the determination of information blocking was referred by OIG. Unless OIG makes an additional referral of an information blocking determination in the subsequent calendar year, an eligible hospital or CAH would again be able to qualify as a meaningful EHR user starting in the subsequent EHR reporting period.

CMS invites public comment on these proposals, particularly on its approach to the application of a disincentive for OIG determinations that found that information blocking occurred in multiple years and whether there should be multiple disincentives for such instances (for example, disincentives in multiple calendar years/reporting periods compared to only the calendar year/reporting period in which OIG made the referral).

d. Notification and Application of the Disincentive

After OIG has determined that a health care provider has committed information blocking and referred that health care provider to CMS, CMS would notify the eligible hospital or CAH that OIG determined that the eligible hospital or CAH committed information blocking as defined under 45 CFR 171.103, and thus the eligible hospital or CAH was not a meaningful EHR user for the EHR reporting period in the calendar year when OIG referred its information blocking determination to CMS. This notice would be issued in accordance with the notice requirements proposed at 45 CFR 171.1002, as discussed in section III.B.2 of this proposed rule.

As a result of our proposal to modify the definition of meaningful EHR user in 42 CFR 495.4, the application of the disincentive would result in a downward payment adjustment for eligible hospitals 2 years after the OIG referral of a determination of information blocking to CMS. Based upon the existing regulation at 42 CFR 495.4, the downward payment adjustment would apply 2 years after the year of the referral and the EHR reporting period in which the eligible hospital was not a meaningful EHR user. For CAHs, the downward payment adjustment would apply to the payment adjustment year in which the OIG referral was made.

CMS invites public comment on these proposals.

3. Promoting Interoperability Performance Category of the Medicare Merit-Based Incentive Payment System (MIPS)

a. Background

MIPS requires that MIPS eligible clinicians use CEHRT, as defined at SSA section 1848(o)(4) and 42 CFR 414.1305,[16] in a meaningful manner, in

[14] Available at *https://www.cms.gov/research-statistics-data-and-systems/downloadable-public-use-files/cost-reports.*

[15] The hypothetical 3.2 percent market basket increase used in this simulation was based on the 2023 Medicare Trustees Report, which assumes a 3.2 percent annual market basket increase.

[16] For MIPS, SSA section 1848(o)(4) defines CEHRT as a qualified electronic health record (as defined in PHSA section 3000(13)) that is certified by ONC pursuant to PHSA section 3001(c)(5) as meeting standards adopted under PHSA section 3004 that are applicable to the type of record involved, as determined by the Secretary. CMS has

Continued

accordance with SSA sections 1848(q)(2)(A)(iv) and (B)(iv) and 1848(o)(2) and 42 CFR 414.1375, to earn a score for the MIPS Promoting Interoperability performance category. We intend to use this existing authority, requiring the meaningful use of CEHRT, to impose disincentives on MIPS eligible clinicians that OIG determines to have committed information blocking as defined at 45 CFR 171.103.

(1) MIPS Overview—Scoring and Payment Calculations

Authorized by the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–10, April 16, 2015), the Quality Payment Program is a payment incentive program, by which the Medicare program rewards MIPS eligible clinicians who provide high-value, high-quality services in a cost-efficient manner. The Quality Payment Program includes two participation tracks for clinicians providing services under the Medicare program: MIPS and Advanced Alternative Payment Models (APMs). The statutory requirements for MIPS are set forth in SSA sections 1848(q) and (r).

For the MIPS participation track, MIPS eligible clinicians are subject to a MIPS payment adjustment (positive, negative, or neutral) based on their performance in four performance categories (cost, quality, improvement activities, and Promoting Interoperability) compared to the established performance threshold for that performance period/MIPS payment year. CMS assesses each MIPS eligible clinician's total performance according to established performance standards with respect to the applicable measures and activities specified in each of these four performance categories during a performance period to compute a final composite performance score (a ''final score'' as defined at 42 CFR 414.1305) in accordance with our policies set forth in 42 CFR 414.1380.

In calculating the final score, CMS must apply different weights for the four performance categories, subject to certain exceptions, as set forth in SSA section 1848(q)(5) and at 42 CFR 414.1380. Unless CMS assigns a different scoring weight pursuant to these exceptions, for the CY 2024 performance period/2026 MIPS payment year, the scoring weights are as follows: 30 percent for the quality performance category; 30 percent for the cost performance category; 15 percent for the improvement activities performance category; and 25 percent for the Promoting Interoperability performance category (SSA section 1848(q)(5)(E); 42 CFR 414.1380(c)(1)).

To calculate the payment adjustment factor that will be applied to the amounts otherwise paid to MIPS eligible clinicians under Medicare Part B for covered professional services during the applicable MIPS payment year, CMS then compares the final score to the performance threshold CMS has established for that performance period/MIPS payment year at 42 CFR 414.1405(b). The MIPS payment adjustment factors specified for a year must result in differential payments such that MIPS eligible clinicians with final scores above the performance threshold receive a positive MIPS payment adjustment factor, those with final scores at the performance threshold receive a neutral MIPS payment adjustment factor, and those with final scores below the performance threshold receive a negative MIPS payment adjustment factor. As further specified in SSA section 1848(q)(6)(F) and 42 CFR 414.1405, CMS also applies a scaling factor to determine the MIPS payment adjustment factor for each MIPS eligible clinician, and CMS must ensure that the estimated aggregate increases and decreases in payments to all MIPS eligible clinicians as a result of MIPS payment adjustment factors are budget neutral for that MIPS payment year. As provided in SSA sections 1848(q)(6)(A) and (B)(iv) and 42 CFR 414.1405(c), the positive MIPS payment adjustment factor may be up to 9 percent for a final score of 100 and the negative MIPS payment adjustment factor may be up to negative 9 percent for a final score of zero.

(2) MIPS Promoting Interoperability Performance Category

For MIPS eligible clinicians, SSA section 1848(q)(2)(A)(iv) includes the meaningful use of CEHRT as one of the four performance categories by which a MIPS eligible clinician is assessed to determine a MIPS payment adjustment factor, as discussed previously. CMS refers to this performance category as the Promoting Interoperability performance category. SSA section 1848(q)(2)(B)(iv) provides that the requirements set forth in SSA section 1848(o)(2) for determining whether a MIPS eligible clinician is a meaningful user of CEHRT also apply to our assessment of MIPS eligible clinicians' performance on measures and activities with respect to the MIPS Promoting Interoperability performance category. Also, SSA section 1848(o)(2)(D) generally provides that the requirements for being a meaningful EHR user under section 1848(o)(2) continue to apply for purposes of MIPS.

A MIPS eligible clinician that is not a meaningful user of CEHRT in accordance with SSA section 1848(o)(2)(A) cannot satisfy the requirements of the MIPS Promoting Interoperability performance category and, therefore, would earn a score of zero for this performance category. Applying the weights for the performance categories under 42 CFR 414.1380(c)(1), a score of zero for the Promoting Interoperability performance category would mean that the maximum final score a MIPS eligible clinician could achieve, if they performed perfectly in the three remaining performance categories, would be 75 points.

To be a meaningful EHR user under SSA section 1848(o)(2)(A) (and therefore meet the requirements of the MIPS Promoting Interoperability performance category under SSA section 1848(q)(2)(B)(iv)), a MIPS eligible clinician must meet three requirements related to the meaningful use of CEHRT during a performance period for a MIPS payment year. In brief, the MIPS eligible clinician must (1) demonstrate to the satisfaction of the Secretary the use of CEHRT in a meaningful manner; (2) demonstrate to the satisfaction of the Secretary that their CEHRT is connected in a manner that provides for electronic exchange of health information to improve the quality of care; and (3) use CEHRT to submit information concerning quality measures and other measures as specified.

More specifically, for the first requirement under SSA section 1848(o)(2)(A)(i), a MIPS eligible clinician must demonstrate, to the satisfaction of the Secretary, that during the relevant performance period, the MIPS eligible clinician is ''using certified EHR technology in a meaningful manner.'' For the second requirement under SSA section 1848(o)(2)(A)(ii), a MIPS eligible clinician must demonstrate, to the satisfaction of the Secretary, that during the relevant period CEHRT is ''connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of care, such as promoting care coordination'' and the MIPS eligible clinician demonstrates, through ''a process specified by the Secretary, such as the use of an attestation'' that the MIPS eligible clinician ''has not knowingly and willfully taken action

codified the definition of CEHRT, including additional criteria it must be certified as meeting, that MIPS eligible clinicians must use at 42 CFR 414.1305.

(such as to disable functionality) to limit or restrict the compatibility or interoperability of the certified EHR technology.'' For the third requirement under SSA section 1848(o)(2)(A)(iii), a MIPS eligible clinician currently must submit information via their CEHRT on ''such clinical quality measures and such other measures as selected by the Secretary'' in ''a form and manner specified by the Secretary,'' including measures focused on providing patients with electronic access to their electronic health information, sending electronic health information to other health care providers, and receiving and incorporating electronic health information from other health care providers.

As discussed further in section III.C.3.b. of this proposed rule, these three requirements for a MIPS eligible clinician to be determined to be a meaningful user of CEHRT, particularly the first two requirements under SSA section 1848(o)(2)(A)(i) and (ii), would be substantially undermined and frustrated if the MIPS eligible clinician commits information blocking, such that application of an appropriate disincentive is warranted.

b. The MIPS Promoting Interoperability Performance Category Requirements as an Appropriate Disincentive for Information Blocking Under the PHSA

As discussed previously, we believe that the requirements set forth in SSA sections 1848(q)(2)(B)(iv) and 1848(o)(2)(A) for the MIPS Promoting Interoperability performance category are an applicable Federal law for the purposes of establishing a disincentive for a health care provider that participates in MIPS and has been determined by OIG to have committed information blocking. First, the definitions of MIPS eligible clinician and health care provider under 45 CFR 171.102 and the PHSA generally are aligned. Second, committing information blocking not only violates the law and principles set forth in the Cures Act, but also undermines the goals and purpose of the MIPS Promoting Interoperability performance category. On such basis, CMS is proposing an appropriate disincentive for MIPS eligible clinicians that OIG determines have committed information blocking and for whom OIG refers its determination of information blocking to CMS, as discussed further in section III.C.3.c. of this proposed rule.

(1) Alignment of Definitions of MIPS Eligible Clinician and Health Care Provider Under the PHSA

CMS believes that the definitions of MIPS eligible clinician under the SSA and 42 CFR 414.1305 and health care provider under PHSA section 3000(3) and 45 CFR 171.102 generally are aligned. CMS believes this alignment will permit application of appropriate disincentives, as required by PHSA section 3022(b)(2)(B), to MIPS eligible clinicians, except for qualified audiologists. CMS proposes to codify this exception in the definition of Meaningful EHR User for MIPS at 42 CFR 414.1305.

Beginning with the 2024 MIPS payment year, a MIPS eligible clinician is defined in 42 CFR 414.1305 as including: (1) a physician (as defined in SSA section 1861(r)); (2) a physician assistant, nurse practitioner, and clinical nurse specialist (as defined in SSA 1861(aa)(5)); (3) a certified registered nurse anesthetist (defined in SSA section 1861(bb)(2)); (4) a physical therapist or occupational therapist; (5) a qualified speech-language pathologist; (6) a qualified audiologist (as defined in SSA section 1861(ll)(4)(B)); (7) a clinical psychologist (as defined by the Secretary for purposes of SSA section 1861(ii)); (8) a registered dietician or nutrition professional; (9) a clinical social worker (as defined in SSA section 1861(hh)(1)); (10) a certified nurse midwife (as defined in SSA section 1861(gg)(2)); and (11) a group, identified by a unique single taxpayer identification number (TIN), with two or more eligible clinicians, one of which must be a MIPS eligible clinician, identified by their individual national provider identifier (NPI) and who have reassigned their billing rights to the single group TIN. However, for a given performance period/MIPS payment year, a MIPS eligible clinician does not include an eligible clinician who meets one of the exclusions set forth in 42 CFR 414.1310(b), including being a Qualifying APM participant, Partial Qualifying APM Participant that does not elect to participate in MIPS, or does not exceed the low volume threshold (as these terms are defined in 42 CFR 414.1305).

Meanwhile, the definition of ''health care provider'' under PHSA section 3000(3) as implemented in 45 CFR 171.102, includes the following which are also considered MIPS eligible clinicians: (1) a ''group practice'' (which is not defined in the PHSA); (2) a physician (as defined in SSA section 1861(r)); (3) practitioners, as defined in SSA section 1842(b)(18)(C) to include: (a) a physician assistant, nurse practitioner, and clinical nurse specialist (as defined in SSA 1861(aa)(5)); (b) a certified registered nurse anesthetist (defined in SSA section 1861(bb)(2)); (c) a certified nurse-midwife (as defined in SSA section 1861(gg)(2)); (d) a clinical social worker (as defined in SSA section 1861(hh)(1)); (e) a clinical psychologist (as defined by the Secretary for purposes of SSA section 1861(ii)); and (f) a registered dietician or nutrition professional; (4) therapists, as defined in SSA section 1848(k)(3)(B)(iii) to include: (a) a physical therapist; (b) an occupational therapist; and (c) a qualified speech-language pathologist; and (5) ''any other category of health care facility, entity, practitioner, or clinician determined appropriate by the Secretary.''

CMS notes that, at this time, only a qualified audiologist, included in the definition of MIPS eligible clinician in 42 CFR 414.1305 since the CY 2019 performance period/2021 MIPS payment year, is not identified as a health care provider under 45 CFR 171.102 and PHSA section 3000(3). Because qualified audiologists are not included in the PHSA definition of health care provider, CMS proposes that MIPS eligible clinicians who are qualified audiologists would not be subject to the disincentive proposed for the MIPS Promoting Interoperability performance category in this proposed rule.

As discussed previously in this section (III.C.3.b.(1)), groups and multispecialty groups (as defined in 42 CFR 414.1305) also are included in the definition of MIPS eligible clinician and therefore are subject to payment adjustments under MIPS based on the performance of MIPS eligible clinicians that are included in these groups, under different sets of regulations in 42 CFR part 414, subpart O. Meanwhile, as discussed previously, the definition of health care provider in PHSA section 3000(3) includes ''group practice,'' but does not define what this term means. Accordingly, CMS also believes that a group may be subject to the disincentive proposed for the MIPS Promoting Interoperability performance category in this proposed rule if the group has been determined by OIG to have committed information blocking, or if MIPS eligible clinicians included in the group have committed information blocking.

(2) Information Blocking Conduct Undermines the Goals and Purpose of the MIPS Promoting Interoperability Performance Category

Health care providers that engage in information blocking undermine and frustrate the purpose for requiring MIPS eligible clinicians to use CEHRT in a meaningful manner. Specifically, requiring MIPS eligible clinicians to use CEHRT is not limited to MIPS eligible clinicians adopting and implementing CEHRT for documenting clinical care in lieu of paper-based medical records. For use of CEHRT to be meaningful, SSA section 1848(o)(2)(A) requires that MIPS eligible clinicians use CEHRT to communicate with other treating providers, pharmacies, and oversight authorities regarding the patient's health information, including the MIPS eligible clinician's review and treatment of the patient's health. SSA sections 1848(o)(2)(A)(i) and (ii) require that MIPS eligible clinicians demonstrate that they are meaningfully using CEHRT's key functionalities, such as electronically prescribing, and ensuring that CEHRT is ''connected in a manner that provides, in accordance with law and standards applicable to the exchange of information, for the electronic exchange of health information to improve the quality of health care,'' such as ''promoting care coordination.'' SSA section 1848(o)(2)(A)(ii) further requires that the MIPS eligible clinician demonstrate that they have not ''knowingly and willfully taken action (such as to disable functionality) to limit or restrict the compatibility or interoperability'' of CEHRT, which is similar to the directive to investigate and discourage information blocking under PHSA section 3022. Establishing an appropriate disincentive for information blocking under the MIPS Promoting Interoperability performance category would not only deter information blocking, but would strengthen an existing merit-based incentive payment system that already encourages health care providers to support the access, exchange, and use of electronic health information.

Furthermore, the requirements to be treated as a meaningful EHR user in SSA sections 1848(o)(2)(A)(i) and (ii) specify that a MIPS eligible clinician must demonstrate that they meet these requirements to the satisfaction of the Secretary. CMS believes these provisions authorize the Secretary to interpret these requirements through rulemaking as necessary to ensure that a MIPS eligible clinician satisfies the requirements to be a meaningful user of CEHRT as defined by the Secretary. Specifically, CMS believes it is appropriate for the Secretary to interpret these requirements through rulemaking to determine that a MIPS eligible clinician that has committed information blocking is not a meaningful EHR user. This proposal is consistent with the goals of the MIPS Promoting Interoperability performance category, which include promoting health care efficiency and encouraging widespread health information exchange (81 FR 77200 through 77202). Information blocking by MIPS eligible clinicians frustrates both these goals.

CMS believes a disincentive for information blocking associated with the MIPS Promoting Interoperability performance category would be an appropriate disincentive that would deter information blocking by other MIPS eligible clinicians, consistent with the discussion in section III.A.3. of this proposed rule. While the exact monetary impact of the disincentive may vary for each MIPS eligible clinician based on the various factors CMS considers when determining the MIPS payment adjustment factor, CMS believes the proposed disincentive would deter information blocking by other MIPS eligible clinicians. A MIPS eligible clinician who receives a score of zero in the MIPS Promoting Interoperability performance category under this proposed disincentive may not be able to earn a positive or neutral MIPS payment adjustment factor that they otherwise would have earned for their performance in MIPS.

To illustrate the degree to which this disincentive could deter information blocking, HHS analyzed the range of potential disincentive amounts MIPS eligible clinicians could be subject to if the proposed disincentive was imposed, using actual payment and MIPS data from 2021, the most recent year of publicly available data. The three data sets used were the Medicare Fee-For-Service Provider Utilization & Payment Data—Physician and Other Practitioners Dataset; the Clinician Public Reporting: Overall MIPS Performance Dataset and the Quality Payment Program Experience Dataset.[17] [18] [19] The Medicare Fee-For-Service Provider Utilization file contains actual payments to clinicians under Medicare Part B. We simulated disincentive amounts for all eligible clinicians on an individual basis by applying zero points for the Promoting Interoperability performance category portion of the MIPS score and using the MIPS scoring policies from the CY 2021 performance year. We estimated potential disincentive amounts for groups by multiplying estimated per-clinical disincentive amounts by the number of eligible clinicians in estimated group sizes.

We first assessed the overall payment to eligible clinicians as well as the portion of the payment that was based on a positive or negative adjustment based on their MIPS score. We then varied the MIPS score based on lower scores on the Promoting Interoperability performance category portion, determined the change in positive or negative adjustment amount, and recalculated the payment under Medicare Part B. The difference between the actual 2021 payment and the simulated payment under the lower score represents the disincentive amount calculated in the simulation for individual eligible clinicians. We estimated a median individual disincentive amount of $686 and a 95 percent range (the 2.5th to 97.5th percentile of estimated disincentive amounts) of $38 to $7,184 across all eligible clinicians (including those who may have been in a group). Based on the median estimated disincentive amount of $686 and estimated median group size of six clinicians, we estimated a group disincentive of $4,116 and a range of $1,372 to $165,326 for group sizes ranging from two to 241 clinicians (the estimated 2.5th to 97.5th percentile of group sizes). In consideration of MIPS eligible clinicians that may be subject to higher-than-median disincentives, we also simulated estimates for a median-sized group of six clinicians and an estimated 75th percentile per-clinician disincentive amount of $1,798. Based on this, we estimated a disincentive of $10,788. We noted that the ranges of potential group disincentive amounts vary based on individual clinician payments and group sizes.

c. Proposals

Under the authority in SSA sections 1848(o)(2)(A) and (D), and 1848(q)(2)(A)(iv) and (B)(iv), for the MIPS Promoting Interoperability performance category, CMS proposes that a MIPS eligible clinician would not be a meaningful EHR user in a performance period if OIG refers a determination that the MIPS eligible clinician committed information blocking (as defined at 45 CFR 171.103)

[17] Provider Utilization and Payment Data available at *https://catalog.data.gov/dataset/medicare-physician-other-practitioners-by-provider-b297e.*

[18] Overall MIPS Performance Dataset available at *https://data.cms.gov/provider-data/dataset/a174-a962.*

[19] Quality Payment Program Experience Dataset available at *https://data.cms.gov/quality-of-care/quality-payment-program-experience/data.*

at any time during the calendar year of the performance period.[20] CMS also proposes that the determination by OIG that the MIPS eligible clinician committed information blocking would result in a MIPS eligible clinician that is required to report on the MIPS Promoting Interoperability performance category not earning a score in the performance category (a zero score), which is typically a quarter of the total final score. CMS proposes to codify this proposal under the definition of meaningful EHR user for MIPS at 42 CFR 414.1305 and amend the requirements for earning a score for the MIPS Promoting Interoperability performance category at 42 CFR 414.1375(b).

CMS considered applying this proposed disincentive based on the date that the MIPS eligible clinician committed the information blocking as determined by OIG, instead of the date OIG refers its determination to CMS. However, a significant period of time could pass between the date when the MIPS eligible clinician is determined to have committed information blocking, and the date when OIG makes a referral to CMS, due to the time required for OIG to fully investigate a claim of information blocking. Such delay between the date the information blocking allegedly occurred and OIG's referral could complicate our application of the disincentive and would likely necessitate reprocessing of a significant number of claims. Therefore, CMS decided to use the date of the OIG referral instead of the date of the information blocking occurrence to apply this proposed disincentive. Accordingly, CMS would apply the proposed disincentive to the MIPS payment year associated with the calendar year in which OIG referred its determination to CMS.

As provided in 42 CFR 414.1320, the applicable MIPS payment year is 2 calendar years after the performance period. This time period between the performance period and the MIPS payment year permits CMS to review each MIPS eligible clinician's performance to determine their final score and MIPS payment adjustment factor. Under our proposal, if OIG referred its determination that a MIPS eligible clinician committed information blocking in calendar year 2025, then CMS would apply the disincentive proposed herein for the 2027 MIPS payment year.

First, CMS proposes to amend the definition of ''meaningful EHR user for MIPS'' at 42 CFR 414.1305. The current definition of meaningful EHR user for MIPS definition states that a ''meaningful EHR user for MIPS means a MIPS eligible clinician who possesses CEHRT, uses the functionality of CEHRT, reports on applicable objectives and measures specified for the Promoting Interoperability performance category for a performance period in the form and manner specified by CMS, does not knowingly and willfully take action (such as to disable functionality) to limit or restrict the compatibility or interoperability of CEHRT, and engages in activities related to supporting providers with the performance of CEHRT.'' CMS proposes to add to this definition that a MIPS eligible clinician is not a meaningful EHR user in a performance period if OIG refers a determination that the clinician committed information blocking (as defined at 45 CFR 171.103) during the calendar year of the performance period. CMS also proposes other minor technical changes to the language of the definition. In tandem with other proposals in this section, this proposed amendment to the definition in 42 CFR 414.1305 would result in a MIPS eligible clinician not being able to earn points associated with the Promoting Interoperability performance category they may otherwise have earned, potentially resulting in a negative or neutral payment adjustment. As such, this potential outcome likely would deter health care providers from engaging in information blocking.

Second, CMS proposes to amend our requirements for earning a score for the MIPS Promoting Interoperability performance category by adding a new requirement at 42 CFR 414.1375(b). Currently, 42 CFR 414.1375(b) provides that, to earn a score (other than zero) for the Promoting Interoperability performance category, the MIPS eligible clinician must meet certain requirements, including using CEHRT, reporting on the objectives and associated measures as specified by CMS, and attesting to certain statements and activities. CMS proposes to amend 42 CFR 414.1375(b) by adding that the MIPS eligible clinician must be a meaningful EHR user for MIPS as defined at 42 CFR 414.1305. In conjunction with our proposal to amend the definition of a meaningful EHR user for MIPS at 42 CFR 414.1305 discussed previously, CMS believes this proposal would establish a clear basis to apply a score of zero for the MIPS Promoting Interoperability performance category to a MIPS eligible clinician that fails to meet the definition of meaningful EHR user for MIPS during a performance period, specifically if OIG refers a determination of information blocking during the calendar year of the performance period.

Under these proposals, a MIPS eligible clinician that OIG determines has committed information blocking would not be a meaningful EHR user, and therefore would be unable to earn a score (instead, earning a score of zero) for the MIPS Promoting Interoperability performance category. Because a MIPS eligible clinician that has committed information blocking would not be a meaningful EHR user for a given performance period, they would earn a zero for the Promoting Interoperability performance category for the calendar year of the applicable performance period in which the determination of information blocking was referred by OIG. For example, if OIG refers a determination that a MIPS eligible clinician committed information blocking to CMS in CY 2026, CMS would apply a score of zero for the Promoting Interoperability performance category for the CY 2028 MIPS payment year to the MIPS eligible clinician.

Under this proposed disincentive for information blocking, a score of zero for the MIPS Promoting Interoperability performance category would negatively impact 25 percent of the MIPS eligible clinician's final score such that it would likely result in a negative MIPS payment adjustment for the applicable MIPS payment year. For example, applying the weights for the performance categories under 42 CFR 414.1380(c)(1), a score of zero for the Promoting Interoperability performance category would mean that the maximum final score a MIPS eligible clinician could achieve, if they performed perfectly in the three remaining performance categories, would be 75 points.

Then, as discussed previously, to determine the MIPS payment adjustment factor, CMS compares the MIPS eligible clinician's final score to the established performance threshold for that MIPS payment year. In 42 CFR 414.1405(b)(9)(ii), CMS established that the performance threshold for the 2025

[20] As provided in 42 CFR 414.1320(h), for purposes of the 2024 MIPS payment year and each subsequent MIPS payment year, the performance period for the MIPS Promoting Interoperability performance category is a minimum of a continuous 90-day period within the calendar year that occurs 2 years prior to the applicable MIPS payment year, up to and including the full calendar year. In 42 CFR 414.1305, CMS has defined the ''MIPS payment year'' as the calendar year in which the MIPS payment adjustment factor is applied to Medicare Part B payments. In the CY 2024 Physician Fee Schedule proposed rule, CMS proposed that, beginning with the 2026 MIPS payment year, the performance period for the MIPS Promoting Interoperability performance category is a minimum of a continuous 180-day period within the calendar year that occurs 2 years prior to the applicable MIPS payment year, up to and including the full calendar year (88 FR 52578 through 52579).

MIPS payment year is 75 points. If, under this example, a MIPS eligible clinician still achieved 75 points for their final score for the 2025 MIPS payment year matching the established performance threshold of 75 points, then they would receive a neutral MIPS payment adjustment factor.

However, in the CY 2024 Physician Fee Schedule proposed rule, CMS proposed that the performance threshold for the 2026 MIPS payment year would be 82 points (88 FR 52596 through 52601). If this performance threshold of 82 points is finalized for the 2026 MIPS payment year, or some other performance threshold higher than 75 points is finalized in a future MIPS payment year, then, under our example, a MIPS eligible clinician (that OIG determined committed information blocking and received a score of zero in the Promoting Interoperability performance category and therefore a final score of 75 points) would receive a negative MIPS payment adjustment factor. If CMS finalizes a performance threshold higher than 75 points in a future MIPS payment year, this proposed disincentive would likely to result in a MIPS eligible clinician that commits information blocking, as determined by OIG, receiving a negative payment adjustment, up to negative nine percent for a final score of zero as set forth in 42 CFR 414.1405(b)(2) and (c).

Under this proposal, a MIPS eligible clinician that otherwise fulfilled other requirements to demonstrate meaningful use for a performance period, and earned a score for the Promoting Interoperability performance category, would nevertheless not be a meaningful EHR user for that performance period if OIG refers a determination of information blocking during the calendar year of the performance period. CMS further notes that if a MIPS eligible clinician earned a score of zero for the Promoting Interoperability performance category for a given year because CMS had already determined the MIPS eligible clinician had otherwise not been a meaningful EHR user in that performance period due to its performance in the Promoting Interoperability performance category, imposition of the proposed disincentive would result in no additional impact on the MIPS eligible clinician during that MIPS payment year.

CMS clarifies that, even if multiple information blocking violations were identified as part of OIG's determination (including over multiple years) and referred to CMS, each referral of an information blocking determination by OIG would only affect a MIPS eligible clinician's status as a meaningful EHR user in a single performance period during the calendar year when the determination of information blocking was referred by OIG. Barring an additional referral of an information blocking determination by OIG in the subsequent calendar year, a MIPS eligible clinician could be deemed a meaningful EHR user and earn a score for the Promoting Interoperability performance category in the following calendar year.

CMS invites public comment on these proposals. CMS particularly requests comment on its approach to the application of a disincentive for OIG determinations that found that information blocking occurred in multiple years and whether there should be multiple disincentives for such instances (for example, disincentives in multiple calendar years/performance periods compared to only one disincentive in the calendar year in which a referral from OIG is made).

(1) Groups and Virtual Groups

CMS also proposes that if data for the MIPS Promoting Interoperability performance category is submitted as a group or virtual group then the application of the disincentive would be made at that level. CMS refers readers to our prior rulemaking governing groups and virtual groups (81 FR 77073 through 77077) and our regulations at 42 CFR 414.1305 (defining MIPS eligible clinicians as including groups as well as separately defining groups and virtual groups) and 414.1315 (governing virtual groups). MIPS eligible clinicians who submit data as a part of a group or virtual group and individually will be evaluated as an individual and as a group for all performance categories. Beginning with the CY 2021 performance period/2023 MIPS payment year, if a TIN/NPI has a virtual group final score associated with it, we will use the virtual group final score to determine the MIPS payment adjustment; if a TIN/NPI does not have a virtual group final score associated with it, we will use the highest available final score associated with the TIN/NPI to determine the MIPS payment adjustment (85 FR 84917 through 84919). CMS would apply the MIPS payment adjustment factor to the Medicare Part B claims during the MIPS payment year for the MIPS eligible clinicians in the group or virtual group. Thus, if CMS is calculating a final score and MIPS payment adjustment factor for a group or virtual group and OIG refers a finding of information blocking to CMS, CMS would apply the proposed disincentive to the whole group.

(2) Reweighting Policies

CMS has established policies that result in the reweighting of the Promoting Interoperability performance category for certain MIPS eligible clinicians at 42 CFR 414.1380(c)(2). These include but are not limited to hospital-based clinicians (81 FR 77238 through 77420, 82 FR 53684, and 82 FR 53686 through 53687) and Ambulatory Surgical Center-based clinicians (82 FR 53684). CMS is not proposing changes to its existing reweighting policies for MIPS eligible clinicians.

Starting with the CY 2022 performance period/2024 MIPS payment year performance period CMS automatically reweights small practices for the Promoting Interoperability performance category (86 FR 65485 through 65487; 42 CFR 414.1380(c)(2)(i)(C)(*9*)). CMS is not proposing changes to our existing policy for MIPS eligible clinicians in small practices.

CMS notes that if these MIPS eligible clinicians choose to submit data for the Promoting Interoperability performance category, their reweighting is canceled, and they could be subject to a disincentive if OIG refers a determination of information blocking to CMS.

d. Notification of the Disincentive

After OIG has determined that a health care provider has committed information blocking and referred that health care provider to CMS, CMS would notify the MIPS eligible clinician that OIG determined that the eligible clinician committed information blocking as defined under 45 CFR 171.103, and thus the MIPS eligible clinician was not a meaningful EHR user for the performance period in the calendar year when OIG referred its information blocking determination to CMS. CMS would apply the proposed disincentive to the MIPS payment year associated with the calendar year in which the OIG referred its determination to CMS. This notice would be issued in accordance with the notice requirements for disincentives proposed in 45 CFR 171.1002 (see also section III.B.2. of this proposed rule).

CMS invites public comment on this proposal.

4. Medicare Shared Savings Program

a. Background

(1) Statutory Authority for Disincentive

Section 3022 of the Patient Protection and Affordable Care Act (PPACA) (Pub.

L. 111–148, Mar. 23, 2010) added section 1899 to the Social Security Act (SSA) (42 U.S.C. 1395jjj), which established the Medicare Shared Savings Program (Shared Savings Program). In accordance with the statute, groups of providers of services and suppliers (referred to herein as ''ACO participants'') and their associated health care providers (referred to herein as ''ACO providers/suppliers'') meeting criteria specified by the Secretary may work together to manage and coordinate care for Medicare fee-for-service beneficiaries through an ACO. ACOs that meet quality performance standards established by the Secretary are eligible to receive payments for shared savings the ACO generates for Medicare and to avoid sharing losses at the maximum level. One condition of participation required by the statute is for the ACO to define certain processes, including a mandate to ''define processes to promote evidence-based medicine and patient engagement, report on quality and cost measures, and coordinate care, such as through the use of telehealth, remote patient monitoring, and other such enabling technologies'' (Social Security Act section 1899(b)(2)(G)).

(2) Shared Savings Program Regulations

The Shared Savings Program regulations at 42 CFR part 425 set forth, among other things, requirements for ACO eligibility, quality reporting, and other program requirements and beneficiary protections.[21] The regulations at 42 CFR 425.116 require that an ACO, as a condition of participation in the Shared Savings Program, must effectuate an agreement with its ACO participants and ACO providers/suppliers (as defined at 42 CFR 425.20). This agreement must expressly require the ACO participant to agree, and to ensure that each ACO provider/supplier billing through the TIN of the ACO participant agrees, to participate in the Shared Savings Program and to comply with the requirements of the Shared Savings Program and all other applicable Federal laws and regulations including, but not limited to: (1) Federal criminal law; (2) The False Claims Act (31 U.S.C. 3729 *et seq.*); (3) The anti-kickback statute (42 U.S.C. 1320a–7b(b)); (4) The civil monetary penalties law (42 U.S.C. 1320a–7a); and (5) The physician self-referral law (42 U.S.C. 1395nn).

CMS has interpreted the requirement at section 1899(b)(1)(G) of the SSA that an ACO coordinates care for assigned beneficiaries using enabling technologies to require an ACO (and, by agreement, an ACO participant and ACO provider/supplier) to, among other things, define its methods and processes established to coordinate care across and among health care providers both inside and outside the ACO and have a written plan to ''encourage and promote use of enabling technologies for improving care coordination for beneficiaries'' (42 CFR 425.112(b)(4)(i) and (b)(4)(ii)(C)). Enabling technologies may include one or more of the following: electronic health records and other health IT tools; telehealth services, including remote patient monitoring; electronic exchange of health information; and other electronic tools to engage beneficiaries in their care. The ACO must ensure that ACO participants and ACO providers/suppliers comply with and implement the defined care coordination process, including the encouragement and promotion of enabling technologies, and the remedial processes and penalties (including the potential for expulsion) applicable to ACO participants and ACO providers/suppliers for failure to comply with and implement the required process (see 42 CFR 425.112(a)(3)). Sharing health information using enabling technologies across all health care providers engaged in a beneficiary's care (both inside and outside the ACO) for purposes of care coordination and quality improvement is an essential aspect of the ACO's activities. Moreover, this type of information sharing among health care providers (both inside and outside the ACO) supports quality measurement and quality reporting activities, which are necessary in order for the ACO to be eligible to share in savings and are also used in determining the amount of shared losses.

Before the start of an agreement period, before each performance year thereafter, and at such other times as specified by CMS, the ACO must submit to CMS an ACO participant list and an ACO provider/supplier list (see 42 CFR 425.118(a)). The ACO must certify the submitted lists annually. All Medicare-enrolled individuals and entities that have reassigned their right to receive Medicare payment to the TIN of the ACO participant must be included on the ACO provider/supplier list and must agree to participate in the ACO and comply with the requirements of the Shared Savings Program before the ACO submits the ACO participant list and the ACO provider/supplier list.

CMS may deny an ACO, ACO participant, and/or an ACO provider/supplier participation in the Shared Savings Program if the entity or individual has a history of program integrity issues (see 42 CFR 425.305(a)(2)). CMS screens ACOs, ACO participants, and ACO providers/suppliers during the Shared Savings Program application process and periodically thereafter (for example, during the annual certification of the ACO participant and ACO provider/supplier lists) with regard to their program integrity history (including any history of Medicare program exclusions or other sanctions and affiliations with individuals or entities that have a history of program integrity issues) (see 42 CFR 425.305(a)(1)). In the Medicare Shared Savings Program Final Rule (76 FR 67802), CMS stated that the results of the screening would need to be considered in light of the relevant facts and circumstances. CMS did not draw a bright line regarding when an entity's history of program integrity issues justifies denial of a Shared Savings Program participation agreement. CMS stated instead that we would likely consider the nature of the applicant's program integrity issues (including the program integrity history of affiliated individuals and entities), the available evidence, the entity's diligence in identifying and correcting the problem, and other factors. CMS stated that we intended to ensure that ACOs, ACO participants, and ACO providers/suppliers would not pose a risk of fraud or abuse within the Shared Savings Program while recognizing that some program integrity allegations may not have been fully adjudicated.

CMS may terminate the participation agreement with an ACO when the ACO, its ACO participants, or its ACO providers/suppliers or other individuals or entities performing functions or services related to ACO activities fail to comply with any of the requirements of the Shared Savings Program under 42 CFR part 425 (§ 425.218(a) and (b)). This includes, but is not limited to, violations of the physician self-referral prohibition, CMP law, Federal anti-kickback statute, antitrust laws, or any other applicable Medicare laws, rules, or regulations that are relevant to ACO operations. Similarly, CMS requires that the agreement the ACO effectuates with its ACO participants must permit the ACO to take remedial action against the ACO participant, and must require the ACO participant, in turn, to take remedial action against its ACO providers/suppliers, including

[21] Shared Savings Program regulations generally specify standards for an ACO, which is bound by its participation agreement to the standards. CMS generally specifies standards applicable to an ACO participant and ACO provider/supplier that is participating in the ACO through its regulation of the ACO.

imposition of a corrective action plan, denial of incentive payments, and termination of the ACO participant agreement, to address noncompliance with the requirements of the Shared Savings Program and other program integrity issues, including program integrity issues identified by CMS (42 CFR 425.116(a)(7)). Taken together, these regulations ensure that CMS may take appropriate enforcement actions when CMS' screening process or oversight of ACOs reveals a history of program integrity issues or when an ACO, an ACO participant or ACO provider/suppliers and other individuals or entities performing functions or services related to ACO activities fail to comply with the requirements of the Shared Savings Program, including failure to comply with other Federal laws that are relevant to the ACO's operations, such as the Cures Act's information blocking provision (PHSA section 3022).

b. Proposals

CMS proposes to revise the Shared Savings Program regulations to establish disincentives for health care providers, including ACOs, ACO participants, or ACO providers/suppliers, that engage in information blocking. Under this proposal, a health care provider that OIG determines has committed information blocking may not participate in the Shared Savings Program for a period of at least 1 year.

Information blocking runs contrary to the care coordination goals of the Shared Savings Program. ACO participants and their ACO providers/suppliers participating in an ACO in the Shared Savings Program use enabling technologies (such as electronic health records) to improve care coordination for beneficiaries. The ability of ACO providers/suppliers to exchange information between health care providers (both inside and outside the ACO) is essential for the operations of the ACO, including for effective coordination of care and quality improvement activities and services for assigned beneficiaries.

First, CMS proposes to amend 42 CFR 425.208(b) to include a specific reference to the Cures Act information blocking provision codified in the PHSA. The provision would be one of many laws with which ACOs (and by agreement, their ACO participants and ACO providers/suppliers) must comply.[22] In this case, compliance is required because a Medicare enrolled ''health care provider,'' to which an information blocking disincentive may apply, includes ACO providers/suppliers (See 42 CFR 400.202 and 425.20 and 45 CFR 171.102). The effect of adding a specific reference to the information blocking provision would be to require that, as a condition of participation in the Shared Savings Program, an ACO must specifically agree (and must require its ACO participants, ACO providers/suppliers, and other individuals or entities performing functions or services related to the ACO's activities to agree) to not commit information blocking as defined in PHSA section 3022(a).

Second, CMS proposes to revise 42 CFR 425.305(a)(1) to specify that the program integrity history on which ACOs, ACO participants, and ACO providers/suppliers are reviewed during the Shared Savings Program application process and periodically thereafter includes, but is not limited to, a history of Medicare program exclusions or other sanctions, noncompliance with the requirements of the Shared Savings Program, or violations of laws specified at 42 CFR 425.208(b). This revision would provide the basis for CMS to deny participation in the Shared Savings Program to a health care provider that is an ACO, an ACO participant, or an ACO provider/supplier when the health care provider has engaged in information blocking, as determined by OIG.

Third, CMS proposes to make a conforming modification to the provision related to the grounds for CMS to terminate an ACO at 42 CFR 425.218(b)(3) based on ''[v]iolations of the physician self-referral prohibition, civil monetary penalties (CMP) law, Federal anti-kickback statute, antitrust laws, or any other applicable Medicare laws, rules, or regulations that are relevant to ACO operations.'' CMS proposes to replace this language with ''[v]iolations of any applicable laws, rules, or regulations that are relevant to ACO operations, including, but not limited to, the laws specified at § 425.208(b).''

Pursuant to CMS' authority under 42 CFR 425.206(a)(1)(iii) to deny an ACO's participation in the Shared Savings Program, CMS' authority under 42 CFR 425.118(b)(1)(iii) to deny the addition of a health care provider to an ACO's participation list, and CMS' authority under 42 CFR 425.305(a) to screen for program integrity issues, CMS proposes to screen ACOs, ACO participants, and ACO providers/suppliers for an OIG determination of information blocking and deny the addition of such a health care provider to an ACO's participation list for the period of at least 1 year. In the case of an ACO that is a health care provider, CMS proposes to deny the ACO's application to participate in the Shared Savings Program for the period of at least 1 year. If the ACO were to re-apply to participate in the Shared Savings Program in a subsequent year, then CMS would review whether OIG had made any subsequent determinations of information blocking with respect to the ACO as a health care provider as well as any evidence that indicated whether the issue had been corrected and appropriate safeguards had been put in place to prevent its reoccurrence, as part of the ACO's application process. CMS therefore proposes that, in cases where the result of the program integrity screening identifies that an ACO (acting as a health care provider), ACO participant, or ACO provider/supplier, has committed information blocking, as determined by OIG, CMS would take the following actions, as applicable:

- Pursuant to 42 CFR 425.118(b)(1)(iii), CMS would deny the request of the ACO to add an ACO participant to its ACO participant list on the basis of the results of the program integrity screening under 42 CFR 425.305(a).
- Pursuant to 42 CFR 425.116(a)(7) and (b)(7), CMS would notify an ACO currently participating in the Shared Savings Program if one of its ACO participants or ACO providers/suppliers is determined by OIG to have committed information blocking so that the ACO can take remedial action—removing the ACO participant from the ACO participant list or the ACO provider/supplier from the ACO provider/supplier list—as required by the ACO participant agreement.
- Pursuant to 42 CFR 425.305(a)(2), CMS would deny an ACO's Shared Savings Program application if the results of a program integrity screening under 42 CFR 425.305(a)(1) reveal a history of program integrity issues or other sanctions and affiliations with individuals or entities that have a history of program integrity issues.
- Pursuant to 42 CFR 425.218(a) and (b)(3), CMS would terminate an ACO participation agreement in the case of a failure to comply with requirements of the Shared Savings Program, including violations of any applicable laws, rules, or regulations that are relevant to ACO operations, including, but not limited to, the laws specified at 42 CFR 425.208(b).

Each of these actions would deter information blocking consistent with the discussion of an appropriate

[22] CMS notes that the list of laws included at 42 CFR 425.208(b) with which an ACO must comply is not an exclusive list. ACOs, ACO participants, and ACO providers/suppliers must continue to comply with all applicable Federal laws.

disincentive in section III.A.3. of this proposed rule. Restricting the ability for these entities to participate in the Shared Savings Program for at least 1 year would result in these health care providers potentially not receiving revenue that they might otherwise have earned if they had participated in the Shared Savings Program.

The period of time of the disincentive would be at least 1 performance year. CMS would determine if it would be appropriate for the period to exceed 1 year if OIG has made any subsequent determinations of information blocking (for example, CMS would be unlikely impose a disincentive greater than 1 year if the information blocking occurred in the past and there was evidence that the information blocking had stopped) and whether safeguards have been put in place to prevent the information blocking that was the subject of OIG's determination. Prior to imposing any disincentive arising from an OIG determination of information blocking, CMS would provide a notice in accordance with the notice requirements proposed in 45 CFR 171.1002 (see section III.B.2 of this proposed rule) that would specify the disincentive would be imposed for at least 1 performance year.

CMS proposes to apply the disincentive no sooner than the first performance year after we receive a referral of an information blocking determination from OIG and in which the health care provider is to participate in the Shared Savings Program. CMS performs a program integrity screening of ACOs, ACO participants, and ACO providers/suppliers as part of the annual application/change request process for new and existing ACOs, which typically occurs between May and October during the performance year. In the case of the new addition of an ACO participant (TIN) to an ACO's participant list, CMS would prevent the TIN from joining the ACO as an ACO participant if the program integrity screening reveals that the TIN has engaged in information blocking, as determined by OIG. In the case of an existing ACO participant, CMS would notify the ACO that an ACO participant or an ACO provider/supplier had committed information blocking, as determined by OIG, so the ACO can remove the ACO participant or ACO provider/supplier from its ACO participant list or ACO provider/supplier list, as applicable. If the TIN were to remain on the ACO participant list or ACO provider/supplier list when the ACO certifies its ACO participant list for the next performance year, then CMS would issue a compliance action to the ACO. Continued noncompliance (for example, failure to remove the TIN) would result in termination of the ACO's participant agreement with CMS, as the ACO would have failed to enforce the terms of its ACO participant agreement.

Applying the disincentive prospectively is the most appropriate timing for the disincentive. It would be impractical and inequitable for CMS to apply the disincentive retrospectively or in the same year in which CMS received a referral from OIG. Applying the disincentive to a historical performance year or a performance year contemporaneous to the OIG's determination would unfairly affect other ACO participants that did not commit the information blocking and likely were not aware of the information blocking. CMS recognizes, however, that the prospective application of the disincentive means that it may be applied to a health care provider substantially after the information blocking occurred, during the provider's first attempt to participate in the Shared Savings Program, and after the provider was previously subject to a disincentive in another program, such as MIPS. As discussed in more detail below, CMS is contemplating an approach under which a health care provider could participate in the Shared Savings Program if a significant amount of time (for example, 3 to 5 years) had passed between the occurrence of the information blocking and OIG's determination, and the provider had given assurances in the form and manner specified by CMS that the issue had been corrected and appropriate safeguards had been put in place to prevent its reoccurrence.

After the completion of the last performance year in which the disincentive was applied, an ACO may submit a change request to add the TIN or include the NPI on its ACO participant list or ACO provider/supplier list, as applicable, for a subsequent performance year, and CMS would approve the addition, assuming that all other Shared Savings Program requirements for adding a TIN or NPI are met, so long as (1) OIG has not made any additional determinations of information blocking, and (2) the ACO provides assurances (in the form and manner required by CMS) that the information blocking is no longer ongoing and that the ACO has put safeguards in place to prevent the information blocking that was the subject of the referral. If, however, OIG made and referred an additional information blocking determination (that is either related or unrelated to the previous OIG referral) in a subsequent year or the ACO cannot provide assurance that the information blocking has ceased, then CMS would continue to deny participation.

In addition, CMS would notify ACOs about an ACO participant or ACO provider/supplier that had committed information blocking, as determined by OIG, so that the ACO could take remedial action—removing the ACO participant from the ACO participant list or the ACO provider/supplier from the ACO provider/supplier list—as required by the ACO participant agreement. ACOs are well-positioned to take remedial action against ACO participants and ACO providers/suppliers that have been found by OIG to have committed information blocking as a result of their ACO participant agreements, which provide for the ACO to take remedial action against the ACO participant, and require the ACO participant to take remedial action against its ACO providers/suppliers, including imposition of a corrective action plan, denial of incentive payments, and termination of the ACO participant agreement, to address noncompliance with the requirements of the Shared Savings Program and other program integrity issues.

By way of example, consider if in January 2025 OIG determined that an ACO participant has committed information blocking as recently as 2024 and referred this determination to CMS. Under CMS' proposal, the ACO participant would be able to remain on the ACO's certified participant list for the duration of the 2025 performance year. However, CMS would notify the ACO that an ACO participant had been determined to have committed information blocking by OIG and that CMS expected the ACO to take remedial action by removing the ACO participant from its ACO participant list for a specified period of time. To determine if removal was warranted for a period in addition to performance year 2026, CMS would consider whether there was any evidence to suggest that that information blocking was still occurring (for example, whether OIG had made a subsequent determination of information blocking) and whether safeguards had been put in place to prevent the information blocking that was the subject of the referral. Upon a review of these criteria, CMS may require the affected ACO to remove the ACO participant prior to recertification of the ACO participant list for additional performance years. If the ACO participant were to remain when the ACO certifies its ACO participant list for performance year 2026, CMS

would inform the ACO that it was obligated to take remedial action against the ACO participant by removing it from the ACO participant list for performance year 2026; if it failed to do so, CMS would remove the ACO participant from the ACO's participant list and take compliance action against the ACO up to terminating the ACO pursuant to 42 CFR 425.218(b)(1) and (3). In the case of a disincentive that was applied only for performance year 2026, if the ACO were to submit a change request to add the ACO participant for performance year 2027 or a subsequent year, then CMS would review whether OIG had made any subsequent determinations of information blocking with respect to the ACO participant as well as any evidence that indicated whether the issue had been corrected and appropriate safeguards had been put in place to prevent its reoccurrence, prior to approving the ACO participant to participate in the ACO for performance year 2027 or the subsequent year.

If an ACO applicant or a renewal ACO applicant that is itself a health care provider (for example, a large multi-specialty practice that forms a single participant ACO using its existing legal entity and governing body under 42 CFR 425.104) is the subject of an OIG information blocking determination, CMS would deny the ACO's application for participation in the Shared Savings Program for the upcoming performance year for which it was applying to participate. Should OIG make a determination of information blocking with respect to an ACO that is already participating in the Shared Savings Program and refer the determination to us for the application of a disincentive, CMS may terminate the ACO's participation agreement for the upcoming performance year. CMS would assess a subsequent application from an ACO to which the disincentive had been applied under the same criteria described for assessing the return of an ACO participant or ACO provider/supplier. The ACO may participate in the Shared Savings Program after the duration of the disincentive so long as OIG had not made a subsequent determination of information blocking applicable to the health care provider and whether there was evidence that the issue had been corrected and appropriate safeguards had been put in place to prevent its reoccurrence, prior to approving the ACO's application to participate in the Shared Savings Program in a subsequent performance year.

The Shared Savings Program is considering an alternative policy in which CMS would not apply a disincentive in certain circumstances despite an OIG information blocking determination. Under this alternative policy, the Shared Savings Program would consider OIG's referral of an information blocking determination in light of the relevant facts and circumstances before denying the addition of an ACO participant to an ACO participant list (or an ACO provider/supplier to the ACO provider/supplier list), informing an ACO that remedial action should be taken against the ACO participant (or ACO provider/supplier), or denying an ACO's application to participate in the Shared Savings Program. The relevant facts and circumstances could include the nature of the health care provider's information blocking, the health care provider's diligence in identifying and correcting the problem, the time since the information blocking occurred, the time since the OIG's determination of information blocking, and other factors. This alternative policy would offer some flexibility in certain circumstances, where prohibiting an ACO, ACO participant, or ACO provider/supplier from participating in the Shared Savings Program would distort participation incentives and therefore be less appropriate. We are particularly concerned about situations in which many years have passed since an ACO participant or ACO provider/supplier was found to be an information blocker and such an issue had long been remediated. In such a case, the ACO participant or ACO provider/supplier might be incentivized to apply to the Shared Savings Program for a year in which it did not actually intend to participate merely to avoid being barred from doing so at a future date when it did intend to participate, wasting the resources of the ACO and CMS. Such an alternative policy could allow a health care provider to participate in the Shared Savings Program if a significant amount of time had passed between the occurrence of the information blocking and the OIG's determination, and the provider had given assurances in the form and manner specified by CMS that the issue had been corrected and appropriate safeguards had been put in place to prevent its reoccurrence.

An ACO may be able to appeal the application of an information blocking disincentive in the Shared Savings Program. An ACO may appeal an initial determination that is not prohibited from administrative or judicial review under 42 CFR 425.800 by requesting a reconsideration review by a CMS reconsideration official (42 CFR 425.802(a)). To the extent it is not barred by 42 CFR 425.800, an ACO may appeal the removal or denial of a health care provider from an ACO participant list as a result of the referral by OIG of an ACO participant that OIG had determined to be an information blocker. Subject to the same limitation, an ACO applicant or ACO may appeal the denial of the ACO applicant's application or termination of the ACO's participation agreement as a result of the referral by OIG of the ACO applicant or ACO that the OIG had determined to be an information blocker. The underlying information blocking determination made by OIG, however would not be subject to the Shared Savings Program's reconsideration process. The OIG determination is not an initial determination made by CMS, but a determination made by another agency. The Shared Savings Program reconsideration process may not negate, diminish, or otherwise alter the applicability of determinations made by other government agencies (see 42 CFR 425.808(b)).

We remind all health care providers and ACOs that it is possible that a health care provider or any entity, such as an ACO, may meet the definition of a health information network or health information exchange, which is a functional definition, or the definition of a health IT developer of certified health IT, codified in 45 CFR 171.102. If it is found by OIG that such health care provider or entity meets either definition and, while under the same set of facts and circumstances, is also found by OIG to have committed information blocking, then the health care provider or entity would be subject to a different intent standard and civil money penalties administered by OIG (see generally 88 FR 42820; see 88 FR 42828 through 42829).

We invite public comment on these proposals and on whether additional actions should be taken.

IV. Request for Information

As discussed in section III.C.1. of this proposed rule, we recognize that the disincentives we propose would only apply to a subset of health care providers as defined in 45 CFR 171.102. However, we believe it is important for HHS to establish appropriate disincentives that would apply to all health care providers, as such providers are defined in 45 CFR 171.102. This would ensure that any health care provider, as defined in 45 CFR 171.102, that has engaged in information blocking would be subject to appropriate disincentives by an appropriate agency, consistent with the

disincentives provision at PHSA section 3022(b)(2)(B).

We request information from the public on additional appropriate disincentives that we should consider in future rulemaking, particularly disincentives that would apply to health care providers, as defined in 45 CFR 171.102, that are not implicated by the disincentives proposed in this rule. We encourage commenters to identify specific health care providers (for example, laboratories, pharmacies, post-acute care providers, etc.) and associated potential disincentives using authorities under applicable Federal law. We also request information about the health care providers that HHS should prioritize when establishing additional disincentives.

V. Collection of Information Requirements

This document does not impose any new information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Impact Statement

We have examined the impacts of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 14094 entitled ''Modernizing Regulatory Review'' (April 6, 2023), the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, September 19, 1980), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), and Executive Order 13132 on Federalism (August 4, 1999).

A. Executive Order 12866

Executive Order 12866, as amended by Executive Order 14094 published on April 6, 2023, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). A regulatory impact analysis must be prepared for major rules with significant effects (for example, $200 million or more in any given year). This is not a major rule as defined at 5 U.S.C. 804(2); it is not significant under section 3(f)(1) because it does not reach that economic threshold, nor does it meet the other criteria outlined in the Executive order.

This proposed rule would implement provisions of the Cures Act through changes to 45 CFR part 171 and 42 CFR parts 414, 425, and 495. We believe that the likely aggregate economic effect of these regulations would be significantly less than $200 million.

The expected benefits of this proposed rule would be to deter information blocking that interferes with effective health information exchange and negatively impacts many important aspects of healthcare. We refer readers to the impact analysis of the benefits of prohibiting and deterring information blocking in the ONC Cures Act Final Rule, which encompasses all anticipated benefits without differentiation among actors (85 FR 25936).

We anticipate that OIG would incur some costs associated with investigation as authorized by the Cures Act. The Consolidated Appropriations Act, 2022 appropriates to OIG funding necessary for carrying out information blocking activities (Pub. L. 117–103, March 15, 2022). Additionally, investigated parties may incur some costs in response to an OIG investigation or in response to the application of a disincentive by an agency with the authority to impose a disincentive. Absent information about the frequency of prohibited practices, including the number of OIG determinations of information blocking in a given year that could be referred to an appropriate agency, we are unable to determine the potential costs of this regulation.

The monetary value of the disincentives proposed in this rule, if imposed on a health care provider by an appropriate agency, would be considered transfers. We are unable to reliably estimate the aggregate value of potential disincentive amounts because the value of the disincentive may vary based on other provisions specific to the authority under which the disincentive has been established, as discussed in section III.C.1. of this proposed rule. For instance, the value of a disincentive imposed on an eligible hospital under the disincentive proposed in section III.C.2. of this proposed rule would depend on the amount of IPPS payment received by the eligible hospital.

We invite public comment on potential impacts of the rulemaking.

B. Regulatory Flexibility Act

The RFA and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and Government agencies.

The Department considers a rule to have a significant impact on a substantial number of small entities if it has an impact of more than 3 percent of revenue for more than 5 percent of affected small entities. This proposed rule would not have a significant impact on the operations of a substantial number of small entities, as these changes would not impose any new requirement on any party. We have concluded that this proposed rule likely would not have a significant impact on a substantial number of small entities and that a regulatory flexibility analysis is not required for this rulemaking. Additionally, the Secretary proposes to certify that this proposed rule would not have a significant impact on a substantial number of small entities.

In addition, section 1102(b) the SSA (42 U.S.C. 1302) requires us to prepare a regulatory impact analysis if a rule under Titles XVIII or XIX or section B of Title XI of the SSA may have a significant impact the operations of a substantial number of small rural hospitals. We have concluded that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals because these changes would not impose any requirement on any party. Therefore, a regulatory impact analysis under section 1102(b) of the SSA is not required for this rulemaking. Therefore, the Secretary has certified that this proposed rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any 1 year by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million, adjusted annually for inflation. There are no significant costs associated with these proposals that would impose mandates on State, local, or Tribal governments or the private sector resulting in an expenditure of $177 million in 2023 (after adjustment for inflation) or more in any given year. A full analysis under the Unfunded Mandates Reform Act is not necessary.

D. Executive Order 13132

Executive Order 13132, Federalism, establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements or costs on State and local governments, preempts State law, or otherwise has federalism implications. In reviewing this rule under the threshold criteria of Executive Order 13132, we have determined that this proposed rule would not significantly affect the rights, roles, and responsibilities of State or local governments. Nothing in this proposed rule imposes substantial direct requirements or costs on State and local governments, preempts State law, or otherwise has federalism implications. We are not aware of any State laws or regulations that are contradicted or impeded by any of the provisions in this proposed rule.

List of Subjects

42 CFR Part 414

Administrative practice and procedure, Biologics, Diseases, Drugs, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 425

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 495

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Health records, Medicaid, Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

45 CFR Part 171

Computer technology, Electronic health record, Electronic information system, Electronic transactions, Health, Healthcare, Health care provider, Health information exchange, Health information technology, Health information network, Health insurance, Health records, Hospitals, Privacy, Reporting and recordkeeping requirements, Public health, Security.

For the reasons set forth in the preamble, HHS proposes to amend 42 CFR chapter IV and 45 CFR part 171 as follows:

42 CFR Chapter IV

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

■ 1. The authority citation for part 414 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395hh, and 1395rr(b)(l).

■ 2. Amend § 414.1305 by revising the definition of ''Meaningful EHR user for MIPS'' to read as follows:

§ 414.1305 Definitions.

* * * * *

Meaningful EHR user for MIPS means a MIPS eligible clinician that possesses CEHRT, uses the functionality of CEHRT, reports on applicable objectives and measures specified for the Promoting Interoperability performance category for a performance period in the form and manner specified by CMS, does not knowingly and willfully take action (such as to disable functionality) to limit or restrict the compatibility or interoperability of CEHRT, and engages in activities related to supporting providers with the performance of CEHRT. In addition, a MIPS eligible clinician (other than a qualified audiologist) is not a meaningful EHR user for a performance period if the HHS Inspector General refers a determination that the MIPS eligible clinician committed information blocking as defined at 45 CFR 171.103 during the calendar year of the performance period.

* * * * *

■ 3. Amend § 414.1375 by revising paragraph (b) introductory text to read as follows:

§ 414.1375 Promoting Interoperability (PI) performance category.

* * * * *

(b) *Reporting for the Promoting Interoperability performance category.* To earn a performance category score for the Promoting Interoperability performance category for inclusion in the final score, a MIPS eligible clinician must be a meaningful EHR user for MIPS and:

* * * * *

PART 425—MEDICARE SHARED SAVINGS PROGRAM

■ 4. The authority citation for part 425 continues to read as follows:

Authority: 42 U.S.C. 1302, 1306, 1395hh, and 1395jjj.

■ 5. Amend § 425.208 by adding paragraph (b)(6) to read as follows:

§ 425.208 Provisions of participation agreement.

* * * * *

(b) * * *

(6) The information blocking provision of the 21st Century Cures Act (42 U.S.C. 300jj–52).

* * * * *

■ 6. Amend § 425.218 by revising paragraph (b)(3) to read as follows:

§ 425.218 Termination of the participation agreement by CMS.

* * * * *

(b) * * *

(3) Violations of any applicable laws, rules, or regulations that are relevant to ACO operations, including, but not limited to, the laws specified at § 425.208(b).

* * * * *

■ 7. Amend § 425.305 by revising paragraph (a)(1) to read as follows:

§ 425.305 Other program safeguards.

(a) * * *

(1) ACOs, ACO participants, and ACO providers/suppliers are reviewed during the Shared Savings Program application process and periodically thereafter with regard to their program integrity history, including any history of Medicare program exclusions or other sanctions and affiliations with individuals or entities that have a history of program integrity issues. Program integrity history issues include, but are not limited to, a history of Medicare program exclusions or other sanctions, noncompliance with the requirements of the Shared Savings Program, or violations of laws specified at § 425.208(b).

* * * * *

PART 495—STANDARDS FOR THE ELECTRONIC HEALTH RECORD TECHNOLOGY INCENTIVE PROGRAM

■ 8. The authority citation for part 495 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 9. Amend § 495.4 in the definition of ''Meaningful EHR user'' by revising paragraph (1) introductory text and adding paragraph (4) to read as follows:

§ 495.4 Definitions.

* * * * *

Meaningful EHR user * * *

(1) Subject to paragraphs (3) and (4) of this definition, an eligible professional, eligible hospital or CAH that, for an EHR reporting period for a payment year or payment adjustment year—

* * * * *

(4) An eligible professional, eligible hospital or CAH is not a meaningful

EHR user in a payment adjustment year if the HHS Inspector General refers a determination that the eligible hospital or CAH committed information blocking as defined at 45 CFR 171.103 during the calendar year of the EHR reporting period.

* * * * *

45 CFR Subtitle A

PART 171—INFORMATION BLOCKING

■ 10. The authority citation for part 171 continues to read as follows:

Authority: 42 U.S.C. 300jj–52; 5 U.S.C. 552.

■ 11. Amend § 171.102 by adding, in alphabetical order, the definition of ''Appropriate agency'' and ''Disincentive'' to read as follows:

§ 171.102 Definitions.

* * * * *

Appropriate agency means a government agency that has established disincentives for health care providers that the Office of Inspector General (OIG) determines have committed information blocking.

* * * * *

Disincentive means a condition specified in § 171.1001(a) that may be imposed by an appropriate agency on a health care provider that OIG determines has committed information blocking for the purpose of deterring information blocking practices.

* * * * *

Subparts D through I [Added and Reserved]

■ 12. Add reserved subparts D through I.

■ 13. Add subpart J to read as follows:

Subpart J—Disincentives for Information Blocking by Health Care Providers

Sec.

171.1000 Scope.
171.1001 Disincentives.
171.1002 Notice of disincentive.

§ 171.1000 Scope.

This subpart sets forth disincentives that an appropriate agency may impose on a health care provider based on a determination of information blocking referred to that agency by OIG, and certain procedures related to those disincentives.

§ 171.1001 Disincentives.

(a) Health care providers that commit information blocking are subject to the following disincentives from an appropriate agency based on a determination of information blocking referred by OIG:

(1) An eligible hospital or critical access hospital (CAH) as defined in 42 CFR 495.4 is not a meaningful electronic health record (EHR) user as also defined in 42 CFR 495.4.

(2) A Merit-based Incentive Payment System (MIPS) eligible clinician as defined in 42 CFR 414.1305, who is also a health care provider as defined in § 171.102, is not a meaningful EHR user for MIPS as defined in 42 CFR 414.1305.

(3) Accountable care organizations (ACOs) who are health care providers as defined in § 171.102, ACO participants, and ACO providers/suppliers will be removed from, or denied approval to participate, in the Medicare Shared Savings Program as defined in 42 CFR part 425 for at least 1 year.

(b) [Reserved]

§ 171.1002 Notice of disincentive.

Following referral of a determination of information blocking by OIG, an appropriate agency that imposes a disincentive or disincentives specified in § 171.1001(a) would send a notice to the health care provider subject to the disincentive or disincentives, via usual methods of communication for the program or payment system under which the disincentive is applied, that includes:

(a) A description of the practice or practices that formed the basis for the determination of information blocking referred by OIG;

(b) The basis for the application of the disincentive or disincentives being imposed;

(c) The effect of each disincentive; and

(d) Any other information necessary for a health care provider to understand how each disincentive will be implemented.

■ 14. Add subpart K to read as follows:

Subpart K—Transparency for Information Blocking Determinations, Disincentives, and Penalties

Sec.

171.1100 Scope.
171.1101 Posting of information for actors found to have committed information blocking.

§ 171.1100 Scope.

This subpart sets forth the information that will be posted on the Office of the National Coordinator for Health Information Technology's (ONC) public website about actors that have been determined by the HHS Office of Inspector General to have committed information blocking.

§ 171.1101 Posting of information for actors found to have committed information blocking.

(a) *Health care providers.* (1) ONC will post on its public website the following information about health care providers that have been subject to a disincentive in § 171.1001(a) for information blocking:

(i) Health care provider name;

(ii) Business address;

(iii) The practice, as the term is defined in § 171.102 and referenced in § 171.103, found to have been information blocking;

(iv) Disincentive(s) applied; and

(iv) Where to find any additional information about the determination of information blocking that is publicly available via HHS or, where applicable, another part of the U.S. Government.

(2) The information specified in paragraph (a)(1) of this section will not be posted prior to a disincentive being imposed and will not include information about a disincentive that has not been applied.

(3) Posting of the information specified in paragraph (a)(1) of this section will be conducted in accordance with existing rights to review information that may be associated with a disincentive specified in § 171.1001.

(b) *Health IT developers of certified health IT and health information networks or health information exchanges.* (1) ONC will post on its public website the following information, to the extent applicable, about health information networks/health information exchanges and health IT developers of certified health IT (actors) that have been determined by the HHS Office of Inspector General to have committed information blocking:

(i) Type of actor;

(ii) Actor's legal name, including any alternative or additional trade name(s) under which the actor operates;

(iii) The practice, as the term is defined in § 171.102 and referenced in § 171.103, found to have been information blocking or alleged to be information blocking in the situation specified in paragraph (b)(2)(i) of this section; and

(iv) Where to find any additional information about the determination (or resolution of information blocking as specified in paragraph (b)(2)(i) of this section) of information blocking that is publicly available via HHS or, where applicable, another part of the U.S. Government.

(2) The information specified in paragraph (b)(1) of this section will not be posted until one of the following occurs:

(i) OIG enters into a resolution of civil money penalty (CMP) liability; or

(ii) A CMP imposed under subpart N of 42 CFR part 1003 has become final consistent with the procedures in subpart O of 42 CFR part 1003.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–24068 Filed 10–30–23; 11:15 am]

BILLING CODE 4150–45–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 4, 7, 10, 11, 12, 37, 39, and 52

[FAR Case 2021–019; Docket No. FAR–2021–0019; Sequence No. 1]

RIN 9000–AO35

Federal Acquisition Regulation: Standardizing Cybersecurity Requirements for Unclassified Federal Information Systems; Extension of Comment Period

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: DoD, GSA, and NASA issued a proposed rule on October 3, 2023, proposing to amend the Federal Acquisition Regulation (FAR) to partially implement an Executive Order to standardize cybersecurity contractual requirements across Federal agencies for unclassified Federal information systems, and a statute on improving the Nation's cybersecurity. The deadline for submitting comments is being extended from December 4, 2023, to February 2, 2024, to provide additional time for interested parties to provide comments on the proposed rule.

DATES: For the proposed rule published on October 3, 2023 (88 FR 68402), the deadline to submit comments is extended. Submit comments by February 2, 2024.

ADDRESSES: Submit comments in response to FAR Case 2021–019 to the Federal eRulemaking portal at *https://www.regulations.gov* by searching for ''FAR Case 2021–019''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2021–019''. Follow the instructions provided on the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2021–019'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''FAR Case 2021–019'' in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at *https://www.regulations.gov/faq*). To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, Ms. Carrie Moore, Procurement Analyst, at 571–300–5917 or by email at *carrie.moore@gsa.gov.* For information pertaining to status, publication schedules, or alternate instructions for submitting comments if *https://www.regulations.gov* cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAR Case 2021–019.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 88 FR 68402 on October 3, 2023. The comment period is extended to February 2, 2024, to allow additional time for interested parties to develop comments on the rule.

List of Subjects in 48 CFR Parts 1, 2, 4, 7, 10, 11, 12, 37, 39, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2023–24026 Filed 10–31–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 4, 7, 10, 11, 12, 39, and 52

[FAR Case 2021–017; Docket No. FAR–2021–0017; Sequence No. 1]

RIN 9000–AO34

Federal Acquisition Regulation: Cyber Threat and Incident Reporting and Information Sharing; Extension of Comment Period

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: DoD, GSA, and NASA issued a proposed rule on October 3, 2023, proposing to amend the Federal Acquisition Regulation (FAR) to implement an Executive order on cyber threats and incident reporting and information sharing for Federal contractors and to implement related cybersecurity policies. The deadline for submitting comments is being extended from December 4, 2023, to February 2, 2024, to provide additional time for interested parties to provide comments on the proposed rule.

DATES: For the proposed rule published on October 3, 2023 (88 FR 68055), the comment period is extended. Submit comments by February 2, 2024.

ADDRESSES: Submit comments in response to FAR Case 2021–017 to the Federal eRulemaking portal at *https://www.regulations.gov* by searching for ''FAR Case 2021–017''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2021–017''. Follow the instructions provided on the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2021–017'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''FAR Case 2021–017'' in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. Public comments

may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at *https://www.regulations.gov/faq*). To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, Ms. Marissa Ryba, Procurement Analyst, at 314–586–1280 or by email at *Marissa.Ryba@gsa.gov.* For information pertaining to status, publication schedules, or alternate instructions for submitting comments if *https://www.regulations.gov* cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAR Case 2021–017.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 88 FR 68055 on October 3, 2023. The comment period is extended to February 2, 2024, to allow additional time for interested parties to develop comments on the rule.

List of Subjects in 48 CFR Parts 1, 2, 4, 7, 10, 11, 12, 39, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2023–24025 Filed 10–31–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 230802–0182]

RIN 0648–BL87

Endangered and Threatened Wildlife and Plants; Proposed Protective Regulations for the Threatened Banggai Cardinalfish (Pterapogon Kauderni); Informational Meeting and Public Hearing

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

ACTION: Notice; informational meeting and public hearing.

SUMMARY: We, NMFS, will hold an informational meeting and formal public hearing related to our proposed rule published on August 15, 2023, to promulgate protective regulations for the Banggai cardinalfish (*Pterapogon kauderni*). The public comment period was extended to December 15, 2023.

DATES: An informational meeting and virtual public hearing will be held online on November 17, 2023, from 7 to 8:30 p.m. (Eastern Standard Time).

ADDRESSES: The informational meeting and 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/action/proposed-protective-regulations-banggai-cardinalfish.*

You may submit comments verbally at the public hearing. You may also submit comments in writing by the following method:

• *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *https://www.regulations.gov* and enter NOAA–NMFS–2023–0099 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

We 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 PDF file formats only.

Details on the virtual public hearing will be made available on our website at: *https://www.fisheries.noaa.gov/action/proposed-protective-regulations-banggai-cardinalfish.* The draft environmental assessment and draft initial regulatory flexibility analysis that were prepared to support the development of the proposed rule are available on our website at: *https://www.fisheries.noaa.gov/action/proposed-protective-regulations-banggai-cardinalfish.* 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/banggai-cardinalfish/conservation-management.*

FOR FURTHER INFORMATION CONTACT: Celeste Stout, NMFS, Office of Protected Resources, *celeste.stout@noaa.gov,* (301) 427–8436; Erin Markin, NMFS, Office of Protected Resources, *erin.markin@noaa.gov,* (301) 427–8416.

SUPPLEMENTARY INFORMATION: On August 15, 2023, NMFS published a proposed rule to promulgate protective regulations for the Banggai cardinalfish under the Endangered Species Act (ESA; 88 FR 55431). In that notice of proposed rulemaking, we also announced a 60-day public comment period, and an option to request a public hearing. On September 27, 2023, we received a letter requesting a public hearing be held as well as a 90-day extension to the public comment period. In response, the public comment period was extended by another 60 days, and we are accepting public comments on the proposed rule through December 15, 2023 (88 FR 71523). In addition, a virtual public hearing and will be held online on November 17, 2023, from 7 to 8:30 p.m. (Eastern Standard Time) as specified in **DATES** above. Public comments can be submitted as described under **ADDRESSES**.

Public Hearing

The informational meeting and public hearing on November 17, 2023, will be conducted online as a virtual meeting, as specified in the **ADDRESSES** above. More detailed instructions for joining the virtual meeting are provided on our web page (see *https://www.fisheries.noaa.gov/action/proposed-protective-regulations-banggai-cardinalfish*). The hearing will begin with a brief presentation by NMFS that will give an overview of the proposed rule 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 for 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 the 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 Celeste Stout (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: October 26, 2023.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–24027 Filed 10–31–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 88, No. 210

Wednesday, November 1, 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

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: 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; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on 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 regarding this information collection received by December 1, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Resources Conservation Service

Title: Conservation Outreach, Education, and Technical Assistance.

OMB Control Number: 0578–NEW.

Summary of Collection: NRCS OPD is administrating the Equity in Conservation Outreach cooperative agreements. As the primary goal of NRCS, in collaboration with partners, is to expand conservation assistance to historically underserved producers and underserved communities and to provide opportunities for students to pursue careers in agriculture, natural resources, and related sciences. After the cooperative agreements are awarded, the cooperators will be required to provide performance reports to provide information as specified in the general terms and conditions in the executed cooperative agreement. Recipients will report semi-annually. In order to evaluate the impact and effectiveness of the agreement via standardized metrics, NRCS OPD is offering a performance reporting template as a supplement to the required performance report.

Need and Use of the Information: The approved cooperators will report the equity information using the report template to NRCS OPD on the underserved producers and communities who receive conservation assistance and students who are interested to pursue agriculture, natural resources and related sciences careers. Failure in not providing the report will result in not getting the effectiveness of the outreach, education and technical assistance.

Description of Respondents: Individuals or households.

Number of Respondents: 150.

Frequency of Responses: Reporting: Other (once)

Total Burden Hours: 1,200.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–24050 Filed 10–31–23; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; 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; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on 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 regarding this information collection received by December 1, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Foreign Agricultural Service

Title: Grant and Agreement Applications and Reporting for the National Agricultural Research, Extension, and Teaching Policy Act.

OMB Control Number: 0551–New.

Summary of Collection: Section 503 of the Agricultural Trade Expansion Act of 1978 (7 U.S.C. 5693), as delegated via 7

CFR 2.601, empowers the Foreign Agricultural Service (FAS) to assist the Secretary of Agriculture by, inter alia, providing agricultural technical assistance and training and by carrying out other legislated programs, including international agricultural research, extension, and teaching as authorized by the National Agricultural Research, Extension, and Teaching Policy Act of 1977, 7 U.S.C. 3101 *et seq.*

Information collection is required by 2 CFR parts 200 and 400. For assistance agreements awarded on or after December 26, 2014, 2 CFR part 400 implements OMB regulations in 2 CFR part 200. These regulations include only those provisions mandated by statue or added by USDA to ensure sound and effective financial assistance management. These regulations set forth pre-award, post-award, and after-the-grant requirements. This information is needed by FAS project officers, grant specialists, program coordinators, managers, and finance officials to manage/oversee recipient programmatic and financial performance under FAS assistance agreements.

Need and Use of the Information: Pre-award information is used by FAS personnel to qualify and select assistance agreement applicants for funding. Post-award reporting is used by FAS personnel to make amendments to established assistance agreement awards, to make payments pursuant to such awards, and to verify that the recipient is using Federal funds appropriately to comply with applicable Federal and agency requirements. The information is necessary to ensure minimum fiscal control and accountability for award funds and to deter waste, fraud, and abuse.

Description of Respondents: State agricultural experiment stations, State cooperative extension services, all colleges and universities, other research or education institutions and organizations, Federal and private agencies and organizations, individuals, and any other contractor or recipient, either foreign or domestic.

Number of Respondents: 100.

Frequency of Responses: Reporting: Other: Varies.

Total Burden Hours: 29,046.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–24090 Filed 10–31–23; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2023–0049]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Importation of Live Swine, Pork and Pork Products, and Swine Semen From the European Union; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of request for comments; correction.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) is correcting a notice that was published in the **Federal Register** on June 29, 2023. The notice announced APHIS' intention to request a revision to and extension of approval of an information collection associated with the importation of live swine, pork and pork products, and swine semen into the United States from the European Union and requested comments pursuant to the Paperwork Reduction Act of 1995. This document corrects the estimates provided for the associated activities and reopens the comment period.

DATES: We will consider all comments that we receive on or before January 2, 2024.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2023–0049 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2023–0049, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the importation of animals and animal products into the United States from the European Union, contact Dr. Alexandra MacKenzie, Senior Veterinary Medical Officer, Live Animal Imports/Ruminants, Swine, Semen, and Embryos, Strategy and Policy, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737; (301) 851–3411; email: *alexandra.mackenzie@usda.gov.* For more information on the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION: On June 29, 2023, the Animal and Plant Health Inspection Service published in the **Federal Register** a notice (FR Doc. 2023–13801, 88 FR 42042, APHIS–2023–0049) [1] regarding an information collection associated with the importation of live swine, pork and pork products, and swine semen from the European Union. Since publication, we have found that the estimates provided need to be corrected. This document corrects the estimates and also reopens the comment period for an additional 60 days to allow interested persons to prepare and submit comments.

Correction

In the **Federal Register** of June 29, 2023, FR Doc. 2023–13803 (88 FR 42042–42043) under the **SUPPLEMENTARY INFORMATION** section, the following corrections are made:

1. On page 42042, in the third column, correct *Estimate of burden: to read:*

Estimate of burden: The public burden for this collection of information is estimated to average 0.99 hours per response.

2. On page 42043, in the first column, make the following corrections:

Estimated annual number of respondents: 216.

Estimated annual number of responses per respondent: 33.

Estimated annual number of responses: 7,179.

Estimated total annual burden on respondents: 7,168 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Done in Washington, DC, this 23rd day of October 2023.

Donna Lalli,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–24064 Filed 10–31–23; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, go to *www.regulations.gov.* Enter APHIS–2023–0049 in the Search field.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–23–CF–0023]

Community Facilities Program: Virtual Public Listening Session

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Community Facilities Loan and Grant program (Community Facilities) of the Rural Housing Service (RHS or the Agency), a Rural Development agency of the United States Department of Agriculture (USDA), is consolidating the existing regulations that govern Community Facility direct loans and grants, fire and rescue and other small community facilities projects; as well as codifying the Tribal College Initiative, and Economic Impact Initiative grant programs that will incorporate all the necessary loan and grant making information into one streamlined final rule. The result will be an up-to-date comprehensive regulation that will be used to administer the programs. Community Facilities is hosting a virtual listening session to obtain stakeholder input on key proposed areas for changes and/or updates to the proposed consolidated Community Facilities Direct Loan and Grant regulation. This session is open to the public.

DATES: The virtual listening session will be held on November 7, 2023, beginning at 2 p.m. (ET).

ADDRESSES: The listening session will convene virtually on the Zoom platform. All participants must pre-register. To register please use the following link:

• General Session—November 7, 2023, 2 p.m. (ET) *https://www.zoomgov.com/webinar/register/WN_uRtst_n4QVuQiSLIGVzglg.*

A confirmation email, including the Zoom link and teleconference information for the meeting, will be sent upon receipt of the registration.

The Agency will accept comments regarding the subject matter in the **SUPPLEMENTARY INFORMATION** section of this notice. Comments will be accepted through Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the ''Search'' box, type in the Docket No. RHS–23–CF–0023. A link to the Notice will appear. You may submit a comment here by selecting the ''Comment'' button or you can access the ''Docket'' tab, select the ''Notice,'' and go to the ''Browse & Comment on Documents'' Tab. Here you may view comments that have been submitted as well as submit a comment. To submit a comment, select the ''comment'' button, complete the required information, and select the ''Submit Comment'' button at the bottom. 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 at the bottom. Comments on this information collection must be received by December 8, 2023.

FOR FURTHER INFORMATION CONTACT: Surabhi Dabir, Senior Policy Advisor, Community Facilities Program, Rural Housing Service, USDA, 1400 Independence Avenue SW, Washington, DC 20250–0781, Telephone: (202) 568–9315; email: *communityfacilities@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Community Facilities offers direct loans and grants to develop or improve essential facilities and services in communities across rural America. These amenities meet essential needs and help increase the competitiveness of rural communities in attracting and retaining businesses that provide employment and services for their residents.

Public bodies, non-profit organizations and federally recognized Tribes can use the funds to construct, expand or improve facilities that provide health care, education, public safety, and public services. Projects can include fire and rescue stations, village and town halls, health care clinics, hospitals, adult- and child-care centers, assisted living facilities, rehabilitation centers, public buildings, schools, libraries, and many other essential community facilities. Financing may also cover the costs for land acquisition, professional fees, and purchase of equipment when associated with an essential community facility. These facilities not only improve the basic quality of life but assist in the development and sustainability of rural America.

Potential Topics for Comments

The following questions and discussion items are provided as examples of topics stakeholders may wish to provide comment. The Community Facilities Program is requesting comment and discussion on the following topics:

Barriers To Be Addressed

1. What challenges or barriers have you encountered that make it difficult to access CF loan and grant resources?

2. What suggestions do you have for Community Facilities to address these challenges through regulatory changes?

Application Process

3. Community Facilities is contemplating allowing projects below a certain threshold to submit a simplified application with less required documentation. What key requirements would you simplify?

Expanded Eligibility

4. Community Facilities has historically limited investments in recreation type projects. Community Facilities is considering expanding eligibility to certain recreation facilities like hiking/biking trails and public pools. Do you have suggestions for what recreation facilities should and should not be funded?

5. The Agriculture Improvement Act of 2018 (2018 Farm Bill) gave Community Facilities the authority to refinance certain hospital debt to preserve a rural community's access to health services. What suggestions do you have for how Community Facilities should implement the hospital refinancing provision?

6. Community Facilities is contemplating expanding eligibility for funding housing projects to meet the essential workforce needs of the education, health care, and public safety sectors. What types of housing projects should Community Facilities fund? What types of facilities should be allowed to use Agency funding to finance housing projects for a facility's workforce needs? What factors or limitations should Community Facilities consider?

Miscellaneous

7. Any other key topics or issues Community Facilities should consider addressing through the regulation update?

Community Facilities is consolidating its existing regulations at 7 CFR part 3570, subpart B (for grants), and 7 CFR part 1942, subparts A (for CF direct loans) and C (for Fire and Rescue and Other Small Community Facilities Projects), and incorporating all the necessary loan and grant making requirements into one streamlined rule; 7 CFR part 3570, subpart A. This consolidation will update its regulations and codify policies to current practices. It will also codify the Tribal College Initiative and Economic Impact Initiative grant programs. Community Facilities is seeking stakeholder input on key proposed areas for changes and updates to the consolidated Community Facilities Direct Loan and Grant

regulation. In addition to participating in the listening sessions, stakeholders may provide written comments to the agency until December 8, 2023.

After the listening session, the Agency will consider stakeholder input for identifying opportunities for regulatory updates to policies and practices of Community Facilities' direct loan and grant programs.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2023–24119 Filed 10–31–23; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–983]

Drawn Stainless Steel Sinks From the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on drawn stainless steel sinks (sinks) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Review" section of this notice.

DATES: Applicable November 1, 2023.

FOR FURTHER INFORMATION CONTACT: Adam Simons, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6172.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2023, Commerce published the *Initiation Notice* of the second sunset review of the AD order on sinks from China,[1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2]

On July 17, 2023, Elkay Manufacturing Company (Elkay), a domestic interested party, notified Commerce of its intent to participate within the 15-day period specified in 19 CFR 351.218(d)(1)(i).[3] Elkay claimed interested party status under section 771(9)(C) of the Act as a producer of the domestic like product in the United States.

On August 2, 2023, Commerce received a complete substantive response to the *Initiation Notice* with respect to the *Order* from Elkay within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[4] Commerce did not receive a substantive response from any other interested parties with respect to the *Order* covered by this sunset review, nor was a hearing requested. On August 22, 2023, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties in this sunset review.[5] Pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of this *Order.*

Scope of the Order

The products covered by the *Order* are sinks from China. Imports of subject merchandise are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7324.10.0000 and 7324.10.0010. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[6]

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review is provided in the accompanying Issues and Decision Memorandum. A list of the issues discussed in the Issues and Decision Memorandum is included in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would likely lead to a continuation or recurrence of dumping and that the magnitude of the dumping margin likely to prevail would be up to 76.45 percent.

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 protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing the results in accordance with sections 751(c), 752(c), and 771(i)(1) of the Act and 19 CFR 351.218.

Dated: October 26, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. History of the *Order*
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Margin of Dumping Likely to Prevail
VII. Final Results of Sunset Review
VIII. Recommendation

[FR Doc. 2023–24083 Filed 10–31–23; 8:45 am]

BILLING CODE 3510–DS–P

---

[1] *See Drawn Stainless Steel Sinks from the People's Republic Of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 78 FR 21592 (April 11, 2013) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 42688 (July 3, 2023) (*Initiation Notice*).

[3] *See* Elkay's Letter, "Elkay Manufacturing Company's Notice of Intent To Participate," dated July 17, 2023.

[4] *See* Elkay's Letter, "Elkay Manufacturing Company's Substantive Response to Notice of Initiation of Review of the Antidumping Duty Order," dated August 2, 2023.

[5] *See* Commerce's Letter, "Sunset Reviews for July 2023," dated August 22, 2023.

[6] *See* Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order on Drawn Stainless Steel Sinks from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

International Trade Administration

Stanford University, et al.; Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before November 21, 2023. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Please also email a copy of those comments to *Dianne.Hanshaw@trade.gov.*

Docket Number: 23–014. *Applicant:* Stanford University, Department of Neurosurgery, Ivan Soltesz Laboratory, 1201 Welch Road, Stanford, CA 94305. *Instrument:* 50 mW Fiber-coupled DPSS 473nm blue lasers (x5). *Manufacturer:* Shanghai Laser & Optics Century Co., Ltd., China. *Intended Use:* These lasers will be used to control the activity of neuronal populations in the brain of mice in order to study how altering the activity of specific neurons can lead to changes in mouse behavior and/or the emergence of pathological activity in the brain. Specifically, mice will be genetically induced to express particular optogenetic receptors in neuronal populations in the brain. These lasers will be used to deliver light into the brain via implanted fiberoptic cannula. The receptors, when activated by light, cause an increase in the activity of the neurons in which they are expressed. Lasers will be controlled through an external controller in order to only turn on in response to specific behaviors detected in the mouse. The goal of these studies is to identify specific populations of neurons responsible for the emergence of various behaviors and brain states. These insights will enable the identification of neuronal targets for future therapeutic intervention to treat various neurological disorders. *Justification for Duty-Free Entry:* According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs, April 10, 2023.

Docket Number: 23–015. *Applicant:* University of Connecticut, 3107 Horsebarn Hill Road, Unit 4210, Storrs, CT 06269. *Instrument:* Swim Tunnel Respirometry Systems and Vertical Resting Respirometry Systems. *Manufacturer:* Loligo Systems, Denmark. *Intended Use:* Respirometry refers to the study of an organism's metabolic rates. For this research, water bath respirometry systems will be used to measure how the metabolic rates of small-bodied fish and bivalves (oysters, mussels, clams, etc.,) are influenced by the different environmental conditions including temperature change and the presence of chemical stressors such as contaminants. This scientific equipment order involves two complete swim tunnel respirometry systems (1,500 mL chamber size for small-bodied fish species) and four vertical respirometry chambers (bivalve species) which allow for the measure of an organism's metabolic rate by measuring oxygen consumption over time. This research falls under the broader scientific area of study known as organismal bioenergetics. The order is broken down into component parts (for example, chambers, pumps, tubing, temperature controls) which together comprise the complete respirometry systems. *Justification for Duty-Free Entry:* According to the applicant, there are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs, April 22, 2023.

Dated: October 26, 2023.

Gregory W. Campbell,

Director, Subsidies and Economic Analysts, Enforcement and Compliance.

[FR Doc. 2023–24048 Filed 10–31–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping duty and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The U.S. International Trade Commission (ITC) is publishing concurrently with this notice its notice of institution of five-year reviews which covers the same order(s) and suspended investigation(s).

DATES: Applicable November 1, 2023.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the ''Initiation of Review'' section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s) and suspended investigation(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–588–838 ...	731–TA–739	Japan	Clad Steel Plate (5th Review)	Mary Kolberg (202) 482–1785.
A–570–828 ...	731–TA–672	China	Silicomanganese (5th Review)	Mary Kolberg (202) 482–1785.

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–823–805	731–TA–673	Ukraine	Silicomanganese (5th Review)	Mary Kolberg (202) 482–1785.
A–822–804	731–TA–873	Belarus	Steel Concrete Reinforcing Bars (4th Review)	Jacky Arrowsmith (202) 482–5255.
A–570–860	731–TA–874	China	Steel Concrete Reinforcing Bars (4th Review)	Jacky Arrowsmith (202) 482–5255.
A–560–811	731–TA–875	Indonesia	Steel Concrete Reinforcing Bars (4th Review)	Jacky Arrowsmith (202) 482–5255.
A–449–804	731–TA–878	Latvia	Steel Concrete Reinforcing Bars (4th Review)	Jacky Arrowsmith (202) 482–5255.
A–841–804	731–TA–879	Moldova Steel Concrete Reinforcing Bars (4th Review).	Jacky Arrowsmith (202) 482–5255.	
A–455–803	731–TA–880	Poland Steel Concrete Reinforcing Bars (4th Review).	Jacky Arrowsmith (202) 482–5255.	
A–823–809	731–TA–882	Ukraine Steel Concrete Reinforcing Bars (4th Review).	Jacky Arrowsmith (202) 482–5255.	

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for sunset reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these sunset reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in sunset reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[2]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that all parties wishing to participate in a sunset review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

Notification to Interested Parties

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: October 17, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–24101 Filed 10–31–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[2] *See* 19 CFR 351.218(d)(1)(iii).

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 meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the National Artificial Intelligence Advisory Committee (NAIAC or Committee) will hold an open meeting via web conference on Wednesday, November 15, 2023, from 10:00 a.m.–1:00 p.m. Eastern time. The primary purpose of this meeting is for the Committee to share and discuss updates on each working group's goals and deliverables, including those of the NAIAC Law Enforcement Subcommittee. The Committee will also deliberate on draft findings and recommendations. The final agenda will be posted to the NAIAC website: *ai.gov/naiac/.*

DATES: The meeting will be held on Wednesday, November 15, 2023, from 10:00 a.m.–1:00 p.m. Eastern time.

ADDRESSES: The meeting will be held via web conference. For instructions on how to attend and/or participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

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. 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 will meet on Wednesday, November 15, 2023, from 10:00 a.m.–1:00 p.m. Eastern time. The meeting will be open to the public and will be held via web conference. The primary purpose of this meeting is for the Committee to share and discuss updates on each working group's goals and deliverables, including those of the NAIAC Law Enforcement Subcommittee. The Committee will also deliberate on draft findings and recommendations. The final agenda will be posted to the NAIAC website: *ai.gov/naiac/.*

The NAIAC is authorized by Section 5104 of the National Artificial Intelligence Initiative Act of 2020 (Pub. L. 116–283, Div. E), in accordance with the provisions of the Federal Advisory Committee Act, as amended (FACA), 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: Individuals and representatives of organizations who would like to offer comments and suggestions related to items on the Committee'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 ''November 15, 2023, NAIAC Meeting Comments'' to *naiac@nist.gov* by 5:00 p.m. Eastern Time, Tuesday, November 14, 2023.

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. 2023–24045 Filed 10–31–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD486]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Tillamook South Jetty Repairs in Tillamook Bay, Oregon

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from the U.S. Army Corps of Engineers (USACE), Portland District (Corps), for the re-issuance of a previously issued incidental harassment authorization (IHA) with the only change being to the effective dates. The initial IHA authorized take of five species of marine mammals, by Level A and Level B harassment, incidental to construction associated with the Tillamook South Jetty Repairs in Tillamook Bay, Oregon. The project has been delayed and none of the work covered in the initial IHA has been conducted. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHA. NMFS is, therefore, issuing a second identical IHA to cover the incidental take analyzed and authorized in the initial IHA.

DATES: This authorization is effective from November 1, 2023, through October 31, 2024.

ADDRESSES: An electronic copy of the final 2022 IHA previously issued to the Corps, the Corps' application, and the **Federal Register** notices proposing and issuing the initial IHA may be obtained by visiting *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-army-corps-engineers-tillamook-south-jetty-repairs.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact

resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On August 18, 2022, NMFS published final notice of our issuance of an IHA authorizing take of marine mammals incidental to the Tillamook South Jetty Repairs Project (87 FR 50836). The effective dates of that IHA were November 1, 2022, through October 31, 2023. On October 16, 2023, the Corps informed NMFS that the project was delayed. None of the work identified in the initial IHA (*e.g.,* pile driving) has occurred. The Corps submitted a request that we reissue an identical IHA that would be effective from November 1, 2023, through October 31, 2024, in order to conduct the construction work that was analyzed and authorized through the previously issued IHA. Therefore, re-issuance of the IHA is appropriate.

Summary of Specified Activity and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA.

The Corps constructed, and continues to maintain, two jetties at the entrance of Tillamook Bay, Oregon to provide reliable navigation into and out of the bay. A Major Maintenance Report (MMR) was completed in 2003 to evaluate wave damage to the jetties and provide design for necessary repairs. Some repairs to the North Jetty were completed in 2010, and further repairs to the North Jetty root and trunk began in January 2022. The Tillamook South Jetty Repairs Project (*i.e.,* the ''proposed activities'') would complete critical repairs to the South Jetty, as described in the MMR, with a focus on rebuilding the South Jetty head. Work would consist of repairs to the existing structures within the original jetty footprints (*i.e.,* trunk repairs and the construction of a 100-foot cap to repair the South Jetty Head), with options to facilitate land- and water-based stone transport, storage, and placement operations. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the initial IHA. The mitigation and monitoring are also as prescribed in the initial IHA.

Species that are expected to be taken by the planned activity include harbor porpoise (*Phocoena phocoena*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), harbor seal (*Phoca vitulina*), and northern elephant seal (*Mirounga angustirostris*). A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The data inputs and methods of estimating take are identical to those used in the initial IHA. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or take estimate under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the initial 2022 IHA for the Corps' construction work (87 FR 50836), the Corps' application, the **Federal Register** notice of the proposed IHA (87 FR 38116), and all associated references and documents.

Determinations

The Corps will conduct activities as analyzed in the initial 2022 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the initial IHA and no new information has emerged that would change those findings. The re-issued 2023 IHA includes identical required mitigation, monitoring, and reporting measures as the initial IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) the Corps' activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that categorical exclusion from further NEPA review remains appropriate for reissuance of this IHA.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to the Corps for in-water construction activities associated with the specified activity from November 1, 2023, through October 31, 2024. All previously described mitigation, monitoring, and reporting requirements from the initial 2022 IHA are incorporated.

Dated: October 27, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–24105 Filed 10–31–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Technical Information Service

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Extension of Currently Approved Information Collection; Comment Request; Limited Access Death Master File Systems Safeguards Attestation Forms

AGENCY: National Technical Information Service, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before January 2, 2024.

ADDRESSES: Interested persons are invited to submit written comments by mail to Daniel Ramsey, Supervisory Program Manager, Office of Program Management, National Technical Information Service, Department of Commerce or by email to *dramsey@ntis.gov* or *PRAcomments@doc.gov.* Please reference OMB Control Number 0692–0016 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Daniel Ramsey, Supervisory Program Manager, Office of Program Management, National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312, email: *dramsey@ntis.gov* or telephone: 703–605–6703.

SUPPLEMENTARY INFORMATION:

I. Abstract

Title of Information Collection

(A) ''Limited Access Death Master File (LADMF) Accredited Conformity Assessment Body Systems Safeguards Attestation Form'' (ACAB Systems Safeguards Attestation Form)

(B) ''Limited Access Death Master File (LADMF) State or Local Government Auditor General (AG) or Inspector General (IG) Systems Safeguards Attestation Form'' (AG or IG Systems Safeguards Attestation Form)

This notice informs the public that the National Technical Information Service (NTIS) is requesting approval for extension of the above information collection for use in connection with the final rule for the ''Certification Program for Access to the Death Master File.'' The final rule was promulgated under section 203 of the Bipartisan Budget Act of 2013, Public Law 113–67 (Act) and published on June 1, 2016 (81 FR 34882). The rule became effective on November 28, 2016 (15 CFR part 1110). No changes are being proposed to the currently approved information collection.

The Act prohibits the Secretary of Commerce (Secretary) from disclosing DMF information during the three-year period following an individual's death (Limited Access DMF), unless the person requesting the information has been certified to access the Limited Access DMF pursuant to certain criteria in a program that the Secretary establishes. The Secretary delegated the authority to carry out Section 203 to the Director of NTIS.

To accommodate the requirements of the final rule, NTIS is using both the ACAB Systems Safeguards Attestation Form and the AG or IG Systems Safeguards Attestation Form.

The ACAB Systems Safeguards Attestation Form requires an ''Accredited Conformity Assessment Body'' (ACAB), as defined in the final rule, to attest that a Person seeking certification or a Certified Person seeking renewal of certification has information security systems, facilities and procedures in place to protect the security of the Limited Access DMF, as required under ection 1110.102(a)(2) of the final rule. The ACAB Systems Safeguards Attestation Form collects information based on an assessment by the ACAB conducted within three years prior to the date of the Person or Certified Person's submission of a completed certification statement under Section 1110.101(a) of the final rule. This collection includes specific requirements of the final rule, which the ACAB must certify are satisfied, and the provision of specific information by the ACAB, such as the date of the assessment and the auditing standard(s) used for the assessment.

Section 1110.501(a)(2) of the final rule provides that a state or local government office of AG or IG and a Person or Certified Person that is a department or agency of the same state or local government, respectively, are not considered to be owned by a common ''parent'' entity under Section 1110.501(a)(1)(ii) for the purpose of determining independence, and attestation by the AG or IG is possible. The AG or IG Systems Safeguards Attestation Form is for the use of a state or local government AG or IG to attest on behalf of a state or local government department or agency Person or Certified Person. The AG or IG Systems Safeguards Attestation Form requires the state or local government AG or IG to attest that a Person seeking certification or a Certified Person seeking renewal of certification has information security systems, facilities and procedures in place to protect the security of the Limited Access DMF, as required under Section 1110.102(a)(2) of the final rule. The AG or IG Systems Safeguards Attestation Form collects information based on an assessment by the state or local government AG or IG conducted within three years prior to the date of the Person or Certified Person's submission of a completed certification statement under Section 1110.101(a) of the final rule. This collection includes specific requirements of the final rule, which the state or local government AG or IG must certify are satisfied, and the provision of specific information by the state or local government AG or IG, such as the date of the assessment.

II. Method of Collection

The information will be collected by paper format, email, and mail.

III. Data

OMB Control Number: 0692–0016.

Form Number(s): NTIS FM100A and NTIS FM100B.

Type of Review: Regular submission: extension of a current information collection.

Affected Public: Accredited Conformity Assessment Bodies and state or local government Auditors General or Inspectors General attesting that a Person seeking certification or a Certified Person seeking renewal of certification under the final rule for the ''Certification Program for Access to the Death Master File'' has information security systems, facilities and procedures in place to protect the

security of the Limited Access DMF, as required by the final rule.

Estimated Number of Respondents: ACAB Systems Safeguards Attestation Form: NTIS expects to receive approximately 240 ACAB Systems Safeguards Attestation Forms from Persons and Certified Persons annually. AG or IG Systems Safeguards Attestation Form: NTIS expects to receive approximately 20 AG or IG Systems Safeguards Attestation Forms from Persons and Certified Persons annually.

Estimated Time per Response: ACAB Systems Safeguards Attestation Form: 3 hours. AG or IG Systems Safeguards Attestation Form: 3 hours.

Estimated Total Annual Burden Hours: ACAB Systems Safeguards Attestation Form: 720 (240 × 3 hours = 720 hours). AG or IG Systems Safeguards Attestation Form: 60 (20 × 3 hours = 60 hours).

Estimated Total Annual Cost to Public: ACAB Systems Safeguards Attestation Form: NTIS expects to receive approximately 240 ACAB Systems Safeguards Attestation Forms annually at a fee of $247 per form, for a total cost of $59,280. This total annual cost reflects the cost to the Federal Government for the ACAB Systems Safeguards Attestation Forms, which consists of the expenses associated with NTIS personnel reviewing and processing these forms. NTIS estimates that it will take ACAB's senior auditor three hours to complete the form at a rate of approximately $204 per hour, for a total additional cost to the public of $146,880 (720 burden hours × $204/hour = $146,880). NTIS estimates the total annual cost to the public for the ACAB Systems Safeguards forms to be $206,160 ($59,280 in fees + $146,880 in staff time = $206,160). AG or IG Systems Safeguards Attestation Form: NTIS expects to receive approximately 20 AG or IG Systems Safeguards Attestation Forms annually at a fee of $247 per form, for a total cost of $4,940. This total annual cost reflects the cost to the Federal Government for the AG or IG Systems Safeguards Attestation Forms, which consists of the expenses associated with NTIS personnel reviewing and processing these forms. NTIS estimates that it will take an AG or IG senior auditor three hours to complete the form at a rate of approximately $204 per hour, for a total additional cost to the public of $12,240 (60 burden hours × $204/hour = $12,240). NTIS estimates the total annual cost to the public for AG or IG Systems Safeguards Attestation Forms to be $17,180 ($4,940 in fees + $12,240 in staff time = $17,180).

NTIS estimates the total annual cost to the public for both the ACAB Systems Safeguards Attestation Forms and the AG or IG Systems Safeguards Attestation Forms to be $223,340 ($206,160 for ACAB Systems Safeguards Attestation Forms + $17,180 for AG or IG Systems Safeguards Attestation Forms).

Respondent's Obligation: Voluntary.

Legal Authority: Section 203 of the Bipartisan Budget Act of 2013, Public Law 113–67; 15 CFR part 1110.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this Information Collection Review (ICR). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary of Economic Affairs, Commerce Department.

[FR Doc. 2023–24127 Filed 10–31–23; 8:45 am]

BILLING CODE 3510–04–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2022–HQ–0010]

Submission for OMB Review; Comment Request

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by December 1, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Fire Emergency Services—Information Management System (FES–IMS) Personnel Information; OMB Control Number 0701–FESR.

Type of Request: Existing collection in use without an OMB Control Number.

Number of Respondents: 2,000.

Responses per Respondent: 1.

Annual Responses: 2,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 500.

Needs and Uses: Information collection is necessary to establish user accounts for Fire and Emergency Services—Information Management System (FES–IMS) users. Users are Fire Department support personnel including Air Force Active Duty, Air National Guard, Air Force Reserve personnel, Air Force Department of Defense Civilians, and Air Force Civil Engineering contractors. Air Force DoD Civilians and Contracted employees at OCONUS locations may include foreign nationals employed at U.S. Military facilities. Data collected supports the daily operations of Air Force Fire Departments and Emergency Dispatch Centers for personnel tracking, shift

scheduling, training requirements tracking, and documenting after-action reports of an incident. This information is critical to protect installation resources, equipment, and personnel that require emergency services.

The data collected consists of 26 questions used to develop the personnel profile for the individual within the system. Information is collected from respondents via a face-to-face interview conducted at the respective duty location. The interview will be hosted and carried out by a uniformed military member or government civilian, assigned the FES–IMS ''Core Data'' collection role.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: October 24, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–24062 Filed 10–31–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2023–HQ–0007]

Submission for OMB Review; Comment Request

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by December 1, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574 *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Qualitative Study of Factors that Influence Healthcare Seeking in Pilots; OMB Control Number 0701–TPHB.

Type of Request: New.

Number of Respondents: 100.

Responses per Respondent: 1.

Annual Responses: 100.

Average Burden per Response: 48 minutes.

Annual Burden Hours: 80.

Needs and Uses: Information collection via semi-structured interviews is necessary to conduct a qualitative study of US Air Force active duty pilots, US Air Force trainee pilots, civilian collegiate aviation students, and commercial airline pilots. Data collection will focus on the following: (1) factors that negatively influence healthcare utilization and aeromedical disclosure during screening, (2) factors that support healthcare utilization and aeromedical disclosure during screening, and (3) factors that can be modified to address pilot healthcare avoidance from a pilot's perspective to inform future prospective research. This study has been approved as part of the FY22 Studies and Analysis (S&A) Portfolio by the Commander of the United States School of Aerospace Medicine (USAFSAM). The Air Force Aerospace and Operational Medicine (AO) Panel (lead by the AFMRA/SG3P) provides baseline S&A funds to USAFSAM to address urgent and near-term needs, issues, and consultative questions that arise from installations, the Aerospace Medicine Community (Team-SGP) and Line of the Air Force senior leadership and commanders that are appropriate for one-year, short term investigative work.

Aircraft pilots are required to meet certain medical standards in order to function as a required aircrew member. If a pilot develops a new symptom or condition and discloses it during aeromedical screening, the pilot runs the risk of temporary or permanent loss of their flying status. This can result in negative occupational, social, and financial repercussions for the pilot. For this reason, it has been hypothesized that a subset of pilots participates in healthcare avoidance or does not fully disclose during aeromedical screening due to fear for aeromedical certificate loss. Evolving data is beginning to clarify the vast scope of this issue. A recent publication of over 3,500 US pilots showed that 56.1% of pilots reported a history of healthcare avoidance behavior due to fear for loss of aeromedical certification (1). More concerning, 60.1% of another sample of US pilots reported delaying or forgoing medical care due to fear for loss of flying status (2). Healthcare avoidance in aircraft pilots due to fear for loss of flying status may be prevalent, but many unanswered questions remain about factors that influence healthcare utilization and medical disclosure during aeromedical screening.

Research on pilot healthcare avoidance is critical to maintain military readiness for the following reasons: (1) optimizing existing medical assets increases the efficiency and effectiveness of warfighting capability without increased investment; (2) early presentation to medical care can increase the operational career and medical readiness of pilots, resulting in increased readiness efficacy and cost savings; and (3) research on pilots can inform how the aeromedical system supports this generation of pilots in the future (this population of pilots is hypothesized to have different healthcare preferences and behaviors from previous generations of pilots).

Affected Public: Individuals or households.

Frequency: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy

for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: October 24, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–24063 Filed 10–31–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2023–HQ–0016]

Proposed Collection; Comment Request

AGENCY: U.S. Army Corps of Engineers (USACE), Department of the Army, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the U.S. Army Corps of Engineers announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 2, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Headquarters, U.S. Army Corps of Engineers, 441 G Street NW, Washington, DC 20314–1000, ATTN: Mr. Matt Wilson, or call 202–761–5856.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Jurisdictional Determination Forms and Aquatic Resources Delineation Forms; ENG Forms 6116 (0–9), 6245–6250, 6281 (1–2); OMB Control Number 0710–0024.

Needs and Uses

Jurisdictional Determination Forms

The U.S. Army Corps of Engineers (Corps), through its Regulatory Program, regulates certain activities in waters of the United States (WOTUS), pursuant to Section 404 of the Clean Water Act (CWA). WOTUS are defined under 33 CFR part 328. The Corps also regulates certain activities in ''navigable waters of the United States'' pursuant to Sections 9 and 10 of the Rivers and Harbors Act of 1899 (RHA). The Corps has authorized its district engineers to issue formal determinations concerning the applicability of the CWA or the RHA to tracts of land. (See 33 CFR 320.1(a)(6)). These formal determinations concerning the applicability of the CWA or RHA to tracts of land are known as ''jurisdictional determinations.'' Approved jurisdictional determinations (AJDs) and preliminary JDs (PJDs) are tools used by the Corps to help implement Section 404 of the CWA (33 U.S.C. 1344) and Sections 9 and 10 of the RHA (33 U.S.C. 401, *et seq.*). Both types of JDs specify what geographic areas will be treated as subject to regulation by the Corps under one or both statutes.

On August 29, 2023, the U.S. Environmental Protection Agency (EPA) and Department of the Army (the agencies) issued a final rule to amend the final ''Revised Definition of 'Waters of the United States''' rule, published in the **Federal Register** on January 18, 2023. This final rule conforms the definition of ''waters of the United States'' to the U.S. Supreme Court's May 25, 2023, decision in the case of *Sackett* v. *Environmental Protection Agency.* Parts of the January 2023 Rule are invalid under the Supreme Court's interpretation of the Clean Water Act in the Sackett decision. Therefore, the agencies have amended key aspects of the regulatory text to conform it to the Court's decision. The conforming rule, ''Revised Definition of 'Waters of the United States'; Conforming,'' published in the **Federal Register** and became effective on September 8, 2023.

As a result of ongoing litigation on the January 2023 Rule, the agencies are currently implementing the January 2023 Rule, as amended by the conforming rule, in 23 states, the District of Columbia, and the U.S. Territories. In the other 27 states and for certain parties, the agencies are interpreting ''waters of the United States'' consistent with the pre-2015 regulatory regime and the Supreme Court's decision in *Sackett* until further notice.

This information collection request thus implements the collections of information associated with the Corps' implementation of the 2023 Rule, as amended, and the pre-2015 regime consistent with *Sackett.* The Corps intends to implement the 2023 Conforming Rule and the pre-2015 regime consistent with *Sackett* using two forms, which consist of the Preliminary Jurisdictional Determination Form (PJD Form) and a ''JD Request Form.'' Under the most recent regulatory regimes (the September 2023 Conforming Rule and the pre-2015 regime consistent with *Sackett*), the Corps has elected to use a Memorandum for Record (MFR) instead of a JD ''form'' to document the basis of its jurisdictional decisions under those two regimes. While we are including four separate AJD Forms in this package, including (1) the ''pre-2015 regime (a.k.a., ''Rapanos'')'' AJD Form, (2) The pre-2015/Rapanos ''dry land'' AJD Form, (3) the 2020 NWPR AJD Form, and (4) the January 2023 Rule AJD Form, none of those four AJD Forms are currently in use. Even though these four forms are not currently in use, they are included in this collection for historical purposes. Therefore, there a total of six JD forms (the PJD Form, the JD Request Form, and the 4 historical AJD Forms) in this collection.

Aquatic Resource Delineation Datasheets

In order for the Corps to determine the amount and extent of aquatic resources at a site, the Corps must geographically delineate aquatic resources in accordance with established regulations, policy, and guidance. The aquatic resource delineation datasheets fall into two main categories: (1) the ENG 6119 (0–9) series, which are our automated wetland determination data sheets (ADS) and (2) the Ordinary High Water Mark (OHWM) field identification datasheet.

To delineate wetlands, the Corps uses the 1987 Corps of Engineers Wetlands Delineation Manual (Corps Manual) and the most current applicable regional supplements. There are ten wetland data sheets in total but these really are one single collection that is split into 10 regional sub-forms. The ADSs streamline the information collection process by incorporating reference material and analytical processes directly into the form, which is provided as a Microsoft Excel document rather than the PDF form included in the regional supplements. Additionally, the ADSs automate data analysis using information input by the respondent (*e.g.,* the ''dominance test'' for wetland vegetation), which will reduce the time and effort required to complete these processes.

Non-tidal, non-wetland waters of the United States, which are defined in 33 CFR part 328, must be delineated to the extent of the ordinary high water mark (OHWM), which is defined at 33 CFR 328.3(c)(4) and 33 CFR 329.11(a)(1). Regulatory Guidance Letter (RGL) 05–05 provides guidance on identification of OHWM. In 2022, the Corps released a draft Engineer Research and Development Center Technical Report, ''National Ordinary High Water Mark Field Delineation Manual for Rivers and Streams'' (Draft National Manual), which is the first national manual that provides and describes indicators and a methodology which will help improve consistency in the identification and delineation of the OHWM by (1) providing consistent definitions of OHWM indicators; (2) outlining a clear, step-by-step process for identifying the OHWM using a Weight-of-Evidence approach; and (3) providing a datasheet for logging information at a site. As part of the development of the Draft National Manual, the Corps developed a Data Sheet (ENG 6250) for facilitating documentation of the OHWM.

Affected Public: Individuals or households.

Request for Corps Jurisdictional Determination (ENG 6247)

Annual Burden Hours: 2,815.
Number of Respondents: 16,891.
Responses per Respondent: 1.
Annual Responses: 16,891.
Average Burden per Response: 10 minutes.

Approved Jurisdictional Determination Forms (ENG 6245, 6248, & 6281)

Annual Burden Hours: 1,670.
Number of Respondents: 668.
Responses per Respondent: 1.
Annual Responses: 668.
Average Burden per Response: 150 minutes.

Rapanos Dry Land AJD Form (ENG 6246)

Annual Burden Hours: 61.
Number of Respondents: 243.
Responses per Respondent: 1.
Annual Responses: 243.
Average Burden per Response: 15 Minutes.

Preliminary JD Form (Eng 6249)

Annual Burden Hours: 625.
Number of Respondents: 1,500.
Responses per Respondent: 1.
Annual Responses: 1,500.
Average Burden per Response: 25 Minutes.

Ordinary High Water Mark Data Sheet (Eng 6250)

Annual Burden Hours: 19,990.
Number of Respondents: 39,980.
Responses per Respondent: 1.
Annual Responses: 39,980.
Average Burden per Response: 30 Minutes.

Automated Wetland Data Sheets (Eng 6116 (0–9))

Annual Burden Hours: 48,692.
Number of Respondents: 48,692.
Responses per Respondent: 2.
Annual Responses: 97,384.
Average Burden per Response: 30 Minutes.

Total

Annual Burden Hours: 73,853.
Number of Respondents: 107,974.
Annual Responses: 156,666.
Frequency: On Occasion.

Dated: October 24, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–24069 Filed 10–31–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–HA–0068]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense, (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by December 1, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Third Party Collection Program (Insurance Information); DD Form 2569; OMB Control Number 0720–0055.
Type of Request: Extension.
Number of Respondents: 3,570,000.
Responses per Respondent: 1.5.
Annual Responses: 5,355,000.
Average Burden per Response: 4 minutes.
Annual Burden Hours: 357,000 hours.
Needs and Uses: The DoD is authorized to collect ''reasonable charges'' from third party payers for the cost of inpatient and outpatient services rendered at military treatment facilities (MTFs) to military retirees, all dependents, and other eligible beneficiaries who have private health insurance. The DoD may also collect the cost of trauma or other medical care provided from civilians (or their insurers), and/or the average cost of health care provided to beneficiaries at DoD MTFs from other federal agencies. For DoD to perform such collections, eligible beneficiaries may elect to provide DoD with other health insurance information. For civilian

nonbeneficiary and interagency patients, DD Form 2569 is necessary and serves as an assignment of benefits, approval to submit claims to payers on behalf of the patient, and authorizes the release of medical information. This form is available to third-party payers upon request. The collection of personal information from individuals of the public for use in medical services is authorized by title 10 U.S.C. 1095, ''Health Care Services Incurred on Behalf of Covered Beneficiaries: Collection from Third-Party Payers''; Title 32 CFR part 220, ''Collection From Third Party Payers of Reasonable Charges for Healthcare Services''; Title 10 U.S.C. 1079b(a), ''Procedures for Charging Fees for Care Provided to Civilians; Retention and Use of Fees Collected''; and Title 10 U.S.C. 1085, ''Medical and Dental Care from Another Executive Department: Reimbursement.''

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Matt Eliseo.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: October 24, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–24061 Filed 10–31–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0106]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Intelligence and Security, (OUSD(I&S)), Department of Defense, (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the All-Domain Anomaly Resolution Office, (AARO) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 2, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Angela Duncan, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil* or call 571–372–7574.

SUPPLEMENTARY INFORMATION: The AARO Contact Form for Authorized Reporting information collection will be used to gather contact information, to include Personally Identifiable Information (PII), from members of the public. The collection is necessary to enable the All-domain Anomaly Resolution Office (AARO), Office of the Secretary of Defense, Department of Defense, to meet its statutory requirements. FY23 NDAA, Section 1673, ''Unidentified Anomalous Phenomena Reporting Procedures'' requires that the Secretary of Defense ''issue clear public guidance for how to securely access the mechanism for authorized reporting'' no later than 180 days from enactment, which was June 2023. Furthermore, Section 1683 of the FY23 NDAA requires AARO to produce a Historical Record Report detailing the historical record of the United States government relating to unidentified anomalous phenomena (UAP). To meet this requirement, AARO relies on the ''AARO Contact Form'' to receive reports from individuals with knowledge of potential UAP programs.

Title; Associated Form; and OMB Number: AARO Contact Form for Authorized Reporting; OMB Control Number 0704–0674.

Needs and Uses: The *AARO Contact Form for Authorized Reporting* information collection will be used to gather contact information, to include Personally Identifiable Information (PII) from members of the public. The collection is necessary to enable the All-domain Anomaly Resolution Office (AARO), Office of the Secretary of Defense, Department of Defense, to meet its statutory requirements.

The proposed information collection, *AARO Contact Form for Authorized Reporting,* enables AARO to comply with Section 1673 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (FY23 NDAA), which directs AARO to establish a secure mechanism for authorized reporting of U.S. Government programs and activities related unidentified anomalous phenomena (UAP). The form will collect contact information from current and former U.S. Government employees, service members, and contractors who wish to make an authorized report to AARO. The collection is necessary to enable persons wanting to make a report to contact AARO directly.

The *AARO Contact Form for Authorized Reporting* also supports

Section 1683 of the FY23 NDAA, which directs AARO to produce a Historical Record Report (HRR) on U.S. Government activities and events related to UAP from 1945 to present. Oral history interviews, records of the National Archive, open source research, and all records and documents from U.S. Government agencies are the foundational pillars of information supporting the HRR. The *AARO Contact Form for Authorized Reporting* enables AARO to contact individuals to schedule oral history interviews.

The respondents are current and former U.S. Government employees, service members, and contractors who want to contact AARO in furtherance of providing authorized reporting regarding potential U.S. Governments activities and events related to UAP. The respondents will be asked to voluntarily provide their contact information by completing fields and using drop down menus on a page within AARO's website (*www.aaro.mil*). This form is the only collection instrument, is 100 percent electronic, and is accessible by any web browser, via both desktop and mobile device. The collection is sent to AARO once the respondent clicks the ''Submit'' button on the website. No other communications are sent to the respondents that solicit responses. The Office of the Secretary of Defense Public Affairs will notify the public when AARO's contact form is available for use.

Information, including PII, collected from the public will be processed and stored in an electronic environment accredited to handle and secure PII. AARO will then review submitted information to prioritize potential oral history interviews of persons so that they might make an authorized report. The end result of the information collection is the successful ability of individuals to contact AARO, provide a report, and contribute to the HRR, and for AARO to meet its statutory requirements.

Affected Public: Individuals or households.

Annual Burden Hours: 208.

Number of Respondents: 2,500.

Responses Per Respondent: 1.

Annual Responses: 2,500.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

Dated: October 24, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–24103 Filed 10–31–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors, National Defense University; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Chairman of the Joint Chiefs of Staff, Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal advisory committee meeting of the Board of Visitors, National Defense University (BoV NDU) will take place.

DATES: Friday, December 1, 2023 from 9 a.m. to 3 p.m.

ADDRESSES: Marshall Hall, Building 62, Room 155, the National Defense University, 300 5th Avenue SW, Fort McNair, Washington, DC 20319–5066. Visitors should report to the Front Security Desk in the lobby of Marshall Hall and from there, they will be directed to the meeting room.

FOR FURTHER INFORMATION CONTACT: Ms. Joycelyn Stevens, (202) 685–0079 (Voice) *joycelyn.a.stevens.civ@mail.mil; stevensj7@ndu.edu* (Email). Mailing address is National Defense University, Fort McNair, Washington, DC 20319–5066. Website: *http://www.ndu.edu/About/Board-of-Visitors/.* The most up-to-date changes to the meeting agenda can be found at *https://www.ndu.edu/About/Board-of-Visitors/BOV-Dec-1-2023.*

SUPPLEMENTARY INFORMATION: This meeting is being held in accordance with chapter 10 of title 5 United States Code (U.S.C.) (formerly known as the Federal Advisory Committee Act (FACA) (5 U.S.C., App.)). Under the provisions of the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150. Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public.

Purpose of the Meeting: The purpose of the meeting will include discussion on accreditation compliance, organizational management, resource management, and other matters of interest to the National Defense University.

Agenda: Friday, December 1, 2023 from 9 a.m. to 3 p.m. (eastern time): Call to Order and Administrative Notes; State of the University Address; Reaffirmation of Middle States Commission on Higher Education Accreditation Update; Facilities, Technology (NDU Connect) & Manpower (Hiring) Updates; Ethics Working Group Update; NATO Conference of Commandants; Discussion of Public Written Comments; Board of Visitors Member Deliberation and Feedback; Wrap-up and Closing Remarks.

Meeting Accessibility: Limited space is available for observers and will be allocated on a first come, first served basis. Meeting location is handicap accessible. The Main Gate/Visitor's Gate on 2nd Street SW is open 24/7. All non-DoD, non-federally-affiliated visitors MUST use this gate to access Fort McNair.

Base Access Requirements: All visitors without a U.S. Department of Defense Common Access Card (CAC) or U.S. military ID must be vetted in advance to gain entry onto the base. Per the U.S. Army, all non-DoD civilians are required to have a background check before being allowed on a military installation; better known as vetting. It is HIGHLY recommended that visitors undergo the pre-vetting process and apply online as detailed below.

For pre-vetting:

To allow sufficient time for processing, access requests should be submitted 10 days before the event. The visitor will receive notification via email, and, if approved, a one-day visitor's pass for entry onto the base. The visitor must print the pass and present it to the guard at the gate to enter Fort McNair.

(a) If the visitor has a valid U.S. driver's license:

(i) The visitor can apply for access online at *https://pass.aie.army.mil/jbmhh/*. Under Reason for Visit, select ''Other.'' Alternatively, the visitor can apply in person at the Fort McNair Visitor Control Center (VCC)/Police Substation (Building 65) from 8 a.m. to 4 p.m. Monday through Friday.

(b) If the visitor does not have a U.S. driver's license:

(i) The visitor must fill out a paper application in person at the Fort McNair Visitor Control Center (VCC)/Police Substation (Building 65) from 8 a.m. to 4 p.m. Monday through Friday.

For vetting the day of the event:

The visitor must apply in person at the Fort McNair Visitor Control Center (VCC)/Police Substation (Building 65) from 8 a.m. to 4 p.m. Monday through Friday. The visitor should plan to arrive early, as the procedure for running background checks and issuing passes can take much longer than expected.

For additional information, please go to *https://home.army.mil/jbmhh/index.php/my-fort/all-services/access-gate-info.*

Vehicle Search: Non-DoD, Non-federally-affiliated visitors' vehicles are subject to search.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, written statements to the committee may be submitted to the committee at any time or in response to a stated planned meeting agenda by email to Ms. Joycelyn Stevens at *bov@ndu.edu* or fax at (202) 685–3920. Any written statements received by 5 p.m. on Thursday, November 30 will be distributed to the BoV NDU in the order received. Comments pertaining to the agenda items will be discussed during the public meeting. Any written statements received after the deadline will be provided to the members of the BoV NDU prior to the next scheduled meeting and posted on the website.

Dated: October 24, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–24070 Filed 10–31–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0149]

[Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Charter Online Management and Performance System (COMPS) CMO APR

AGENCY: Office of Elementary and Secondary Education (OESE), 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 December 1, 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 Jones, (202) 453–7498.

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: Charter Online Management and Performance System (COMPS) CMO APR.

OMB Control Number: 1810–NEW.

Type of Review: New ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 90.

Total Estimated Number of Annual Burden Hours: 2,970.

Abstract: This request is for a new OMB approval to collect the Annual Performance Report (APR) data from Charter School Programs (CSP) Replication and Expansion of High-Quality Charter Schools (CMO) grantees. The Charter School Programs (CSP) was originally authorized under title V, part B, subpart 1, sections 5201 through 5211 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind (NCLB) Act of 2001. For fiscal year 2017 and thereafter, ESEA has been amended by the Every Student Succeeds Act (ESSA), (20USC 7221–7221i), which reserves funds to improve education by supporting innovation in public education and to: (2) provide financial assistance for the planning, program design, and initial implementation of charter schools; (3) increase the number of high-quality charter schools available to students across the United States; (4) evaluate the impact of charter schools on student achievement, families, and communities, and share best practices between charter schools and other public schools; (5) encourage States to provide support to charter schools for facilities financing in an amount more nearly commensurate to the amount States typically provide for traditional public schools; (6) expand opportunities for children with disabilities, English learners, and other traditionally underserved students to attend charter schools and meet the challenging State academic standards; (7) support efforts to strengthen the charter school authorizing process to improve performance management, including transparency, oversight and monitoring (including financial audits), and evaluation of such schools; and (8) support quality, accountability, and transparency in the operational performance of all authorized public chartering agencies, including State educational agencies, local educational agencies, and other authorizing entities.

The U.S. Department of Education (ED) is requesting authorization to collect data from CSP grantees within the CMO program through a new online platform. In 2022, ED began development of a new data collection system, the Charter Online Management and Performance System (COMPS), designed specifically to reduce the burden of reporting for users and increase validity of the overall data. This new collection consists of questions responsive to the actions established in the program's final rule published in the **Federal Register** on July 6, 2022, as well as the CMO program Notice Inviting Applications (NIA). This collection request is a consolidation of all previously established program data collection efforts and provides a more comprehensive representation of grantee performance.

Dated: October 26, 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. 2023–24023 Filed 10–31–23; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine Act notice; Notice of public meeting agenda.

SUMMARY: Public meeting: U.S. Election Assistance Commission.

DATES: Friday, November 17, 2:00 p.m.–3:30 PM Eastern.

ADDRESSES: The meeting will be virtual and livestreamed on the U.S. Election Assistance Commission's YouTube Channel: *https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw.*

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct an open meeting to review findings from the 2023 EAC Voluntary Electronic Poll Book Pilot Program Report and hear from subject matter experts on different aspects of testing and certification programs of this technology.

Agenda: The U.S. Election Assistance Commission (EAC) will host panels featuring election administrators, EAC staff, and election subject matter experts. They will discuss the findings of the Voluntary Electronic Poll Book Pilot Program Report, the benefits of these programs, lessons learned from the pilot, and information from the voting system test laboratories who participated.

Background: Under the authority of the Help America Vote Act (HAVA), the EAC created the Election Supporting Technology Evaluation Program (ESTEP) to establish requirements and guidelines specific to election technologies that are not covered under the Voluntary Voting System Guidelines (VVSG). The e-poll book pilot is the first in a series of pilots conducted by the ESTEP program, which will also examine voter registration databases, election night reporting systems, and ballot delivery systems.

The e-poll book pilot program testing, took place between January and August 2023. The pilot involved two VSTLs, Pro V&V and SLI Compliance, that tested e-poll book devices from five commercial manufacturers, and two in-house developers. These systems were tested against the Voluntary Electronic Poll Book Requirements (Version 0.9) developed by ESTEP in consultation with the National Institute of Standards and Technology (NIST), cybersecurity and accessibility experts, and other key stakeholders.

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

Status: This meeting will be open to the public.

Camden Kelliher,

Deputy General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023–24202 Filed 10–30–23; 4:15 pm]

BILLING CODE 4810–71–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–19–000.
Applicants: Poblano Energy Storage, LLC.
Description: Poblano Energy Storage, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 10/26/23.
Accession Number: 20231026–5131.
Comment Date: 5 p.m. ET 11/16/23.

Docket Numbers: EG24–20–000
Applicants: Century Oak wind Project, LLC
Description: Century Oak Wind Project, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 10/26/23
Accession Number: 20231026–5134
Comment Date: 5 p.m. ET 11/16/23

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–730–003.
Applicants: Linden VFT, LLC.
Description: Amendment to Transmission Scheduling Rights Purchase Agreement and Request for Confidential Treatment of Linden VFT, LLC.
Filed Date: 10/18/23.
Accession Number: 20231018–5179.
Comment Date: 5 p.m. ET 11/8/23.

Docket Numbers: ER21–964–001.
Applicants: Microsoft Energy LLC.
Description: Notice of Change in Status of Microsoft Energy LLC, et al.
Filed Date: 10/24/23.
Accession Number: 20231024–5156.
Comment Date: 5 p.m. ET 11/14/23.

Docket Numbers: ER23–2532–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: Deficiency Response—Lea County's Revisions to Formula to be effective 10/1/2023.
Filed Date: 10/26/23.
Accession Number: 20231026–5049.
Comment Date: 5 p.m. ET 11/16/23.

Docket Numbers: ER23–2699–000; ER23–2701–000.
Applicants: MRP Rocky Road LLC, MRP Elgin LLC.
Description: MRP Elgin LLC, et. al. submits Request for Expedited Treatment re the 08/24/2023, as supplemented on 10/18/2023, filing of Applications for Market-Based Rate Authorization.
Filed Date: 10/25/23.
Accession Number: 20231025–5148.
Comment Date: 5 p.m. ET 11/6/23.

Docket Numbers: ER23–2699–000; ER23–2701–000.
Applicants: MRP Rocky Road LLC, MRP Elgin LLC.
Description: Supplement to August 24, 2023 MRP Elgin LLC, et al. tariff filing.
Filed Date: 10/18/23.
Accession Number: 20231018–5175.
Comment Date: 5 p.m. ET 11/6/23.

Docket Numbers: ER23–2759–000.
Applicants: Mammoth North LLC.
Description: Amendment to September 1, 2023, Mammoth North LLC tariff filing.
Filed Date: 10/24/23.
Accession Number: 20231024–5154.
Comment Date: 5 p.m. ET 11/3/23.

Docket Numbers: ER23–2886–000.
Applicants: South Energy Investments, LLC.
Description: Supplement to September 18, 2023, South Energy Investments, LLC tariff filing.
Filed Date: 10/24/23.
Accession Number: 20231024–5153.
Comment Date: 5 p.m. ET 11/7/23.

Docket Numbers: ER24–207–000.
Applicants: Hunter Solar, LLC.
Description: 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 12/26/2023.
Filed Date: 10/26/23.
Accession Number: 20231026–5005.
Comment Date: 5 p.m. ET 11/16/23.

Docket Numbers: ER24–208–000.
Applicants: Steel Solar, LLC.
Description: 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 12/26/2023.
Filed Date: 10/26/23.
Accession Number: 20231026–5006.
Comment Date: 5 p.m. ET 11/16/23.

Docket Numbers: ER24–209–000.
Applicants: Southwest Power Pool, Inc.
Description: 205(d) Rate Filing: 1166R41 Oklahoma Municipal Power Authority NITSA and NOA to be effective 10/1/2023.
Filed Date: 10/26/23.
Accession Number: 20231026–5024
Comment Date: 5 p.m. ET 11/16/23.

Docket Numbers: ER24–210–000

Applicants: Arche Energy Project, LLC
Description: 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 12/26/2023.
Filed Date: 10/26/23
Accession Number: 20231026–5031
Comment Date: 5 p.m. ET 11/16/23

Docket Numbers: ER24–211–000.
Applicants: Southwest Power Pool, Inc.
Description: 205(d) Rate Filing: 1630R12 The Empire District Electric Company NITSA and NOA to be effective 10/1/2023.
Filed Date: 10/26/23.
Accession Number: 20231026–5034.
Comment Date: 5 p.m. ET 11/16/23.

Docket Numbers: ER24–212–000.
Applicants: San Diego Gas & Electric Company.
Description: 205(d) Rate Filing: 2024 TRBAA Update to be effective 1/1/2024.
Filed Date: 10/26/23.
Accession Number: 20231026–5054.
Comment Date: 5 p.m. ET 11/16/23.

Docket Numbers: ER24–213–000.
Applicants: Puget Sound Energy, Inc.
Description: 205(d) Rate Filing: Amendatory Agreement No. 2 to the PNW AC Intertie Capacity Ownership Agreement, to be effective 10/1/2023.
Filed Date: 10/26/23.
Accession Number: 20231026–5112.
Comment Date: 5 p.m. ET 11/16/23.

Docket Numbers: ER24–214–000.
Applicants: Puget Sound Energy, Inc.
Description: 205(d) Rate Filing: Amendment No. 1 to the Westside Northern Intertie and Area Transmission Agmt to be effective 10/1/2023.
Filed Date: 10/26/23.
Accession Number: 20231026–5116.
Comment Date: 5 p.m. ET 11/16/2.3

Docket Numbers: ER24–215–000.
Applicants: California Independent System Operator Corporation.
Description: 205(d) Rate Filing: 2023–10–26 Amendment to Nodal Pricing Model Agreement—Pacificorp to be effective 1/1/2024.
Filed Date: 10/26/23.
Accession Number: 20231026–5124.
Comment Date: 5 p.m. ET 11/16/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Dated: October 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–24092 Filed 10–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14861–002]

FFP Project 101, LLC; Notice of Modification of Procedural Schedule

Take notice that the schedule for processing the following hydroelectric application has been modified.

a. *Type of Application:* Original Major License.
b. *Project No.:* 14861–002.
c. *Date Filed:* June 23, 2020.
d. *Applicant:* FFP Project 101, LLC.
e. *Name of Project:* Goldendale Energy Storage Project.
f. *Location:* Off-stream on the north side of the Columbia River at River Mile 215.6 in Klickitat County, Washington, with transmission facilities extending into Sherman County, Oregon. The project would be located approximately 8 miles southeast of the City of Goldendale, Washington. The project would occupy 18.1 acres of lands owned by the U.S. Army Corps of Engineers and administered by the Bonneville Power Administration.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Erik Steimle, Rye Development, 745 Atlantic Avenue, Boston, Massachusetts 02111; (503) 998–0230; email—*erik@ryedevelopment.com.*
i. *FERC Contact:* Michael Tust at (202) 502–6522; or email at *michael.tust@ferc.gov.*
j. *Procedural Schedule:* The Commission's February 2, 2023, Notice of Modification of Procedural Schedule established October 2023 as the target date for issuing the Final Environmental Impact Statement (Final EIS). The revised estimate for issuing the Final EIS is December 2023.

Any questions regarding this notice may be directed to Michael Tust.

Dated: October 25, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–24037 Filed 10–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2336–094]

Georgia Power Company; Notice of Revised Procedural Schedule for Environmental Assessment for the Proposed Project Relicense

On January 3, 2022, Georgia Power Company filed an application for a new license to continue to operate and maintain the 18-megawatt Lloyd Shoals Hydroelectric Project No. 2336 (Lloyd Shoals Project). On August 8, 2022, Commission staff issued a notice of intent to prepare an Environmental Assessment (EA) to evaluate the effects of relicensing the Lloyd Shoals Project. The notice of intent included a schedule for preparing a single EA.

By this notice, Commission staff is updating the procedural schedule for completing the EA. The revised schedule is shown below. Further revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue EA	December 2023.

Any questions regarding this notice may be directed to Allan Creamer at (202) 502–8365, or by email at *allan.creamer@ferc.gov.*

Dated: October 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–24096 Filed 10–31–23; 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: RP24–57–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Compliance filing: Annual Penalty Revenue Sharing 2023 to be effective N/A.
Filed Date: 10/26/23.
Accession Number: 20231026–5003.
Comment Date: 5 p.m. ET 11/7/23.

Docket Numbers: RP24–58–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 4(d) Rate Filing: 10.26.23 Negotiated Rates—Emera Energy Services, Inc. R–2715–88 to be effective 11/1/2023.
Filed Date: 10/26/23.
Accession Number: 20231026–5023.
Comment Date: 5 p.m. ET 11/7/23.

Docket Numbers: RP24–59–000.
Applicants: Texas Eastern Transmission, LP.
Description: 4(d) Rate Filing: Negotiated Rates—EQT 911915 and 911916 to be effective 11/1/2023.
Filed Date: 10/26/23.
Accession Number: 20231026–5058.
Comment Date: 5 p.m. ET 11/7/23.

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.

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: October 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–24098 Filed 10–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC24–2–000]

Commission Information Collection Activities (FERC–725R); Comment Request; Extention

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of revision of information collection and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on revisions of the information collection FERC–725R (Mandatory Reliability Standards for the Bulk-Power System: BAL Reliability Standards).

DATES: Comments on the collection of information are due January 2, 2024.

ADDRESSES: Comments should be submitted to the Commission, in Docket No. IC24–2–000, by one of the following methods:

Electronic filing through *https://www.ferc.gov* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–725R, Mandatory Reliability Standards for the Bulk-Power System: BAL Reliability Standards.

OMB Control No.: 1902–0268.

Type of Request: OMB renewal of the FERC–725R information collection requirements, with no changes to the requirements.

Abstract: The FERC 725R information collection includes four reliability standards.

- BAL–001–2, Real Power Balancing Control Performance; (effective July 1, 2016)
- BAL–002–3, Disturbance Control Standard—Contingency Reserve for Recovery from a Balancing Contingency Event; (effective April 1, 2019)
- BAL–003–2, Frequency Response and Frequency Bias Setting; (effective December 1, 2020)
- BAL–005–1, Balancing Authority Control. (effective January 1, 2019)

On August 8, 2005, Congress enacted into law the Electricity Modernization Act of 2005, which is title XII, subtitle A, of the Energy Policy Act of 2005 (EPAct 2005).[1] EPAct 2005 added a new section 215 to the Federal Power Act (FPA), which required a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, any Reliability Standard may be enforced by the ERO subject to Commission oversight, or the Commission may independently enforce Reliability Standards.[2]

On February 3, 2006, the Commission issued Order No. 672, implementing section 215 of the FPA.[3] Pursuant to

[1] Energy Policy Act of 2005, Public Law 109–58, title XII, subtitle A, 119 Stat. 594, 941 (codified at 16 U.S.C. 824*o*).

[2] 16 U.S.C. 824*o*(e)(3).

[3] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the* Continued

Order No. 672, the Commission certified one organization, North American Electric Reliability Corporation (NERC), as the ERO.[4] The Reliability Standards developed by the ERO and approved by the Commission apply to users, owners and operators of the Bulk-Power System as set forth in each Reliability Standard.

This collection was last revised beginning on December 19, 2019 when NERC submitted for approval the proposed Reliability Standard BAL–003–2.

Types of Respondents: Balancing authorities and a Frequency Response Sharing Group (FRSG).

Estimate of Annual Burden:[5] The estimated burdens of the FERC 725R includes the Reliability Standards: BAL–001–2, BAL–002–3, BAL–003–2, and BAL–005–1.

The requirements for each Reliability Standard go as follows:

BAL–001–2: Real Power Balancing Control Performance. Reliability Standard BAL–001–2 is designed to ensure that applicable entities balance generation and load by maintaining system frequency within narrow bounds around a scheduled value, and it improves reliability by adding a frequency component to the measurement of a Balancing Authority's Area Control Error (ACE).[6]

BAL–002–3: Disturbance Control Standard—Contingency Reserve for Recovery from a Balancing Contingency Event. This standard ensures that a responsible entity, either a balancing authority or reserve sharing group, is able to recover from system contingencies by deploying adequate reserves to return their Area Control Error to defined values and replacing the capacity and energy lost due to generation or transmission equipment outages.

BAL–003–2: Frequency Response and Frequency Bias Setting. This standard requires sufficient Frequency Response from the Balancing Authority (BA) to maintain Interconnection Frequency within predefined bounds by arresting frequency deviations and supporting frequency until the frequency is restored.

BAL–005–1: Balancing Authority Control. This standard establishes requirements for acquiring data necessary to calculate Reporting Area Control Error (Reporting ACE). The standard also specifies a minimum periodicity, accuracy, and availability requirement for acquisition of the data and for providing the information to the System Operator. It requires balancing authorities to maintain minimum levels of annual availability of 99.5% for each balancing authority system for calculating Reporting ACE.

Our estimates are based on the NERC Compliance Registry as of September 22, 2023, which indicates that there are for unique US only 98 registered balancing authorities, 8 registered reserve sharing group (RSG) and 1 frequency response sharing group (FRSG).[7]

Estimates for the average annual burden and cost[8] follow.

FERC–725R

Function	Number & type of respondents (1)	Number of annual responses per respondent (2)	Total number of annual responses (1) × (2) = (3)	Average burden hours & cost ($) per response (4)	Total annual burden hours & total annual cost ($) (3) × (4) = (5)
BAL–001–2					
BA Reporting Requirements	98	1	98	8 hrs.; $618.32	784 hrs.; $60,595.36.
BA Recordkeeping Requirements	98	1	98	4 hrs.; $224.56	392 hrs.; $22,006.88.
BAL–002–3					
BA & RSG Reporting Requirements	106	1	106	8 hrs.; $618.32	848 hrs.; $65,541.92.
BA & RSG Recordkeeping Requirements	106	1	106	4 hrs.; $224.56	424 hrs.; $23,803.36.
BAL–003–2					
BA & FRSG Reporting Requirements	99	28	2,772	8 hrs.; $618.32	22,176 hrs.; $1,713,983.04.
BA & FRSG Recordkeeping Requirements	99	1	99	2 hrs.; $112.28	198 hrs.; $11,115.72.
BAL–005–1					
BA Reporting Requirements	98	1	98	1 hr.; $77.29	98 hrs.; $7,574.42.

Establishment, Approval, and Enforcement of Electric Reliability Standards, Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[4] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *order on compliance,* 118 FERC ¶ 61,190, *order on reh'g,* 119 FERC ¶ 61,046 (2007), *aff'd sub nom. Alcoa Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[5] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[6] Area Control Error is the "instantaneous difference between a Balancing Authority's net actual and scheduled interchange, taking into accounts the effects of Frequency Bias, correction for meter error, and Automatic Time Error Correction (ATEC), if operating in the ATEC mode. ATEC is only applicable to Balancing Authorities in the Western Interconnection." NERC Glossary.

[7] NERC Compliance Registry (September 22, 2023), *available at https://www.nerc.com/pa/comp/Registration%20and%20Certification%20DL/NERC_Compliance_Registry_Matrix_Excel.xlsx.*

[8] The hourly cost estimates are based on wage data from the Bureau of Labor Statistics for May 2022 (at *https://www.bls.gov/oes/current/naics2_22.htm*) and benefits data for Dec. 2022 (issued March 2023, at *https://www.bls.gov/news.release/ecec.nr0.htm*). The hourly costs (for wages and benefits) for reporting are: Electrical Engineer (Occupation code 17–2071), $77.29. The hourly costs (for wages and benefits) for evidence retention are: Information and Record Clerk (Occupation code 43–4199), $56.14.

FERC–725R—Continued

Function	Number & type of respondents (1)	Number of annual responses per respondent (2)	Total number of annual responses (1) × (2) = (3)	Average burden hours & cost ($) per response (4)	Total annual burden hours & total annual cost ($) (3) × (4) = (5)
BA Recordkeeping Requirements	98	1	98	1 hr.; $56.14	98 hrs.; $5,501.72.
SUB-TOTAL FOR REPORTING REQUIREMENTS.					23,906 hrs.; $1,847,694.74.
SUB-TOTAL FOR RECORDKEEPING REQUIREMENTS.					1,112 hrs.; $62,427.68.
TOTAL FOR FERC–725R (rounded).					25,018 hrs.; $1,910,122.42.

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate 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.

Dated: October 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–24097 Filed 10–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4679–050]

New York Power Authority; Notice of Technical Conference

On Wednesday, November 8, 2023, Commission staff will hold a technical conference to provide clarification to New York Power Authority regarding Commission staff's additional information request (AIR) issued August 7, 2023, for the Vischer Ferry Hydroelectric Project No. 4679.[1]

The conference will be held via teleconference beginning at 1:00 p.m. Eastern Standard Time. Discussion topics for the technical conference include: (1) Engineering analysis of project-related flooding impacts (AIR number 2), and (2) Stability analysis and revised Supporting Design Report (AIR number 3).

All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate. There will be no transcript of the conference, but a summary of the meeting will be prepared for the project record. If you are interested in participating in the meeting you must contact Jody Callihan at (202) 502–8278 or *jody.callihan@ferc.gov* by November 6, 2023 to receive specific instructions on how to participate.

Dated: October 25, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–24038 Filed 10–31–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD24–1–000]

City of Homer, Alaska; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On October 23, 2023, the City of Homer, Alaska, filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA). The proposed Homer Hydroelectric Energy Recovery Project would have an installed capacity of 10 kilowatts (kW), and would be located within the applicant's municipal water supply system in Homer, Kenai Peninsula Borough, Alaska.

Applicant Contact: Gregg Semler, InPipe Energy, 920 SW 6th Ave., 12th Floor, Portland, OR 97204, 503–341–0004, *gregg@inpipeenergy.com.*

FERC Contact: Christopher Chaney, 202–502–6778, *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The project would consist of: (1) one 10-kW centrifugal pump as turbine generating unit and (2) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 42 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all the criteria shown in the table below.

[1] Commission staff's letter requesting additional information is available at: *https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20230807-3020&optimized=false.*

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A)	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i)	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii)	The facility has an installed capacity that does not exceed 40 megawatts	Y
FPA 30(a)(3)(C)(iii)	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed Homer Hydroelectric Energy Recovery Project will not alter the primary purpose of the conduit, which is for municipal water supply. Therefore, based upon the above criteria, Commission staff preliminarily determines that the operation of the project described above satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 30 days from the issuance date of this notice. Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and 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 at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may send 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, MD 20852. A copy of all other filings in reference to this application 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.

Locations of Notice of Intent: 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 website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (*i.e.,* CD24–1) 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. Copies of the notice of intent can be obtained directly from the applicant. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* 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: October 26, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–24093 Filed 10–31–23; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–2005 (2022).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0445; FRL–11370–02–OCSPP]

Pesticides; Concept for a Framework To Assess the Risk to the Effectiveness of Human and Animal Drugs Posed by Certain Antibacterial or Antifungal Pesticides; Notice of Availability and Request for Comment; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: In the **Federal Register** of September 26, 2023, EPA announced the availability of and solicited public comment on the concept for developing a framework to improve assessments of potential risks to human and animal health where the use of certain pesticides could potentially result in antimicrobial resistance (AMR) that compromises the effectiveness of medically important antibacterial and antifungal drugs; and sought feedback on research gaps and other information to help inform the risk assessment and mitigation processes. This document extends the comment period, which was

scheduled to end on November 13, 2023, for 30 days. The Environmental Protection Agency (EPA) is extending the comment period for the notice, ''Pesticides; Concept for a Framework to Assess the Risk to the Effectiveness of Human and Animal Drugs Posed by Certain Antibacterial or Antifungal Pesticides; Notice of Availability and Request for Comment.'' EPA published the notice in the **Federal Register** on September 26, 2023, and the public comment period was scheduled to end on November 13, 2023. However, EPA has received requests for additional time to develop and submit comments on the notice. In response to the request for additional time, the EPA is extending the comment period for an additional 30 days, through December 13, 2023.

DATES: The comment period for the document published on September 26, 2023, at 88 FR 65998 (FRL–11370–01–OCSPP), is extended. Comments must be received on or before December 13, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0445, 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: Susan Jennings, Immediate Office (7501M), Office of Pesticide Programs, Environmental Protection Agency, 1201 Constitution Ave. NW, Washington, DC 20004; telephone number: (706) 355–8574; email address: *jennings.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: To give stakeholders additional time to review materials and prepare comments, EPA is hereby extending the comment period established in the **Federal Register** of September 26, 2023 (88 FR 65998) (FRL–11370–01–OCSPP) for 30 days, from November 13, 2023, to December 13, 2023. More information on the action can be found in the **Federal Register** of September 26, 2023.

To submit comments or access the docket, please follow the detailed instructions provided under **ADDRESSES**. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 26, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2023–24065 Filed 10–31–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Appointments Panel Meeting

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Appointments Panel, a subcommittee of the Federal Accounting Standards Advisory Board (FASAB), will hold a meeting on November 15, 2023. The Appointments Panel makes recommendations regarding appointments for non-federal member positions.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

SUPPLEMENTARY INFORMATION: The meeting is closed to the public. The reason for the closure is that matters covered by 5 U.S.C. 552b(c)(2) and (6) will be discussed. Any such discussions will involve matters that relate solely to internal personnel rules and practices of the sponsor agencies and the disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. 1009(d), portions of advisory committee meetings may be closed to the public where the head of the agency to which the advisory committee reports determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code. The determination shall be in writing and shall contain the reasons for the determination. A determination has been made in writing by the U.S. Government Accountability Office, the U.S. Department of the Treasury, and the Office of Management and Budget, as required by section 10(d) of FACA, that such portions of the meetings may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code.

Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001–1014).

Dated: October 26, 2023.

Monica R. Valentine,

Executive Director.

[FR Doc. 2023–24035 Filed 10–31–23; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL MARITIME COMMISSION

National Shipper Advisory Committee November 2023 Meeting

AGENCY: Federal Maritime Commission.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: Notice is hereby given of a meeting of the National Shipper Advisory Commission (NSAC), pursuant to the Federal Advisory Committee Act.

DATES: The Committee will meet in-person in Washington, DC, on November 16, 2023, from 1 p.m. until 4 p.m. eastern time. Please note that this meeting may adjourn early if the Committee has completed its business.

ADDRESSES: The meeting will be held at the Federal Maritime Commission headquarters located at 800 North Capitol St. NW, Washington, DC 20573. Requests to register should be submitted to *nsac@fmc.gov* and contain ''REGISTER FOR NSAC MEETING'' in the subject line. The deadline for members of the public to register to attend the meeting in-person is Monday, November 13, at 5 p.m. eastern. Members of the public are encouraged to submit registration requests via email in advance of the deadline, as space is limited and will be available on a first-come, first-served basis for those who register in advance. We will note when the limit of in-person attendees has been reached. The meeting will also stream virtually, and a link will be distributed in advance of the meeting to those who register in advance. Please note in the registration request if you would like to attend in person or virtually.

FOR FURTHER INFORMATION CONTACT: Mr. Dylan Richmond, Designated Federal Officer of the National Shipper Advisory Committee, phone: (202) 523–5810; email: *drichmond@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The National Shipper Advisory Committee is a Federal advisory committee. It operates under the provisions of the Federal Advisory Committee Act, 5 U.S.C. app., and 46 U.S.C. chapter 425. The Committee was established on January 1, 2021, when the National Defense Authorization Act for Fiscal Year 2021 became law. Public Law 116–283, section 8604, 134 Stat. 3388 (2021). The Committee provides information, insight, and expertise

pertaining to conditions in the ocean freight delivery system to the Commission. Specifically, the Committee advises the Federal Maritime Commission on policies relating to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system. 46 U.S.C. 42502(b).

The Committee will receive an update from each of its subcommittees. The Committee may receive proposals for recommendations to the Federal Maritime Commission and may vote on these recommendations. Any proposed recommendations will be available for the public to view in advance of the meeting on the NSAC's website, *https://www.fmc.gov/industry-oversight/national-shipper-advisory-committee/*.

Public Comments: Members of the public may submit written comments to NSAC at any time. Comments should be addressed to NSAC, c/o Dylan Richmond, Federal Maritime Commission, 800 North Capitol St. NW, Washington, DC 20573 or *nsac@fmc.gov*.

The Committee will also take public comment at its meeting. If attending the meeting in person and providing comments, please note that in the registration request. Comments are most helpful if they address the Committee's objectives or their proposed recommendations. Comments at the meeting will be limited to 3 minutes each.

A copy of all meeting documentation, including meeting minutes, will be available at *www.fmc.gov* following the meeting.

By the Commission.

Dated: October 27, 2023.

Carl Savoy,

Federal Register Alternate Liaison Officer.

[FR Doc. 2023–24072 Filed 10–31–23; 8:45 am]

BILLING CODE 6730–02–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 November 16, 2023.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, IL 60604) [*Colette.A.Fried@chi.frb.org*]:

1. A*ndrew L. Prather and Tina Prather, both of Petersburg, Illinois; Elizabeth A. Prather, Virginia, Illinois; and Laura J. Prather, individually and as trustee of the Laura J. Prather Trust, both of Creve Coeur, Missouri;* to join the Prather Family Control Group, a group acting in concert, to retain voting shares of Petefish, Skiles Bancshares, Inc., and thereby indirectly retain voting shares of Petefish, Skiles & Company, both of Virginia, Illinois.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–24122 Filed 10–31–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Healthcare Delivery of Clinical Preventive Services for People With Disabilities

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submission.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Healthcare Delivery of Clinical Preventive Services for People with Disabilities,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before December 1, 2023.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kelly Carper, Telephone: 301–427–1656 or Email: *epc@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Healthcare Delivery of Clinical Preventive Services for People with Disabilities.* AHRQ is conducting this review pursuant to section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Healthcare Delivery of Clinical Preventive Services for People with Disabilities.* The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/people-with-disabilities/protocol.*

This is to notify the public that the EPC Program would find the following information on *Healthcare Delivery of Clinical Preventive Services for People with Disabilities* helpful:

- A list of completed studies that your organization has sponsored for this topic. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a

summary, including the following elements, if relevant: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.

▪ *A list of ongoing studies that your organization has sponsored for this topic.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including, if relevant, a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.

▪ Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this topic and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on topics not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions

Key Question 1. What are the primary barriers and facilitators[a] to the receipt of clinical preventive services among people with disabilities?

a. How do these barriers/facilitators vary according to preventive service?

b. How do these barriers/facilitators vary according to type and/or severity of disability?

c. How do these barriers/facilitators vary according to characteristics such as: gender, race/ethnicity, economic status, LGBTQ+ status, or geographic location?

Key Question 2. What is the effectiveness of interventions to improve the receipt of clinical preventive services among people with disabilities?

a. How does the effectiveness vary according to preventive service?

b. How does the effectiveness vary according to type and/or severity of disability?

c. How does the effectiveness vary according to characteristics such as: gender, race/ethnicity, economic status, LGBTQ+ status, or geographic location?

Key Question 3. What are the characteristics and/or components of interventions that contribute to their effectiveness (or lack of effectiveness) in mitigating barriers to the receipt of clinical preventive services among people with disabilities?

a. How does the effectiveness vary according to preventive service?

b. How does the effectiveness vary according to type and/or severity of disability?

c. How does the effectiveness vary according to characteristics such as: gender, race/ethnicity, economic status, LGBTQ+ status, or geographic location?

Key Question 4. What are the harms of intervention programs to mitigate barriers to the receipt of clinical preventive services among people with disabilities?

a. How do the harms vary according to preventive service?

b. How do the harms vary according to type and/or severity of disability?

c. How do the harms vary according to characteristics such as: gender, race/ethnicity, economic status, LGBTQ+ status, or geographic location?

[a] Categories of barriers and facilitators may include but are not limited to:

• Environment-level (*e.g.,* transportation; need/availability of guardian or caregiver)

• Person-level (*e.g.,* fear; discomfort; functional ability; self-efficacy)

• Provider-level (*e.g.,* disability knowledge/assumptions; bias or ''ableism''; communication skills)

• Health system (*e.g.,* insurance; patient functionality information in records; procedural accommodations, such as visit length and clinician reimbursement)

• Accessibility of health facilities (*e.g.,* physical facility; equipment; sensory environment; telehealth)

• Accessible communication (*e.g.,* within facility; from outside of facility)

• Policy-level (*e.g.,* Federal or State laws)

PICOTS (POPULATIONS, INTERVENTIONS, COMPARATORS, OUTCOMES, TIMING, AND SETTING)

Element	Include	Exclude
Population	• People with disabilities (including: physical; cognitive/intellectual/developmental; sensory; serious psychiatric/mental illness) • Adults and children • Specific populations of interest: —Age —Gender —Race/ethnicity —Economic status —LGBTQ+ status —Geographic location (regional and urban/rural) —Immigration status —Incarcerated —Unhoused —Language spoken —Use of a guardian/proxy for healthcare decisions	• Studies that do not include people with disabilities or do not report outcomes according to disability status

PICOTS (POPULATIONS, INTERVENTIONS, COMPARATORS, OUTCOMES, TIMING, AND SETTING)—Continued

Element	Include	Exclude
Intervention	• Interventions to mitigate barriers and/or improve the receipt of clinical preventive services among people with disabilities (*e.g.,* modification in policies, practices, and procedures; effective communication; the physical accessibility of facilities; educational/training programs for healthcare providers) • Characteristics/components of interventions (KQ3) may include elements such as: staffing, funding, facilities, equipment, training • Clinical preventive services listed in Appendix B, derived from USPSTF Grade A and Grade B recommendations: —Screening (anxiety disorders, breast cancer, cervical cancer, colorectal cancer, depression, HIV infection, hypertension, intimate partner violence, osteoporosis, diabetes, unhealth drug or alcohol use) —Interventions or behavioral counseling (breastfeeding, falls prevention, perinatal depression, tobacco use/cessation, weight loss, healthy diet and physical activity, sexually transmitted infections)	• Interventions that do not address barriers to receipt of clinical preventive services for people with disabilities • Preventive services not listed in Appendix B
Comparator	• Another intervention • No intervention	
Outcome	• Receipt of clinical preventive service • Quality of receipt of clinical preventive service • Health outcomes related to clinical preventive service • Patient satisfaction • Patient well-being • Harms of the intervention program	• Cost-effectiveness • Outcomes not related to included clinical preventive services listed in Appendix B
Timing	• All	
Setting	• Primary care outpatient clinics • Community health clinics • Settings referable from primary care settings • Emergency departments • Other settings (*e.g.,* home, residence, mobile care units) • United States or countries with a "very high" United Nations Human Development Index	

Abbreviations: HIV = Human Immunodeficiency Virus; KQ = Key Question; LGBTQ+ = Lesbian Gay Bisexual Transgender Queer/questioning plus/others; USPSTF = United States Preventive Services Task Force.

Dated: October 26, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–24057 Filed 10–31–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Matching Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) is providing notice of the re-establishment of a computer matching program between CMS and the Department of Defense, Defense Manpower Data Center for "Verification of Eligibility for Minimum Essential Coverage Under the Patient Protection and Affordable Care Act through a Department of Defense Health Benefits Plan."

DATES: The deadline for comments on this notice is December 1, 2023. The re-established matching program will commence not sooner than 30 days after publication of this notice, provided no comments are received that warrant a change to this notice. The matching program will be conducted for an initial term of 18 months (from approximately November 30, 2023 to May 29, 2025) and within 3 months of expiration may be renewed for up to one additional year if the parties make no change to the matching program and certify that the program has been conducted in compliance with the matching agreement.

ADDRESSES: Interested parties may submit comments on this notice to the CMS Privacy Act Officer by mail at: Division of Security, Privacy Policy & Governance, Information Security & Privacy Group, Office of Information Technology, Centers for Medicare & Medicaid Services, Location: N1–14–56, 7500 Security Blvd., Baltimore, MD 21244–1850 or by email at *Barbara.Demopulos@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions about the matching program, you may contact Anne Pesto, Senior Advisor, Marketplace Eligibility and Enrollment Group, Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services, at 443–955–9966, by email at *anne.pesto@cms.hhs.gov,* or by mail at 7500 Security Blvd., Baltimore, MD 21244.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (5 U.S.C. 552a) provides certain protections for individuals applying for and receiving Federal benefits. The law governs the use of computer matching by Federal agencies when records in a system of records (meaning, Federal agency records about individuals

retrieved by name or other personal identifier) are matched with records of other Federal or non-Federal agencies. The Privacy Act requires agencies involved in a matching program to:

1. Enter into a written agreement, which must be prepared in accordance with the Privacy Act, approved by the Data Integrity Board of each source and recipient Federal agency, provided to Congress and the Office of Management and Budget (OMB), and made available to the public, as required by 5 U.S.C. 552a(o), (u)(3)(A), and (u)(4).
2. Notify the individuals whose information will be used in the matching program that the information they provide is subject to verification through matching, as required by 5 U.S.C. 552a(o)(1)(D).
3. Verify match findings before suspending, terminating, reducing, or making a final denial of an individual's benefits or payments or taking other adverse action against the individual, as required by 5 U.S.C. 552a(p).
4. Report the matching program to Congress and the OMB, in advance and annually, as required by 5 U.S.C. 552a(o) (2)(A)(i), (r), and (u)(3)(D).
5. Publish advance notice of the matching program in the **Federal Register** as required by 5 U.S.C. 552a(e)(12).

This matching program meets these requirements.

Barbara Demopulos,
Privacy Act Officer, Division of Security, Privacy Policy and Governance, Office of Information Technology, Centers for Medicare & Medicaid Services.

Participating Agencies

The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) is the recipient agency, and the Department of Defense (DoD), Defense Manpower Data Center (DMDC) is the source agency.

Authority for Conducting the Matching Program

The principal authority for conducting the matching program is 42 U.S.C. 18001, *et seq.*

Purpose(s)

The purpose of the matching program is to provide CMS with DoD data verifying individuals' eligibility for coverage under a DoD Health Benefit Plan (*i.e.,* TRICARE), when requested by CMS and state-based administering entities (AE) for the purpose of determining the individuals' eligibility for insurance affordability programs under the Patient Protection and Affordable Care Act (PPACA). CMS and the requesting AE will use the DoD data to determine whether an enrollee in private health coverage under a qualified health plan through a federally-facilitated or state-based health insurance exchange is eligible for coverage under TRICARE, and the dates the individual was eligible for TRICARE coverage. DoD health benefit plans provide minimum essential coverage (MEC), and eligibility for such plans precludes eligibility for financial assistance in paying for private coverage. CMS and AE will use the DoD data to authenticate identity, determine eligibility for financial assistance (including an advance tax credit and cost-sharing reduction, which are types of insurance affordability programs), and determine the amount of any financial assistance.

Categories of Individuals

The categories of individuals whose information is involved in the matching program are: (1) active duty service members and their family members and (2) retirees and their family members whose TRICARE eligibility records at DoD match data provided to DoD by CMS (submitted by AEs) about individual consumers who are applying for or are enrolled in private health insurance coverage under a qualified health plan through a federally-facilitated or state-based health insurance exchange.

Categories of Records

The categories of records used in the matching program are identity records and minimum essential coverage (MEC) period records. To request information from DoD, CMS will submit a request to DoD that may contain, but is not limited to, the following specified data elements in a fixed record format: Social Security Number (SSN), first name, middle name, surname (last name), date of birth, gender, and requested Qualified Health Plan (QHP) coverage effective date and end date. When DoD is able to match the SSN and name provided by CMS and information is available, DoD will provide CMS with the following about each individual, as relevant: SSN, response code indicating enrollment in MEC under a TRICARE plan, and, as applicable, begin date(s) and end date(s) of enrollment in MEC under a TRICARE plan.

System(s) of Records

The records used in the matching program are disclosed from these systems of records, as authorized by routine uses published in the System of Records Notices (SORNs) cited below:

A. System of Records Maintained by CMS

CMS Health Insurance Exchanges System (HIX), CMS System No. 09–70–0560, last published in full at 78 FR 63211 (Oct. 23, 2013), and amended at 83 FR 6591 (Feb. 14, 2018). Routine use 3 authorizes CMS' disclosures of identifying information about applicants to DoD for use in this matching program.

B. System of Records Maintained by DoD

The DoD system of records and routine use that support this matching program are Routine Use h in DMDC 02 DoD, Defense Enrollment Eligibility Reporting Systems (DEERS), last published at 87 FR 32384 (May 31, 2022). Routine use H supports DoD's disclosures to CMS.

[FR Doc. 2023–24081 Filed 10–31–23; 8:45 am]
BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2558]

David Winne: Grant of Special Termination; Final Order Terminating Debarment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) granting special termination of the debarment of David Winne with an effective date of August 18, 2024. FDA bases this order on a finding that Mr. Winne provided substantial assistance in the investigations or prosecutions of offenses relating to a matter under FDA's jurisdiction, and that special termination of Mr. Winne's debarment serves the interest of justice and does not threaten the integrity of the drug approval process.

DATES: This order is effective November 1, 2023.

ADDRESSES: Submit comments electronically at *https://www.regulations.gov.* Written comments may be submitted to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

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:

In a **Federal Register** notice dated August 18, 2023 (88 FR 56636), David Winne was permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 306(a) of the FD&C Act (21 U.S.C. 335a(a)). The debarment was based on FDA's finding that Mr. Winne was convicted of a felony under Federal law for conduct relating to the regulation of any drug product under the FD&C Act. On September 7, 2023, Mr. Winne applied for special termination of debarment, under section 306(d)(4) of the FD&C Act.

Under section 306(d)(4)(C) of the FD&C Act, FDA may limit the period of debarment of a permanently debarred individual if the Agency finds that the debarred individual has provided substantial assistance in the investigation or prosecution of offenses described in section 306(a) or (b) of the FD&C Act or relating to a matter under FDA's jurisdiction. In addition, pursuant to section 306(d)(4)(D)(ii) of the FD&C Act, in cases of an individual FDA may limit the period of debarment to less than permanent but to no less than 1 year, whichever serves the interest of justice and protects the integrity of the drug approval process.

Special termination of debarment is discretionary with FDA. FDA generally considers a determination by the Department of Justice concerning the substantial assistance of a debarred individual conclusive in most cases. Mr. Winne cooperated with the United States Attorney's Office in the investigation of several individuals, as substantiated by a letter submitted by the United States Attorney's Office for the Southern District of New York to the sentencing judge in Mr. Winne's case and which was submitted to the Agency by Mr. Winne. His cooperation contributed to the successful prosecution of these individuals. Accordingly, FDA finds that Mr. Winne provided substantial assistance as required by section 306(d)(4)(C) of the FD&C Act.

The additional requisite showings, *i.e.,* that termination of debarment serves the interest of justice and poses no threat to the integrity of the drug approval process, are difficult standards to satisfy. In determining whether these have been met, the Agency weighs the significance of all favorable and unfavorable factors in light of the remedial, public health-related purposes underlying debarment. Termination of debarment will not be granted unless, weighing all favorable and unfavorable information, there is a high level of assurance that the conduct that formed the basis for debarment has not recurred and will not recur, and that the individual will not otherwise pose a threat to the integrity of the drug approval process.

The evidence FDA reviewed in support of termination shows that Mr. Winne was convicted for a first offense; that he has no prior or subsequent convictions for conduct described under the FD&C Act and has committed no other wrongful acts affecting the drug approval process. The evidence presented supports the conclusion that the conduct upon which Mr. Winne's debarment was based is unlikely to recur. For these reasons, the Agency finds that termination of Mr. Winne's debarment serves the interest of justice and will not pose a threat to the integrity of the drug approval process.

Under section 306(d)(4)(D) of the FD&C Act, the period of debarment of an individual who qualifies for special termination may be limited to less than permanent but to no less than 1 year. Mr. Winne's period of debarment, which commenced on August 18, 2023, has not lasted for at least 1 year. As such, his period of debarment cannot terminate until August 17, 2024. Accordingly, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(d)(4) of the FD&C Act and under authority delegated to the Assistant Commissioner, finds that David Winne's application for special termination of debarment should be granted, and that the period of debarment should terminate on August 18, 2024, thereby allowing him to provide services in any capacity to a person with an approved or pending drug product application after that date. As a result of the foregoing findings, David Winne's debarment is terminated effective August 17, 2024.

Dated: October 26, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–24094 Filed 10–31–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0008]

Request for Nominations on Public Advisory Panels of the Medical Devices Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is requesting that any industry organizations interested in participating in the selection of nonvoting industry representatives to serve on certain panels of the Medical Devices Advisory Committee (MDAC or the Committee) in the Center for Devices and Radiological Health (CDRH) notify FDA in writing. FDA is also requesting nominations for nonvoting industry representatives to serve on certain device panels of the MDAC in the CDRH. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current and upcoming vacancies effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to the FDA by December 1, 2023 (see sections I and II of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by December 1, 2023.

ADDRESSES: All statements of interest from industry organizations interested in participating in the selection process of nonvoting industry representative nomination should be sent to Margaret Ames (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives should be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Margaret Ames, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5213, Silver Spring, MD 20993, 301–796–5960, email: *Margaret.Ames@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency is requesting nominations for nonvoting industry representatives to the panels listed in table 1.

I. Medical Devices Advisory Committee

The Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. The panels of the Medical Devices Advisory Committee engage in a number of activities to fulfill the functions the Federal Food, Drug, and Cosmetic Act (FD&C Act) envisions for device advisory panels. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, advises the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification or reclassification of devices into one of three regulatory categories; advises on any possible risks to health associated with the use of devices; advises on formulation of product development protocols; reviews premarket approval applications for medical devices; reviews guidelines and guidance documents; recommends exemption of certain devices from the application of portions of the FD&C Act; advises on the necessity to ban a device; and responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices. The Committee also provides recommendations to the Commissioner or designee on complexity categorization of in vitro diagnostics under the Clinical Laboratory Improvement Amendments of 1988.

TABLE 1—PANELS AND FUNCTIONS

Panels	Function
Dental Products Panel	Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational products for use in dentistry, endodontics, or bone physiology relative to the oral and maxillofacial area and makes appropriate recommendations to the Commissioner.
Ear, Nose, and Throat Devices Panel	Reviews and evaluate data concerning the safety and effectiveness of marketed and investigational ear, nose, and throat devices and makes appropriate recommendations to the Commissioner.
General and Plastic Surgery Devices Panel	Reviews and evaluate data concerning the safety and effectiveness of marketed and investigational general and plastic surgery devices and makes appropriate recommendations to the Commissioner.
Hematology and Pathology Devices Panel	Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational *in vitro* devices for use in clinical laboratory medicine including pathology, hematology, histopathology, cytotechnology, and molecular biology and makes appropriate recommendations to the Commissioner.
Orthopedic and Rehabilitation Devices Panel	Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational orthopedic and rehabilitation devices and makes appropriate recommendations to the Commissioner.

II. Qualifications

Persons nominated for the device panels should be full-time employees of firms that manufacture products that would come before the panel, or consulting firms that represent manufacturers, or have similar appropriate ties to industry.

III. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations, and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for a particular device panel. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

IV. Application Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Nomination must include a current, complete résumé or curriculum vitae for each nominee including current business address and telephone number, email address if available, and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). Nominations must also specify the advisory panel for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the particular device panels listed in table 1. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.)

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees, and therefore encourages nominations of appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5

U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: October 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–24123 Filed 10–31–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–4319]

Determination That CALCIUM DISODIUM VERSENATE (Edetate Calcium Disodium) Injection, 200 Milligrams per Milliliter, and Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–8363, *Stacy.Kane@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) before an ANDA that refers to that listed drug may be approved, (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved, and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for safety or effectiveness reasons, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table are no longer being marketed.

Application No.	Drug name	Active ingredient(s)	Strength(s)	Dosage form/route	Applicant
NDA 008922	CALCIUM DISODIUM VERSENATE.	Edetate Calcium Disodium.	200 Milligrams (mg)/Milliliter (mL)	Injectable; Injection	Bausch Health US, LLC.
NDA 011722	TENUATE	Diethylpropion Hydrochloride.	25 mg	Tablet; Oral	Nostrum Labs., Inc.
NDA 012546	TENUATE DOSPAN	Diethylpropion Hydrochloride.	75 mg	Tablets, Extended-Release; Oral.	Do.
NDA 019117	FLUOCINONIDE	Fluocinonide	0.05%	Cream; Topical	Taro Pharms. U.S.A., Inc.
NDA 019796	ELOCON	Mometasone Furoate	0.1%	Lotion; Topical	Organon, LLC.
NDA 020489	ANDRODERM	Testosterone	2 mg/24 hours; 4 mg/24 hours	Film, Extended Release; Transdermal.	AbbVie Inc.
NDA 020884	AGGRENOX	Aspirin; Dipyridamole	25 mg; 200 mg	Capsule, Extended Release; Oral.	Boehringer Ingelheim Pharms., Inc.
NDA 020903	REBETOL	Ribavirin	200 mg	Capsule; Oral	Merck Sharp and Dohme Corp.
NDA 020907	ACTIVELLA	Estradiol; Norethindrone Acetate.	0.5 mg; 0.1 mg	Tablet; Oral	Amneal Pharms., LLC.
NDA 020949	ACCUNEB	Albuterol Sulfate	Equivalent to (EQ) 0.021% Base; EQ 0.042% Base.	Solution; Inhalation	Mylan Specialty LP.
NDA 021022	PENLAC	Ciclopirox	8%	Solution; Topical	Valeant International Bermuda.
NDA 021449	HEPSERA	Adefovir Dipivoxil	10 mg	Tablet; Oral	Gilead Sciences, Inc.
NDA 022052	ZYFLO CR	Zileuton	600 mg	Tablet, Extended Release; Oral.	Chiesi USA, Inc.
NDA 022511	VIMOVO	Esomeprazole Magnesium; Naproxen.	EQ 20 mg Base; 375 mg; EQ 20 mg Base; 500 mg.	Tablet, Delayed Release; Oral.	Horizon Medicines LLC.
NDA 022569	LAZANDA	Fentanyl Citrate	EQ 0.1mg Base; EQ 0.3 mg Base; EQ 0.4 mg Base.	Spray, Metered; Nasal	BTcP Pharma, LLC.
NDA 202788	SUBSYS	Fentanyl	0.1 mg; 0.2 mg; 0.4 mg; 0.6 mg; 0.8 mg; 1.2 mg; 1.6 mg.	Spray; Sublingual	Do.
NDA 213645	DAPZURA RT	Daptomycin	500 mg/Vial	Powder; Intravenous	Baxter Healthcare Corp.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product

List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the drug products listed are unaffected by the discontinued marketing of the products subject to these applications. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: October 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–24120 Filed 10–31–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–E–3178]

Determination of Regulatory Review Period for Purposes of Patent Extension; Omegaven

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Omegaven and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by January 2, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by April 29, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 2, 2024. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 2, 2024.Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–E–3178 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; OMEGAVEN.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human

drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, Omegaven (fish oil triglycerides) indicated as a source of calories and fatty acids in pediatric patients with parenteral nutrition-associated cholestasis. Subsequent to this approval, the USPTO received a patent term restoration application for Omegaven (U.S. Patent No. 9,566,260) from Children's Medical Center Corporation and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated November 29, 2019, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of Omegaven represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Omegaven is 4,246 days. Of this time, 4,007 days occurred during the testing phase of the regulatory review period, while 239 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* December 13, 2006. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on December 13, 2006.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* December 1, 2017. FDA has verified the applicant's claim that the new drug application (NDA) for Omegaven (NDA 210589) was initially submitted on December 1, 2017.

3. *The date the application was approved:* July 27, 2018. FDA has verified the applicant's claim that NDA 210589 was approved on July 27, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 383 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: October 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–24124 Filed 10–31–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Infant and Maternal Mortality; Correction

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: HRSA published a notice in the **Federal Register** of October 12, 2023, concerning a meeting of the Advisory Committee on Infant and Maternal Mortality. The document contained incorrect location information. The notice originally stated that the meeting would be held in person at HRSA Headquarters (5600 Fishers Lane, Room 5W07, Rockville, Maryland, 20857) and virtually via webinar. The meeting will now be fully virtual via webinar and not held in person. The webinar link and log-in information will be available at the Committee's website before the meeting: *https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.*

FOR FURTHER INFORMATION CONTACT: Vanessa Lee, MPH, Designated Federal Official, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18N84, Rockville, Maryland, 20857; 301–443–0543; or *SACIM@hrsa.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of October 12, 2023, FR Doc. 2023–22509, page 70682, column 1, **ADDRESSES** section, paragraph 1, correct "This meeting will be held in person at HRSA Headquarters (5600 Fishers Lane, Room 5W07, Rockville, Maryland, 20857) and virtually via webinar" to read: "This meeting will be held by webinar."

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–24080 Filed 10–31–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel; R25 Review.

Date: November 6, 2023.

Time: 4:00 p.m. to 6:00 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: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3204, MSC 9529 Rockville, MD 20852, 301–496–0660, *benzingw@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: October 26, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24117 Filed 10–31–23; 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; SBIR E-Learning for HAZMAT and Emergency Response.

Date: December 7, 2023.

Time: 11:00 a.m. to 5:00 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: Alfonso R. Latoni, Ph.D., Scientific Review Officer and Chief, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental, Health Sciences, Research Triangle Park, NC 27709, 984–287–3279, *alfonso.latoni@nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Time-Sensitive Exploratory Research Support in the Environmental Health Sciences.

Date: December 12, 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.*

(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: October 27, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24136 Filed 10–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Research Education Program Advancing the Careers of a Diverse Research Workforce (R25 Clinical Trial Not Allowed).

Date: November 14, 2023.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G51, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Thomas F. Conway, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G51, Rockville, MD 20852, 240–507–9685, *thomas.conway@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 26, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24111 Filed 10–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: December 12–13, 2023.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G13B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G13B, Rockville, MD 20852, (240) 669–5048, *gaoL2@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: December 13, 2023.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G13B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G13B, Rockville, MD 20852, (240) 669–5048, *gaoL2@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 26, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24114 Filed 10–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public 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 Advisory Council on Aging.

Date: January 23–24, 2024.

Closed: January 23, 2024, 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Building 45, Natcher Building, Center Drive, Bethesda, MD 20892.

Open: January 24, 2024, 10:00 a.m. to 2:00 p.m.

Agenda: Call to order and report from the Director; Discussion of future meeting dates; Consideration of minutes of last meeting; Reports from Task Force on Minority Aging Research, Working Group on Program; Council Speaker; Program Highlights.

Place: Building 45, Natcher Building, Center Drive, Bethesda, MD 20892.

Closed: January 24, 2024, 2:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate review of Intramural Research Program.

Place: Building 45, Natcher Building, Center Drive, Bethesda, MD 20892.

Contact Person: Kenneth Santora, Ph.D., Director, Office of Extramural Activities, National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *ksantora@nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/about/naca,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24041 Filed 10–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

A portion of the meetings will be open to the public. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*). Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portion of 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 Advisory Allergy and Infectious Diseases Council.

Date: January 30, 2024.

Open: 10:30 a.m. to 11:30 a.m.

Agenda: Report of Institute Director.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Closed: 11:45 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Kelly Y. Poe, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F50, Bethesda, MD 20892, 301–496–7291, *poeky@mail.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council Allergy, Immunology and Transplantation Subcommittee.

Date: January 30, 2024.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Open: 1 p.m. to 4 p.m.

Agenda: Report of the Division Director and Division Staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30 Rockville, MD 20892 (Virtual Meeting).

Contact Person: Kelly Y. Poe, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F50 Bethesda, MD 20892, 301–496–7291, *poeky@mail.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council Microbiology and Infectious Diseases Subcommittee.

Date: January 30, 2024.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Open: 1 p.m. to 4 p.m.

Agenda: Report of the Division Director and Division Staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Kelly Y. Poe, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F50, Bethesda, MD 20892, 301–496–7291, *poeky@mail.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council Acquired Immunodeficiency Syndrome Subcommittee.

Date: January 30, 2024.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Open: 1 p.m. to 4 p.m.

Agenda: Report of Division Director and Division Staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F30, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Kelly Y. Poe, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4F50, Bethesda, MD 20892, 301–496–7291, *poeky@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice at least 10 days in advance of the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.niaid.nih.gov/about/advisory-council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 26, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24112 Filed 10–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; NIH Office of Intramural Training & Education—Application, Registration, and Alumni Systems Office of the Director

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide an opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) Office of Intramural Training & Education (OITE) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Patricia Wagner, Program Analyst, Office of Intramural Training & Education (OITE), Office of Intramural Research (OIR), Office of the Director (OD), National Institutes of Health (NIH); 2 Center Drive: Building 2/Room 2E06; Bethesda, Maryland 20892 or call non-toll-free number 240–476–3619 or email your request, including your address to: *wagnerpa@od.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: NIH Office of Intramural Training & Education—Application, Registration, and Alumni Systems, 0925–0299, exp., date, 05/31/2024, REVISION, Office of Intramural Training & Education (OITE), Office of Intramural Research (OIR), Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: The OITE administers a variety of programs and initiatives to recruit pre-college through post-doctoral educational level individuals into the NIH Intramural Research Program to facilitate their development into future biomedical scientists. The proposed information collection is necessary to assess the eligibility and quality of potential awardees for traineeships in these programs.

The OITE collection system has been updated to use universal collection form templates with features that may be activated based on collection needs: number of recommendation letters, exceptional financial need statement, NIH campus location, etc. The collection system does allow for templates to have program specific labeling and directions to make sure the collection form is tailored to each training program, including but not limited to the following: Summer Internship Program, Postbaccalaureate Program, Graduate Partnerships

Program (GPP), and Undergraduate Scholarship Program (UGSP). In addition to these changes, the collection system allows applicants to create a personal profile that allows for migrating similar information into multiple applications, thereby reducing applicant burden.

The applications for admission consideration solicit information including: personal information, ability to meet eligibility criteria, contact information, university-assigned student identification number, training program selection, scientific discipline interests, educational history, standardized examination scores, reference information, resume components, employment history, employment interests, dissertation research details, letters of recommendation, financial aid history, sensitive data, and travel information, as well as feedback questions about interviews and application submission experiences. Sensitive data collected on the applicants: race, gender, ethnicity, relatives at NIH, and recruitment method, are made available only to OITE staff members or in aggregate form to select NIH offices and are not used by the admission committees for admission consideration. In addition, information to monitor trainee placement after departure from NIH is periodically collected.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 12,824.

ESTIMATED ANNUALIZED BURDEN HOURS

Type	Number of respondents	Number of responses annually per respondent	Average time/ response (hours)	Total annual burden hours
NIHAC—Applications	10,000	1	45/60	7,500
NIHAC—Reference Letters	25,000	1	10/60	4,167
NIHAC—UGSP Financial Need Form	125	1	10/60	21
GPP—Interview Experience Survey	90	1	10/60	15
UGSP—Interview Experience Survey	30	1	10/60	5
UGSP—Contract	25	1	10/60	4
UGSP—Evaluation of Scholar PayBack Period	40	1	10/60	7
UGSP—Deferment Form	50	1	10/60	8
GPP—Awards Certificate	75	1	3/60	4
Trainee—Climate Survey	500	1	20/60	167
Trainee—Onboarding Survey	1,575	1	10/60	263
Trainee—Exit Survey	1,575	1	10/60	263
MyOITE User Accounts (NIH-only)	3,000	1	3/60	150
Event Registrations	5,000	1	3/60	250
Totals	47,085	n/a	n/a	12,824

Dated: October 24, 2023.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2023–24036 Filed 10–31–23; 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 open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public 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 Advisory Council on Aging.

Date: May 21–22, 2024.

Closed: May 21, 2024, 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate review of applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Closed: May 22, 2024, 8:00 a.m. to 9:00 a.m.

Agenda: To review and evaluate NIA IRP Review.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Open: May 22, 2024, 9:00 a.m. to 12:30 p.m.

Agenda: Call to Order and Director's Status Report; Staff Introduction; Future Meeting Dates; Task Force on Minority Aging Research; Working Group on Program and NOFO Concept Clearances/Contract Clearance and DFCG Review Final Report; Program Highlights; Council Speaker, Dr. Rick Woychik, Ph.D.; Meeting Adjourned.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Kenneth Santora, Director, Office of Extramural Activities, National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *ksantora@nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/about/naca,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 26, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24043 Filed 10–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, October 31, 2023, 11:00 a.m. to November 03, 2023, 05:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on September 25, 2023, FR Doc 2023–21368, 88 FR 67334.

This notice is being amended to change the dates and time of this two-day meeting to November 3, 2023, and November 17, 2023; The start time has changed to 10:00 a.m., and the end time remains the same. The meeting is closed to the public.

Dated: October 26, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24115 Filed 10–31–23; 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: Center for Scientific Review Special Emphasis Panel; Member Conflict: Glioma, Multiple Sclerosis, and Neuroinflammation.

Date: November 29, 2023.

Time: 1:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Salma Asmat Quraishi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0592, *salma.quraishi@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: HIV associated immunopathogenesis, vaccines, co-infections and cancer.

Date: December 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: Kenneth A. Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Learning, Memory, Language, Communication.

Date: December 7, 2023.

Time: 11:30 a.m. to 3:00 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: Sepandarmaz Aschrafi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040D, Bethesda, MD 20892, (301) 451.4251, *Armaz.aschrafi@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: October 27, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24110 Filed 10–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*). Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: January 30, 2024.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: Report of Division Director and Division Staff.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 8D49, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Pamela Gilden, Branch Chief, Science Planning and Operations Branch, Division of AIDS, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 8D49, Rockville, MD 20852–9831, 301–594–9954, *pamela.gilden@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice at least 10 days in advance of the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.niaid.nih.gov/about/committees-aids-research,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 26, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24113 Filed 10–31–23; 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: Center for Scientific Review Special Emphasis Panel; Drug Discovery and Molecular Pharmacology.

Date: November 15, 2023.

Time: 1:00 p.m. to 6:00 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: Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, (301) 272–4596, *smileyja@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Auditory, Visual and Cognitive Neuroscience.

Date: November 30, 2023.

Time: 11:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alena Valeryevna Savonenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1009J, Bethesda, MD 20892 (301) 594–3444, *savonenkoa2@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA/REAP: Respiratory, Cardiac and Circulatory Sciences.

Date: November 30, 2023.

Time: 1:00 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kirk E Dineley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 806E, Bethesda, MD 20892, (301) 867–5309, *dineleyke@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Skeletal Muscle and Exercise Physiology/Musculoskeletal Rehabilitation Sciences.

Date: December 5, 2023.

Time: 9:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aftab A Ansari, Ph.D., Scientific Review, Officer Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 237–9931, *ansaria@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Musculoskeletal, Dental and Oral Sciences.

Date: December 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: Chee Lim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, (301) 435–1850, *limc4@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–21–120: Fogarty Global Infectious Disease Research Training Program.

Date: December 8, 2023.

Time: 10:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dayadevi Jirage, Ph.D., Scientific Review, Officer Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4422, Bethesda, MD 20892, (301) 867–5309, *jiragedb@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 26, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24116 Filed 10–31–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2024 Notice of Supplemental Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services (HHS).

ACTION: Notice of intent to award supplemental funding.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) is supporting a supplement in scope of the original award to the Community-Based, Advocacy-Focused, Data-Driven, Coalition-Building Association (CADCA) recipient funded in FY 2019 under the National Anti-Drug Coalitions Training and Workforce Development Grant Program (Short Title: Coalitions Training Grant), Notice of Funding Opportunity (NOFO) SP–19–002. The recipient may receive up to $562,500. The supplemental funding will extend the project period by 10-months until September 29, 2024 and will: leverage existing resources and conference support to expand SAMHSA's scope and capacity; and provide training and technical assistance to state and community prevention leaders, including members of anti-drug community coalitions from around the country who are committed to addressing the evolving needs of the behavioral health field. The training and workforce development activities supported through this grant include SAMHSA's Prevention Day and SAMHSA's participation in the annual National Leadership Forum and annual Mid-Year Training Institute of CADCA.

FOR FURTHER INFORMATION CONTACT: David Lamont Wilson, Public Health Analyst, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857, telephone 240–276–2588; email: *david.wilson@samhsa.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: FY 2019 National Anti-Drug Coalitions Training and Workforce Development Grant Program (Short Title: Coalitions Training Grant), Notice of Funding Opportunity SP–19–002.

Assistance Listing Number: 93.243.

Authority: The Coalitions Training Grant is authorized under sections 509, 516 and 520A of the Public Health Service Act, as amended.

Justification: Eligibility for this supplemental funding is limited to CADCA, which was funded in FY 2019 under the National Anti-Drug Coalitions Training and Workforce Development Grant Program (Short Title: Coalitions Training Grant). CADCA is the only national organization that provides training and technical assistance annually through a national leadership conference for thousands of members of community coalitions dedicated to preventing substance use. CADCA is currently the sole organization that plays a major role in helping to strengthen and develop the nation's prevention infrastructure of anti-drug coalitions in support of ongoing activities funded by SAMHSA's priority prevention grant programs. It is the only identified organization that currently meets this experience level and national reach to over 5,000 identified anti-drug coalitions across the country.

This is not a formal request for application. Assistance will only be provided to Coalitions Training Grant (CADCA) funded in FY 2019 based on the receipt of a satisfactory application and associated budget that is approved by a review group.

Dated: October 27, 2023.

Ann Ferrero,

Public Health Analyst.

[FR Doc. 2023–24125 Filed 10–31–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

FOR FURTHER INFORMATION CONTACT: Anastasia Flanagan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Flanagan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: In accordance with Section 9.19 of the Mandatory Guidelines, a notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens: At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Desert Tox, LLC, 5425 E Bell Rd., Suite 125, Scottsdale, AZ 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare,* 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive,

Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295 (Formerly: Legacy Laboratory Services Toxicology MetroLab)

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only

Omega Laboratories, Inc., 2150 Dunwin Drive, Unit 1 & 2, Mississauga, ON, Canada L5L 5M8, 289–919–3188

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anastasia D. Flanagan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2023–24058 Filed 10–31–23; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–78]

30-Day Notice of Proposed Information Collection: Manufactured Home Construction and Safety Standards Act Park Model RV Exemption, OMB Control No. 2502–0616

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* December 1, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 21, 2023 at 88 FR 40328.

A. Overview of Information Collection

Title of Information Collection: Manufactured Home Construction and Safety Standards Act Park Model RV Exemption Notice.

OMB Approval Number: 2502–0616.

OMB Expiration Date: January 31, 2024.

Type of Request: Revision of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: For recreational vehicles that are exempt from HUD regulation as manufactured homes, HUD requires certification with either the American National Standards Institute's (ANSI) standard for Park Model Recreational Vehicles (PMRV), A119.5–15 or the National Fire Protection Association's NFPA 1192,

Standard on Recreational Vehicles, 2015 Edition. PMRVs built to ANSI A119.5–15 may exceed the RV exemption's 400 square foot threshold; a manufacturer must post notice in the home that the structure is only designed for recreational purposes and is not designed as a primary residence or for permanent occupancy. The Recreation Vehicle Industry Association's (RVIA) current seal does not satisfy HUD's standard for the manufacturer's notice. HUD requirements provide specifics regarding the content and prominence of the notice and which requires the notice to be prominently displayed in the unit and delivered to the consumer before the sale transaction is complete, regardless of whether the transaction occurs online or in-person. PMRV manufacturers will satisfy this requirement with two printed sheets of paper per PMRV: One in the kitchen, and one delivered to the consumer before the transaction.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 25.

Estimated Number of Responses: 4,480 per annum.

Frequency of Response: Approximately 179.

Average Hours per Response: 20 seconds.

Total Estimated Burden: 25 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–24074 Filed 10–31–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–79]

30-Day Notice of Proposed Information Collection: Public Housing Capital Fund Program, OMB Control No.: 2577–0157

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* December 1, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on February 14, 2023 at 88 FR 9530.

A. Overview of Information Collection

Title of Information Collection: Public Housing Capital Fund Program.

OMB Approval Number: 2577–0157.

Type of Request: Extension of currently approved collection.

Form Numbers: HUD Form 50075.1, HUD–5084, HUD–5087, HUD–50071, HUD–50075.1, HUD–51000, HUD–51001, HUD–51002, HUD–51003, HUD–5104, HUD–51915, HUD–51915–A, HUD–51971–I, HUD 51971–II, HUD–52396, HUD–52427, HUD–52482, HUD–52483–A, HUD–52484, HUD–52485, HUD–52651–A, HUD–52828, HUD–52829, HUD–52830, HUD–52833, HUD–52845, HUD–52846, HUD–52847, HUD–52849, HUD–53001, HUD–53015, HUD–5370–C1, HUD–5370–C2, HUD–5370EZ, HUD–5372, HUD–5378, and HUD–5460.

Description of the need for the information and proposed use: Each year Congress appropriates funds to approximately 3,015 Public Housing Authorities (PHAs) for modernization, development, financing, and management improvements. The funds are allocated based on a complex formula. The forms in this collection are used to appropriately disburse and utilize the funds provided to PHAs. Additionally, these forms provide the information necessary to approve a financing transaction in addition to any Capital Fund Financing transactions. Respondents include the approximately 3,015 PHA receiving Capital Funds and any other PHAs wishing to pursue financing.

Respondents: Public Housing Authorities.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–5084	2,771	1	2,771	1.5	4,156	$34	$141,321
HUD–5087	50	1	50	3	150	56	8,400
HUD–50071	10	1	10	0.5	5	56	280
HUD–50075.1	300	1	300	2.2	660	34	22,440
HUD–51000	590	1	590	1	590	34	20,060
HUD–51001	2,550	12	30,600	3.5	107,100	34	3,641,000
HUD–51002	1,600	5	8,000	1	8,000	34	272,000
HUD–51003	500	2	1,000	1.5	1,500	34	51,000
HUD–51004	500	2	1,000	2.5	2,500	34	85,000
HUD–51915	1,315	1	1,315	3	3,945	34	134,130
HUD–51915–A	1,315	1	1,315	3	3,945	34	134,130
HUD–51971–I	40	1	80	1.5	60	34	2,040
HUD–51971–II	40	1	80	1.5	60	34	2,040
HUD–52396	96	1	96	2	192	34	6,528
HUD–52427	88	1	88	0.5	44	34	1,496
HUD–52482	40	1	40	2	80	34	2,720
HUD–52483–A	40	1	40	2	80	34	2,720
HUD–52484	532	4	2,128	10	21,280	34	723,520
HUD–52485	40	1	40	1	40	34	1,360
HUD–52651–A	40	1	40	2.5	100	34	3,400
HUD–52829	25	1	25	40	1,000	56	56,000
HUD–52830	25	1	25	16	400	56	22,400
HUD–52833	2,771	1	2,771	13	36,023	34	1,224,782
HUD–52836	10	1	10	0.5	5	56	280
HUD–52845	25	1	25	8	200	56	11,200
HUD–52846	25	1	25	16	400	56	22,400
HUD–52847	25	1	25	8	200	56	11,200
HUD–52849	25	1	25	1	25	56	1,400
HUD–53001	2,771	1	2,771	2.5	6,927	34	235,535
HUD–53015	40	1	40	3	120	34	4,080
HUD–5370	1,347	1	1,347	1	1,347	34	45,798
HUD–5370EZ	1,347	1	1,347	1	1,347	34	45,798
HUD–5370C1	1,347	1	1,347	1	1,347	34	45,798
HUD–5370C2	1,347	1	1,347	1	1,347	34	45,798
HUD–5372	590	1	590	1	590	34	20,060
HUD–5378	158	24	3,792	0.25	948	34	32,232
HUD–5460	40	1	40	1	40	34	1,360
Public Housing Information Center Certification of Accuracy	2,771	1	2,771	2	5,542	34	188,428
HUD–52828 Physical Needs Assessment form	2,771	1	2,771	15	41,565	56	2,327,640
Broadband Feasibility determination	2,771	1	2,771	10	27,710	34	942,140
SF–424	2,771	1	2,771	0	0	0	0
Totals					281,570		10,539,914

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–24079 Filed 10–31–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/ A0A501010.999900]

HEARTH Act Approval of Ho-Chunk Nation of Wisconsin Amended Residential Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Ho-Chunk Nation of Wisconsin Amended Residential Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into residential leases without further BIA approval.

DATES: BIA issued the approval on October 26, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Carla Clark, Bureau of Indian Affairs,

Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *carla.clark@bia.gov,* (702) 484–3233.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal Leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Ho-Chunk Nation of Wisconsin.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. *See* 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal Government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal Government pursuant to the HEARTH Act. Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 of the IRA preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self- government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal Government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal Government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to 25 CFR part 162.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or 25 CFR part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Ho-Chunk Nation of Wisconsin.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–24089 Filed 10–31–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/A0A501010.999900]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact Amendment Between Spokane Tribe of Indians and the State of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Fourth Amendment to the Tribal-State Compact between the Spokane Tribe of Indians and the State of Washington.

DATES: The Amendment takes effect on November 1, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment permits the Tribe to offer Electronic Table Games, updates the Compact to reflect this change in various sections, and incorporates Appendix G, Electronic Table Games. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–24088 Filed 10–31–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[DOI–2022–0006; PWOVPADW0 PPMPRLE1Y.Y00000]

Privacy Act of 1974; System of Records

AGENCY: National Park Service, Interior.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior (DOI) is issuing a public notice of its intent to create the National Park Service (NPS) Privacy Act system of records, INTERIOR/NPS–34, Backcountry and Wilderness Use Permit System. The system processes applications for permits from individual members of the public, organizations, and other business entities interested in obtaining permits authorizing access to and use of backcountry and wilderness areas within the National Park System. This new system will be included in DOI's inventory of record systems.

DATES: This new system will be effective upon publication. New routine uses will be effective December 1, 2023. Submit comments on or before December 1, 2023.

ADDRESSES: You may send comments identified by docket number [DOI–2022–0006] by any of the following methods:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.

• *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2022–0006] in the subject line of the message.

• *U.S. mail or hand-delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2022–0006]. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Felix Uribe, Associate Privacy Officer, National Park Service, 12201 Sunrise Valley Drive, Reston, VA 20192, *nps_privacy@nps.gov* or (202) 354–6925.

SUPPLEMENTARY INFORMATION:

I. Background

NPS is establishing the system of records for the INTERIOR/NPS–34, Backcountry and Wilderness Use Permit System. The system processes applications for permits from members of the public, organizations, and other business entities interested in obtaining permits authorizing access to and use of backcountry and wilderness areas within the National Park System. The system also assists park staff with visitors' education, trip planning, fee collection, resource management and protection, wilderness stewardship, outdoor ethics, recreational use planning, law enforcement activities, and public safety, including preventative search and rescue; provides permit holders and participants with information about parks and their partners; identifies permitted trip itineraries; and provides reports of activities conducted under an issued permit.

In accordance with its legal authorities, NPS may share information with Federal, state, local, and Tribal agencies for search and rescue and law enforcement activities, and status of permits to ensure compliance with all applicable permitting requirements and terms of other official agreements. To the extent permitted by law, information may be shared with other agencies and organizations as authorized and compatible with the purpose of this system, or when proper and necessary, consistent with the routine uses set forth in this system of records notice (SORN).

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a "system of records." A system of records is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particulars assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations at 43 CFR part 2, subpart K, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. The INTERIOR/NPS–34, Backcountry and Wilderness Use Permit System, SORN is published in its entirety below. In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Participation

You should be aware your entire comment including your personally identifiable information, such as your address, phone number, email address, or any other personal information in your comment, may be made publicly available at any time. While you may request to withhold your personally identifiable information from public review, we cannot guarantee we will be able to do so.

SYSTEM NAME AND NUMBER:

INTERIOR/NPS–34, Backcountry and Wilderness Use Permit System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Visitor Resource and Protection Directorate, National Park Service, 1849 C Street NW, Room 2462, Washington, DC 20040. Records are also located at the parks responsible for issuing backcountry and wilderness use permits. A current listing of park offices may be obtained by visiting the NPS website at *https://www.nps.gov* or by contacting the System Manager below.

SYSTEM MANAGER(S):

Chief of Wilderness Stewardship, Visitor and Resource Protection Directorate, National Park Service, 1849 C Street NW, Room 2462, Washington, DC 20240.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 54 U.S.C. Subtitle 1, National Park System; 16 U.S.C 1131–1136, Wilderness Act; 16 U.S.C 6801–6814, Federal Lands Recreation Enhancement Act; 36 CFR part 71, Recreation Fees; 36 CFR 1.6, Permits; 36 CFR 2.10, Camping; 36 CFR 2.23, Recreation Fees; and 36 CFR part 13, NPS Units in Alaska.

PURPOSE(S) OF THE SYSTEM:

The purposes of the system are to:

(1) Assist park staff with visitors' education, trip planning, fee collection, resource management and protection, wilderness stewardship, outdoor ethics, recreational use planning, trip itineraries, and law enforcement and public safety activities, including preventative search and rescue;

(2) Establish and verify applicants' eligibility and process applications from members of the public and organizations interested in obtaining a permit for authorized activities within the NPS;

(3) Provide permit holders, participants and members of the public with permit-related information and information about parks and partners;

(4) Monitor activities conducted under a permit and analyze data, produce reports to manage the use of park resources, generate budget estimates and track performance, and evaluate the effectiveness of the permit programs to meet reporting requirements of the DOI and NPS; and

(5) Assess the impact of permitted activities on the conservation and management natural and cultural resources, including protected species and their habitats and preservation of wilderness character.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include members of the public and organizations submitting a permit application, and NPS employees responsible for processing applications for permits, applicants of permits, and holders of permits. This system contains records concerning corporations and other business entities, which are not subject to the Privacy Act. However, records pertaining to individuals acting on behalf of corporations and other business entities may reflect personal information.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains backcountry and wilderness permit applications and permits for authorized activities in national parks and may include applicant information such as name, address and country, email, home phone number, personal mobile number, work phone number, park pass number, group/organization type, permit request number, permit number; type and location of backcountry and wilderness use requested; method of travel; mode of transportation such as vehicle, aircraft, watercraft, snowmobile, and off-road vehicle information including make, model, and color, state of issuance and license plate number; parking and launch locations; aircraft Registration N-number and watercraft Hull Registration number; equipment information; itinerary details such as dates, use area or location, trailhead and/or campground/trail name or code, number of campsites, trip length, and group size; payment information such as credit card number, credit card expiration date, and amount authorized. Other records also include information pertaining to general administrative processing and review of an application, and the monitoring of activities under the issued permit.

RECORD SOURCE CATEGORIES:

Records in the system are obtained from applicants and permit holders of backcountry and wilderness permits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOI as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

(1) DOI or any component of DOI;

(2) Any other Federal agency appearing before the Office of Hearings and Appeals;

(3) Any DOI employee or former employee acting in his or her official capacity;

(4) Any DOI employee or former employee acting in his or her individual capacity when DOI or DOJ has agreed to represent that employee or pay for private representation of the employee; or

(5) The United States Government or any agency thereof, when DOJ determines that DOI is likely to be affected by the proceeding.

B. To a congressional office when requesting information on behalf of, and at the request of, the individual who is the subject of the record.

C. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

D. To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

E. To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

F. To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

G. To representatives of the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

H. To state, territorial and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

I. To an expert, consultant, grantee, shared service provider, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

J. To appropriate agencies, entities, and persons when:

(1) DOI suspects or has confirmed that there has been a breach of the system of records;

(2) DOI has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOI (including its information systems, programs, and operations), the Federal Government, or national security; and

(3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOI's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when DOI determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(1) responding to a suspected or confirmed breach; or

(2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

L. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

M. To the Department of the Treasury to recover debts owed to the United States.

N. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

O. To Federal, state, local, and tribal jurisdictions and agencies for the purpose of disclosing emergency contact information related to search and rescue efforts and coordinated law enforcement activities.

P. To Federal, state, local and tribal natural resource, recreation and land management jurisdictions, agencies, and organizations for the purpose of monitoring backcountry and wilderness visitor use activities, locations, and statistics, and disclosing information on permits granted in compliance with all applicable permitting requirements.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records are stored in file folders stored within filing cabinets. Electronic records are maintained in computers, computer databases, email, and electronic media such as removable hard drives, magnetic disks, compact discs, and computer tapes.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are retrieved by various fields including the first name, last name, permit request number, permit number, email address, phone number, license plate number, use area and date, organization, and zip code.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are retained in accordance with the NPS Records Schedule Resource Management and Lands (Item 1), which has been approved by NARA (Job No. N1–79–08–1). The disposition for routine visitor use, resource management and land records are temporary and are destroyed or deleted 3 years after closure. Approved destruction methods for temporary records that have met their retention period include shredding or pulping paper records and erasing or degaussing electronic records in accordance with NARA guidelines and Departmental policy.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security and privacy rules and policies. During normal hours of operation, paper records are maintained in locked file cabinets under the control of authorized personnel. Computer servers on which electronic records are stored and located in secured DOI controlled facilities with physical, technical and administrative levels of security to prevent unauthorized access to the DOI network and information assets. Access granted to authorized personnel is password-protected, and each person granted access to the system must be individually authorized to use the system. A Privacy Act Warning Notice appears on computer monitor screens when records containing information on individuals are first displayed. Data exchanged between the servers and the system is encrypted. Backup tapes are encrypted and stored in a locked and

controlled room in a secure, off-site location.

Computerized records systems follow the National Institute of Standards and Technology privacy and security standards as developed to comply with the Privacy Act of 1974, as amended, 5 U.S.C. 552a; Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.;* Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551 *et seq.;* and the Federal Information Processing Standards 199: Standards for Security Categorization of Federal Information and Information Systems. Security controls include user identification, passwords, database permissions, encryption, firewalls, audit logs, and network system security monitoring, and software controls.

Access to records in the system is limited to authorized personnel who have a need to access the records in the performance of their official duties, and each user's access is restricted to only the functions and data necessary to perform that person's job responsibilities. System administrators and authorized users are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training and sign the DOI Rules of Behavior. Privacy Impact Assessments were conducted to ensure that Privacy Act requirements are met and appropriate privacy controls were implemented to safeguard the personally identifiable information contained in the system.

RECORD ACCESS PROCEDURES:

An individual requesting access to their records should send a written inquiry to the applicable System Manager identified above. DOI forms and instructions for submitting a Privacy Act request may be obtained from the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must include a general description of the records sought and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requestor's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS'' on both the envelope and letter. A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of their records should send a written request to the applicable System Manager as identified above. DOI instructions for submitting a request for amendment of records are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must clearly identify the records for which amendment is being sought, the reasons for requesting the amendment, and the proposed amendment to the record. The request must include the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requestor's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT REQUEST FOR AMENDMENT'' on both the envelope and letter. A request for amendment must meet the requirements of 43 CFR 2.246.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records about them should send a written inquiry to the applicable System Manager as identified above. DOI instructions for submitting a request for notification are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must include a general description of the records and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requestor's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT INQUIRY'' on both the envelope and letter. A request for notification must meet the requirements of 43 CFR 2.235.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2023–24075 Filed 10–31–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRN_MO4500176078]

Filing of Plats of Survey: Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of lands described in this notice are scheduled to be officially filed in the Bureau of Land Management (BLM), Alaska State Office, Anchorage, Alaska. The surveys, which were executed at the request of the BLM and the National Oceanic and Atmospheric Administration (NOAA), are necessary for the management of these lands.

DATES: The BLM must receive protests by December 1, 2023.

ADDRESSES: You may buy a copy of the plats from the BLM Alaska Public Information Center, 222 W 7th Avenue, Mailstop 13, Anchorage, AK 99513. Please use this address when filing written protests. You may also view the plats at the BLM Alaska Public Information Center, Fitzgerald Federal Building, 222 W 7th Avenue, Anchorage, Alaska, at no cost.

FOR FURTHER INFORMATION CONTACT: Thomas B. O'Toole, Chief, Branch of Cadastral Survey, Alaska State Office, Bureau of Land Management, 222 W 7th Avenue, Anchorage, AK 99513; 907–271–4231; *totoole@blm.gov.* People who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the BLM during normal business hours. The FRS 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: The lands surveyed are:

Fairbanks Meridian, Alaska

T. 8 N., R. 9 E., accepted September 29, 2023.
T. 7 N., R. 10 E., accepted September 29, 2023.
T. 8 N., R. 10 E., accepted September 29, 2023.
T. 9 N., R. 10 E., accepted September 29, 2023.
T. 8 N., R. 11 E., accepted September 29, 2023.
T. 9 N., R. 11 E., accepted September 29, 2023.
T. 9 N., R. 12 E., accepted September 29, 2023.
T. 5 N., R. 18 E., accepted September 29, 2023.
T. 6 N., R. 18 E., accepted September 29, 2023.
T. 5 N., R. 19 E., accepted September 29,

2023.
T. 6 N., R. 19 E., accepted September 29, 2023.
T. 7 N., R. 19 E., accepted September 29, 2023.
T. 9 N., R. 19 E., accepted September 29, 2023.
T. 8 N., R. 20 E., accepted September 29, 2023.

Seward Meridian, Alaska

U.S. Survey No. 14620, accepted October 17, 2023, situated in T. 15 S., R. 49 W.
T. 35 S., R. 131 W., accepted October 23, 2023.

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the State Director for the BLM in Alaska. The protest may be filed by mailing to BLM State Director, Alaska State Office, Bureau of Land Management, 222 W 7th Avenue, Anchorage, AK 99513 or by delivering it in person to BLM Alaska Public Information Center, Fitzgerald Federal Building, 222 W 7th Avenue, Anchorage, Alaska. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. You must file the notice of protest before the scheduled date of official filing for the plat(s) of survey being protested. The BLM will not consider any notice of protest filed after the scheduled date of official filing. A notice of protest is considered filed on the date it is received by the State Director for the BLM in Alaska during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the State Director for the BLM in Alaska within 30 calendar days after the notice of protest is filed.

If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personally identifiable information in a notice of protest or statement of reasons, you should be aware that the documents you submit, including your personally identifiable information, may be made publicly available in their entirety at any time. While you can ask the BLM to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. chap. 3.

Thomas B. O'Toole.
Chief Cadastral Surveyor, Alaska.

[FR Doc. 2023–24046 Filed 10–31–23; 8:45 am]
BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO4500173719]

Notice of Temporary Closure of Public Lands for the 2023–2027 Off-Highway Vehicle Races in the Jean/Roach Dry Lakes Special Recreation Management Area, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure.

SUMMARY: The Las Vegas Field Office announces the temporary closures of certain public lands under its administration in Clark County, NV. These temporary closures are being made in the interest of public safety for the SNORE 250, Mint 400, and Legacy Battleground Off-Highway Vehicle (OHV) races in the Jean/Roach Dry Lakes Special Recreation Management Area (SRMA). The events will individually take place for one-day and two-day periods between the months of December to March from 2023 through 2027. The temporary closures are needed to limit access to the race area and minimize the risk of potential collisions with spectators and racers during the events.

DATES: The temporary closures will go into effect during the official permitted running of the SNORE 250, Mint 400, and Legacy Battleground OHV races. The SNORE 250 and Legacy Battleground OHV races are one-day races, and the Mint 400 takes place over a two-day period. The races occur between the months of December to March each year from 2023–2027. The closure dates will be listed on *www.blm.gov/nevada* at least 30 days prior to each event.

ADDRESSES: The temporary closure order and map of the closure area will be posted at the BLM Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada, 89130, and on the BLM website: *www.blm.gov/nevada.* These materials will also be posted at the access point of Jean Dry Lake and the surrounding areas.

FOR FURTHER INFORMATION CONTACT: Braden Yardley, Outdoor Recreation Planner, (702) 515–5089, or *byardley@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 Las Vegas Field Office announces the temporary closure of certain public lands under its administration. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the official permitted running of the SNORE 250, Mint 400, and Legacy Battleground OHV races.

The public lands affected by this closure are described as follows:

Mount Diablo Meridian, Nevada

T. 25 S., R. 59 E.,
Sec. 23, those portions of the S½ lying southeasterly of the southeasterly right-of-way boundary of State Route 604, excepting CC–0360;
Sec. 24, excepting CC–0360;
Sec. 25;
Sec. 26, E½, excepting CC–0360;
Sec. 35, lots 4, 5, and 10, excepting CC–0360, and E½;
Sec. 36.
T. 26 S., R. 59 E.,
Sec. 1;
Sec. 2, lots 1 and 2, S½NE¼, E½SW¼, and SE¼;
Secs. 11 thru 14;
Sec. 22, lot 1, excepting CC–0360, NE¼NE¼, S½NE¼, excepting CC–0360, and SE¼;
Secs. 23 thru 26;
Sec. 27, lots 4, 5, and 8, excepting CC–0360, NE¼, SE¼SW¼, and SE¼;
Sec. 34, lot 1, excepting CC–0360, NE¼, NE¼NW¼, and SE¼;
Secs. 35 and 36.
T. 27 S., R. 59 E.,
Secs. 1 and 2;
Secs. 3 and 4, excepting CC–0360;
Sec. 5, those portions of the E½ lying easterly of the easterly right-of-way boundary of State Route 604;
Sec. 9, NE¼NE¼, excepting CC–0360 and W½SW¼;
Sec. 10, N½NE¼, SE¼NE¼, and N½NW¼;
Secs. 11 thru 17 and secs. 21 thru 24.
T. 24 S., R. 60 E.,
Sec. 13;
Sec. 14, NE¼, those portions of the NW¼NW¼ lying southeasterly of the southeasterly right-of-way boundary of State Route 604, S½NW¼, and S½;
Sec. 15, those portions of the SE¼NW¼ and S½ lying southeasterly of the southeasterly right-of-way boundary of State Route 604;
Sec. 16, those portions of the SE¼SE¼ lying southeasterly of the southeasterly right-of-way boundary of State Route 604;
Sec. 20, those portions of the SE¼SE¼ lying southeasterly of the southeasterly

right-of-way boundary of State Route 604;
Sec. 21, those portions lying southeasterly of the southeasterly right-of-way boundary of State Route 604;
Secs. 22 thru 28;
Sec. 29, those portions of the NE¼ and S½ lying southeasterly of the southeasterly right-of-way boundary of State Route 604;
Sec. 31, those portions of the E½ lying southeasterly of the southeasterly right-of-way boundary of State Route 604, excepting CC–0360;
Sec. 32, those portions lying southeasterly of the southeasterly right-of-way boundary of State Route 604;
Secs. 33 thru 36.
T. 25 S., R. 60 E., those portions lying southeasterly of the southeasterly right-of-way boundary of State Route 604, excepting CC–0360.
T. 26 S., R. 60 E.,
Secs. 1 thru 24 and secs. 27 thru 34.
T. 27 S., R. 60 E.,
Secs. 3 thru 10 and secs. 13 thru 24.
T. 24 S., R. 61 E.,
Secs. 16 thru 21 and secs. 28 thru 33.
T. 25 S., R. 61 E.,
Secs. 4 thru 9, Secs. 16 thru 21, and secs. 28 thru 33.
T. 26 S., R. 61 E.,
Secs. 6 and 7;
Sec. 8, SW¼NW¼ and NW¼SW¼, excepting those portions affected by Public Law 107–282.

The area described contains 106,786 acres, more or less, according to the BLM National PLSS CadNSDI and the official plats of the surveys of the said land on file with the BLM.

Roads leading into the public lands under the temporary closure will be posted to notify the public of the closure. The closure area includes the Jean Dry Lake and is bordered by Hidden Valley to the north, the McCullough Mountains to the east, the California State line to the south and Nevada State Route 604 to the west. Under the authority of section 303(a) of the Federal Lands Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7, and 43 CFR 8364.1, the BLM will enforce the following rules in the area described above:

The entire area as listed in the legal description above is closed for individual 1-day and 2-day periods during the official permitted running of the SNORE 250, Mint 400, and Legacy Battleground OHV races to all vehicles and personnel except law enforcement, emergency vehicles, event personnel, event participants, and ticketed spectators. Access routes leading to the closed area will be posted as ''closure ahead''. No vehicle stopping or parking in the closed area except for designated areas will be permitted. Event participants and spectators are required to remain within designated pit and spectator areas only.

The following restrictions will be in effect for the duration of the closure to ensure public safety of participants and spectators. Unless otherwise authorized, the following activities within the closure area are prohibited:

- Camping.
- Possession of and/or consuming any alcoholic beverage by any person under the age of 21 years.
- Discharging or use of firearms or other weapons.
- Possession and/or discharging of fireworks.
- Allowing any pet or other animal in one's care to be unrestrained at any time. Animals must be on a leash or other restraint no longer than 3 feet.
- Operation of any vehicle that is not legally registered for street and highway operation, for example, all-terrain vehicles (ATV), motorcycles, utility terrain vehicles (UTV), golf carts, and any off-highway vehicle (OHV), including operation of such a vehicle in spectator viewing areas.
- Parking any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property, or feature. Vehicles so parked are subject to citation, removal, and impoundment at the owner's expense.
- Operating a vehicle through, around, or beyond a restrictive sign, barricade, fence, or traffic control barrier or device.
- Failing to maintain control of a vehicle to avoid danger to persons, property, resources, or wildlife.
- Operating a motor vehicle without due care or at a speed greater than 25 mph.

Signs and maps directing the public to designated spectator areas will be provided by the event sponsor.

Exceptions: Temporary closure restrictions do not apply to BLM employees, contractors, or agents engaged in official duties; any Federal, State, or local officer, member of an organized rescue or firefighting force engaged in fire, emergency, or law enforcement activities; public utility employees engaged in emergency repair; or vehicles owned by or contracted by the United States, the State of Nevada, or Clark County. The closure restrictions also do not apply to vehicles under permit for operation by event staff, contractors, and festival participants. Authorized users must have in their possession a written permit or contract from BLM signed by the authorized officer.

Enforcement: Any person who violates this temporary closure 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 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Nevada law.

(Authority: 43 CFR 8360.0–7 and 8364.1.)

Bruce Sillitoe,
Field Manager, Las Vegas Field Office.

[FR Doc. 2023–24102 Filed 10–31–23; 8:45 am]
BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 234R5065C6, RX.59389832.1009676; OMB Control Number 1006–0005]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of information collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Reclamation (Reclamation), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 1, 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 Janice Perez, Bureau of Reclamation, at *janiceperez@usbr.gov.* Please reference OMB Control Number 1006–0005 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request, contact Janice Perez, Bureau of Reclamation, by email at *janiceperez@usbr.gov,* or by telephone at (303) 817–4477. Individuals who are deaf,

deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. You may also view the information collection request 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 July 10, 2023 (88 FR 43631). 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 information collection request 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: This information collection is required under the Reclamation Reform Act of 1982 (RRA), Acreage Limitation Rules and Regulations, 43 CFR part 426, and Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land, 43 CFR part 428. This information collection requires certain landholders (direct or indirect landowners or lessees) and farm operators to complete forms demonstrating their compliance with the acreage limitation provisions of Federal reclamation law. The forms in this information collection are submitted to districts that use the information to establish each landholder's status with respect to landownership limitations, full-cost pricing thresholds, lease requirements, and other provisions of Federal reclamation law. In addition, forms are submitted by certain farm operators to provide information concerning the services they provide and the nature of their farm operating arrangements. All landholders whose entire westwide landholdings total 40 acres or less are exempt from the requirement to submit RRA forms. Landholders who are ''qualified recipients'' have RRA forms submittal thresholds of 80 acres or 240 acres depending on the district's RRA forms submittal threshold category where the land is held. Only farm operators who provide multiple services to more than 960 acres held in trusts or by legal entities are required to submit forms.

Title of Collection: Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

OMB Control Number: 1006–0005.

Form Numbers: Form 7–2180, Form 7–2180EZ, Form 7–2181, Form 7–2184, Form 7–2190, Form 7–2190EZ, Form 7–2191, Form 7–2194, Form 7–21TRUST, Form 7–21PE, Form 7–21PE–IND, Form 7–21FARMOP, Form 7–21VERIFY, Form 7–21FC, Form 7–21XS, Form 7–21XSINAQ, Form 7–21CONT–I, Form 7–21CONT–L, Form 7–21CONT–O, and Form 7–21INFO.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Landholders and farm operators of certain lands in our projects, whose landholdings exceed specified RRA forms submittal thresholds.

Total Estimated Number of Annual Respondents: 5,544.

Total Estimated Number of Annual Responses: 5,655.

Estimated Completion Time per Response: See table below.

Total Estimated Number of Annual Burden Hours: 5,088 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

Form No.	Burden estimate per form (in minutes)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
Form 7–2180	60	1,967	2,006	2,006
Form 7–2180EZ	45	218	222	167
Form 7–2181	78	1,076	1,098	1,427
Form 7–2184	45	10	10	8
Form 7–2190	60	133	136	136
Form 7–2190EZ	45	32	33	25
Form 7–2191	78	81	83	108
Form 7–2194	45	4	4	3
Form 7–21PE	75	141	144	180
Form 7–21PE–IND	12	20	20	4
Form 7–21TRUST	60	398	406	406
Form 7–21VERIFY	12	688	702	140
Form 7–21FC	30	372	379	190
Form 7–21XS	30	304	310	155

Form No.	Burden estimate per form (in minutes)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
Form 7–21FARMOP	78	100	102	133
Totals	....	5,544	5,655	5,088

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.*).

Matthew Tracy,

Acting Director, Mission Assurance and Protection Organization.

[FR Doc. 2023–24030 Filed 10–31–23; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 234R5065C6, RX.59389832.1009676; OMB Control Number 1006–0023]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Forms To Determine Compliance by Certain Landholders

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Reclamation (Reclamation), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 1, 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 Janice Perez, Bureau of Reclamation, at *janiceperez@usbr.gov.* Please reference OMB Control Number 1006–0023 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request (ICR), contact Janice Perez by email at *janiceperez@usbr.gov,* or by telephone at (303) 817–4477. Individuals who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. 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 July 10, 2023 (88 FR 43629). 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: Identification of limited recipients—Some entities that receive Reclamation irrigation water may believe that they are under the Reclamation Reform Act of 1982 (RRA) forms submittal threshold and, consequently, may not submit the appropriate RRA form(s). However, some of these entities may in fact have a different RRA forms submittal threshold than what they believe it to be due to the number of natural persons benefiting from each entity and the location of the land held by each entity. In addition, some entities that are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land) may in fact be receiving Reclamation irrigation water for which the full-cost rate must be paid because the start of Reclamation irrigation water deliveries occurred after October 1, 1981 [43 CFR 426.6(b)(2)]. The information obtained through completion of the Limited Recipient Identification Sheet (Form 7–2536) allows us to establish entities' compliance with Federal reclamation law. The Limited Recipient Identification Sheet is disbursed at our discretion.

Trust review—In order to administer section 214 of the RRA and 43 CFR 426.7, we are required to review and approve all trusts. Land held in trust generally will be attributed to the beneficiaries of the trust rather than the trustee if the criteria specified in the RRA and 43 CFR 426.7 are met. We may extend the option to complete and submit for our review the Trust Information Sheet (Form 7–2537) instead of actual trust documents when

we become aware of trusts with a relatively small landholding (40 acres or less in districts subject to the prior law provisions of Federal reclamation law, 240 acres or less in districts subject to the discretionary provisions of Federal reclamation law). If we find nothing on the completed Trust Information Sheet that would warrant the further investigation of a particular trust, that trustee will not be burdened with submitting trust documents to us for in-depth review. The Trust Information Sheet is disbursed at our discretion.

Acreage limitation provisions applicable to public entities—Land farmed by a public entity can be considered exempt from the application of the acreage limitation provisions provided the public entity meets certain criteria pertaining to the revenue generated through the entity's farming activities (43 CFR 426.10 and the Act of July 7, 1970, Pub. L. 91–310). We are required to ascertain whether or not public entities that receive Reclamation irrigation water meet such revenue criteria regardless of how much land the public entities hold (directly or indirectly own or lease) [43 CFR 426.10(a)]. In order to minimize the burden on public entities, standard RRA forms are submitted by a public entity only when the public entity holds more than 40 acres subject to the acreage limitation provisions westwide, which makes it difficult to apply the revenue criteria as required to those public entities that hold less than 40 acres. When we become aware of such public entities, we request those public entities complete and submit for our review the Public Entity Information Sheet (Form 7–2565), which allows us to establish compliance with Federal reclamation law for those public entities that hold 40 acres or less and, thus, do not submit a standard RRA form because they are below the RRA forms submittal threshold. In addition, for those public entities that do not meet the exemption criteria, we must determine the proper rate to charge for Reclamation irrigation water deliveries. The Public Entity Information Sheet is disbursed at our discretion.

Acreage limitation provisions applicable to religious or charitable organizations—Some religious or charitable organizations that receive Reclamation irrigation water may believe that they are under the RRA forms submittal threshold and, consequently, may not submit the appropriate RRA form(s). However, some of these organizations may in fact have a different RRA forms submittal threshold than what they believe it to be depending on whether these organizations meet all of the required criteria for full special application of the acreage limitations provisions to religious or charitable organizations [43 CFR 426.9(b)]. In addition, some organizations that (1) do not meet the criteria to be treated as a religious or charitable organization under the acreage limitation provisions, and (2) are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land), may in fact be receiving Reclamation irrigation water for which the full-cost rate must be paid because the start of Reclamation irrigation water deliveries occurred after October 1, 1981 [43 CFR 426.6(b)(2)]. The Religious or Charitable Organization Identification Sheet (Form 7–2578) allows us to establish certain religious or charitable organizations' compliance with Federal reclamation law. The Religious or Charitable Organization Identification Sheet is disbursed at our discretion.

Title of Collection: Forms to Determine Compliance by Certain Landholders, 43 CFR part 426.

OMB Control Number: 1006–0023.

Form Numbers: Form 7–2536, Form 7–2537, Form 7–2565, and Form 7–2578.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Entity landholders, trusts, public entities, and religious or charitable organizations identified by Reclamation that are subject to the acreage limitation provisions of Federal reclamation law.

Total Estimated Number of Annual Respondents: 125.

Total Estimated Number of Annual Responses: 125.

Estimated Completion Time per Response: See table below.

Total Estimated Number of Annual Burden Hours: 15 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

Form	Burden estimate per form (in minutes)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
Limited Recipient Identification Sheet	5	50	50	4
Trust Information Sheet	5	50	50	4
Public Entity Information Sheet	15	15	15	4
Religious or Charitable Identification Sheet	15	10	10	3
Totals		125	125	15

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.*).

Matthew Tracy,

Acting Director, Mission Assurance and Protection Organization.

[FR Doc. 2023–24029 Filed 10–31–23; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 234R5065C6, RX.59389832.1009676; OMB Control Number 1006–0006]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Certification Summary Form and Reporting Summary Form for Acreage Limitation

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Reclamation (Reclamation), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 1, 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 Janice Perez, Bureau of Reclamation, at *janiceperez@usbr.gov.* Please reference OMB Control Number 1006–0006 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request (ICR), contact Janice Perez by email at *janiceperez@usbr.gov,* or by telephone at (303) 817–4477. Individuals who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. 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 July 10, 2023 (88 FR 43632). 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: This information collection is required under the Reclamation Reform Act of 1982 (RRA), Acreage Limitation Rules and Regulations, 43 CFR part 426, and Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land, 43 CFR part 428. The forms in this information collection are to be used by district offices to summarize individual landholder (direct or indirect landowner or lessee) and farm operator certification and reporting forms. This information allows us to establish water user compliance with Federal reclamation law.

Title of Collection: Certification Summary Form and Reporting Summary Form for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

OMB Control Number: 1006–0006.

Form Numbers: Form 7–21SUMM–C and Form 7–21SUMM–R.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Contracting entities that are subject to the acreage limitation provisions of Federal reclamation law.

Total Estimated Number of Annual Respondents: 120.

Total Estimated Number of Annual Responses: 150.

Estimated Completion Time per Response: See table below.

Total Estimated Annual Burden Hours: 6,000 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

Form No.	Burden estimate per form (in hours)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
7–21SUMM–C and associated tabulation sheets	40	113	141	5,640
7–21SUMM–R and associated tabulation sheets	40	7	9	360
Totals		120	150	6,000

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.*).

Matthew Tracy,
Acting Director, Mission Assurance and Protection Organization.

[FR Doc. 2023–24028 Filed 10–31–23; 8:45 am]
BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 245S180110; S2D2S SS08011000 SX064A000 24XS501520; OMB Control Number 1029–0083]

Submission to the Office of Management and Budget for Review and Approval; Certification of Blasters in Federal Program States and 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 January 2, 2024.

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 1029–0083 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 being collected to ensure that the applicants for blaster certification are qualified. This information, with blasting tests, will be used to determine the eligibility of the applicant.

Title of Collection: Certification of blasters in Federal program states and on Indian lands.

OMB Control Number: 1029–0083.

Form Number: OSM–74.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Respondents: 18.

Total Estimated Number of Annual Responses: 18.

Estimated Completion Time per Response: 1 hour.

Total Estimated Number of Annual Burden Hours: 18.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: $1,370.

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. 2023–24130 Filed 10–31–23; 8:45 am]
BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–739 (Fifth Review)]

Clad Steel Plate From Japan; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on clad steel plate from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted November 1, 2023. To be assured of consideration, the deadline for responses is December 1, 2023. Comments on the adequacy of responses may be filed with the Commission by January 11, 2024.

FOR FURTHER INFORMATION CONTACT: Alexis Yim (202–708–1446), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the

Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background—On July 2, 1996, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of clad steel plate from Japan (61 FR 34421). Commerce issued a continuation of the antidumping duty order on imports of clad steel plate from Japan following Commerce's and the Commission's first five-year reviews, effective November 16, 2001 (66 FR 57703), second five-year reviews, effective March 22, 2007 (72 FR 13478), third five-year reviews, effective February 11, 2013 (78 FR 9676), and fourth five-year reviews, effective December 18, 2018 (83 FR 64811). The Commission is now conducting a fifth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, its expedited first and second five-year review determinations, and its full third and fourth five-year review determinations, the Commission defined the *Domestic Like Product* as all clad steel plate coextensive with Commerce's scope of the investigation, including all clad steel plate of a width of 600 mm or more and a composite thickness of 4.5 mm or more.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, its expedited first and second five-year review determinations, and its full third and fourth five-year review determinations, the Commission defined a single *Domestic Industry* comprised of all domestic producers of the *Domestic Like Product.*

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on December 1, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is 5:15 p.m. on January 11, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing*

Procedures, available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–582, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2017.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of

Subject Merchandise from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2017, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 26, 2023.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2023–24016 Filed 10–31–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–672–673 (Fifth Review)]

Silicomanganese From China and Ukraine; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty orders on silicomanganese from China and Ukraine would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted November 1, 2023. To be assured of consideration, the deadline for responses is December 1, 2023. Comments on the adequacy of responses may be filed with the Commission by January 11, 2024.

FOR FURTHER INFORMATION CONTACT: Kenneth Gatten III (202–708–1447), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 31, 1994, the Department of Commerce (''Commerce'') suspended an antidumping duty investigation on imports of silicomanganese from Ukraine (59 FR 60951, November 29, 1994). On December 22, 1994, Commerce issued an antidumping duty order on imports of silicomanganese from China (59 FR 66003). Following first five-year reviews by Commerce and the Commission, effective February 16, 2001, Commerce issued a continuation of the antidumping duty order on imports of silicomanganese from China and of the suspended investigation on imports of silicomanganese from Ukraine (66 FR 10669). On July 19, 2001, the Government of Ukraine requested termination of the suspension agreement on silicomanganese from Ukraine and, effective September 17, 2001, Commerce issued an antidumping duty order on imports of silicomanganese from Ukraine (66 FR 43838, August 21, 2001). Commerce issued a continuation of the antidumping duty orders on imports of silicomanganese from China and Ukraine following Commerce's and the Commission's second five-year reviews, effective September 14, 2006 (71 FR 54272), third five-year reviews, effective November 8, 2012 (77 FR 66956), and fourth five-year reviews, effective December 12, 2018 (83 FR 63830). The Commission is now conducting fifth reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts

A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China and Ukraine.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, its full first five-year review determinations, its expedited second five-year review determinations, and its full third and fourth five-year review determinations, the Commission defined the *Domestic Like Product* as all silicomanganese, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its full first five-year review determinations, its expedited second five-year review determinations, and its full third and fourth five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of silicomanganese.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on December 1, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is 5:15 p.m. on January 11, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–583, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden

estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2017.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide

the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2017, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 26, 2023.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2023–24018 Filed 10–31–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1276]

Certain Light-Based Physiological Measurement Devices and Components Thereof; Notice of the Commission's Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and a Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in the above-captioned investigation. The Commission has determined to issue: a limited exclusion order ("LEO") prohibiting the unlicensed entry of infringing wearable electronic devices with light-based pulse oximetry functionality and components thereof covered by certain claims of U.S. Patent Nos. 10,912,502 or 10,945,648 that are manufactured by or on behalf of, or imported by or on behalf of, respondent Apple, Inc. ("Apple") or any of its affiliated companies, parents, subsidiaries, or other related business entities, or its successors or assigns; and a cease and desist order ("CDO") directed against Apple and any of its affiliated companies, parents, subsidiaries, or other related business entities, or its successors or assigns. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 18, 2021, based on a complaint filed on behalf of Masimo Corporation and Cercacor Laboratories, Inc., both of Irvine, CA (collectively, "Complainants"). 86 FR 46275 (Aug. 18, 2021). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-based physiological measurement devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 10,912,501 ("the '501 patent"); U.S. Patent No. 10,912,502 ("the '502 patent"); U.S. Patent No. 10,945,648 ("the '648 patent"); U.S. Patent No. 10,687,745 ("the '745 patent"); and U.S. Patent No. 7,761,127 ("the '127 patent"). *Id.* The amended complaint further alleged that an industry in the United States exists and/or is in the process of being established as required by section 337. *Id.* The notice of investigation named Apple of Cupertino, California as the sole respondent. *Id.* at 46276. The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

Complainants previously withdrew certain asserted claims pursuant to Order No. 25 (Mar. 23, 2022), *unreviewed* by Comm'n Notice (Apr. 12, 2022), and Order No. 33 (May 20, 2022), *unreviewed* by Comm'n Notice (June 10, 2022). Only claim 12 of the '501 patent, claims 22 and 28 of the '502 patent, claims 12, 24, and 30 of the '648 patent, claims 9, 18, and 27 of the '745 patent, and claim 9 of the '127 patent remain in the investigation. Claim 18 of the '745 patent is still at issue for purposes of the domestic industry only.

On January 10, 2023, the presiding administrative law judge ("ALJ") issued the final initial determination ("Final ID"), which found that Apple violated section 337 as to claims 24 and 30 of the '648 patent, but not as to claim 12 of the '501 patent, claims 22 and 28 of the '502 patent, claim 12 of the '648 patent, claims 9 and 27 of the '745 patent, and claim 9 of the '127 patent. *See* Final ID at 335–36. On January 24, 2023, the ALJ issued a Recommended Determination on remedy and bonding ("RD") should a violation be found in the above-captioned investigation. The RD recommended that, if the Commission finds a violation, it should issue an LEO

directed to certain wearable electronic devices with light-based pulse oximetry functionality and components thereof that are imported, sold for importation, and/or sold after importation by Apple; and a CDO directed to Apple. RD at 2, 5. The RD additionally recommended that the Commission set a zero percent (0%) bond (*i.e.,* no bond) during the sixty-day period of Presidential review. *Id.* at 6. In its notice instituting this investigation, the Commission did not instruct the ALJ to make findings and recommendations concerning the public interest. *See* 86 FR at 46275–76.

On January 23, 2023, Complainants and Apple each filed a petition for review. On January 31, 2023, Complainants and Apple each filed responses to the other party's petitions.

On February 23, 2023, the parties filed their public interest statements pursuant to 19 CFR 210.50(a)(4). The Commission received numerous comments on the public interest from non-parties.

On May 15, 2023, after considering the parties' petitions and responses thereto, the Commission determined to review the Final ID in part. *See* 88 FR 32243, 32243–46 (May 19, 2023). In particular, the Commission determined to review the following findings of the Final ID:

(1) the domestic industry with regard to the '501 patent, the '502 patent, the '648 patent, and the '745 patent;

(2) obviousness with regard to the '501 patent, the '502 patent, the '648 patent, and the '745 patent;

(3) written description with regard to claim 28 of the '502 patent and claim 12 of the '648 patent;

(4) claim construction and infringement with regard to the '745 patent; and

(5) subject matter jurisdiction.

Id. The Commission requested briefing on certain issues under review and on remedy, the public interest, and bonding. *See id.*

On June 5, 2023, the parties filed their written submissions on the issues under review and on remedy, public interest, and bonding, and on June 12, 2023, the parties filed their reply submissions. The Commission also received numerous comments on the public interest from non-parties.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission affirms with modifications the Final ID's domestic industry findings (both economic and technical prong) as to the '501, '502, '648, and '745 patents. The Commission additionally affirms with modifications the Final ID's conclusion that the asserted claims of the '501 patent are obvious, but the asserted claims of the '502, '648, and '745 patents are not obvious. The Commission has determined to reverse the Final ID's finding that Apple proved by clear and convincing evidence that claim 28 of the '502 patent and claim 12 of the '648 patent are invalid for lack of written description. Furthermore, the Commission affirms the Final ID's claim construction related to the recited term ''first shape'' and the related conclusion that the Accused Products do not satisfy elements [1B] and [20B] of the '745 patent. The Commission additionally vacates the Final ID's finding that the Commission has subject matter jurisdiction over the investigation and instead finds that the Commission has statutory authority over the investigation. The Commission affirms the remainder of the Final ID that is not inconsistent with the Commission's opinion issued concurrently herewith. As a result, the Commission finds that Apple has violated section 337 as to claims 22 and 28 of the '502 patent and claims 12, 24, and 30 of the '648 patent.

The Commission has determined that the appropriate form of relief is an LEO prohibiting (1) the unlicensed entry of infringing wearable electronic devices with light-based pulse oximetry functionality and components thereof manufactured by or on behalf of Apple or any of its affiliated companies, parents, subsidiaries, or other related business entities, or its successors or assigns. The Commission has also determined to issue a CDO against Apple. The Commission has determined to include an exemption to the remedial orders for service or repair or, under warranty terms, replacement of products purchased prior to the end of the period of Presidential review.

The Commission has further determined that the public interest factors enumerated in subsections (d)(l) and (f)(1) (19 U.S.C. 1337(d)(l), (f)(1)) do not preclude issuance of the above-referenced remedial orders. Additionally, the Commission has determined to impose a bond of zero (0%) (*i.e.,* no bond) of entered value of the covered products during the period of Presidential review (19 U.S.C. 1337(j)). This investigation is terminated.

The Commission vote for this determination took place on October 26, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 26, 2023.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2023–24071 Filed 10–31–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–873–875, 878–880, and 882 (Fourth Review)]

Steel Concrete Reinforcing Bar From Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty orders on steel concrete reinforcing bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted November 1, 2023. To be assured of consideration, the deadline for responses is December 1, 2023. Comments on the adequacy of responses may be filed with the Commission by January 11, 2024.

FOR FURTHER INFORMATION CONTACT: Lawrence Jones (202–205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 7, 2001, the Department of Commerce (''Commerce'') issued antidumping duty

orders on imports of steel concrete reinforcing bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine (66 FR 46777). Commerce issued a continuation of the antidumping duty orders on imports of steel concrete reinforcing bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine following Commerce's and the Commission's first five-year reviews, effective August 9, 2007 (72 FR 44830), second five-year reviews, effective July 22, 2013 (78 FR 43858), and third five-year reviews, effective December 17, 2018 (83 FR 64530). The Commission is now conducting fourth reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, its full first and second five-year reviews, and its expedited third five-year reviews, the Commission defined the *Domestic Like Product* as steel concrete reinforcing bar, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, three Commissioners based their material injury analysis on a national industry consisting of all producers of steel concrete reinforcing bar and three Commissioners found a regional industry consisting of all domestic production facilities producing the *Domestic Like Product* in the region consisting of the 30 contiguous states from New England to Texas and from the Gulf of Mexico north on both sides of the Mississippi up to the Canadian border, plus the District of Columbia and Puerto Rico. In its full first five-year review determinations, the Commission found that appropriate circumstances did not exist to conduct a regional industry analysis and defined the *Domestic Industry* to consist of all domestic producers of steel concrete reinforcing bar. In its full second five-year review determinations and its expedited third five-year review determinations, the Commission defined the *Domestic Industry* to include all domestic producers of steel concrete reinforcing bar. For purposes of this notice, you should report *Domestic Industry* information based on the Commission's three most recent determinations defining the *Domestic Industry* to consist of all domestic producers of steel concrete reinforcing bar.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice

must provide the information specified below. The deadline for filing such responses is 5:15 p.m. on December 1, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is 5:15 p.m. on January 11, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–584, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2017.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company

transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2017, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 26, 2023.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2023–24017 Filed 10–31–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection; Defined Monetary Assistance Victims Reserve

AGENCY: Executive Office for United States Attorneys, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Executive Office for United States Attorneys (EOUSA), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 2, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Karen Rolley, Executive Office for United States Attorneys, United States Department of Justice, 950 Pennsylvania Avenue NW, Room 2242, Washington, DC 20530–0001; telephone: 202–256–6278, email: *karen.rolley@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,*

permitting electronic submission of responses.

Abstract: The Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018 (''the Act''), Public Law 115–299, established the Child Pornography Victims Reserve (Reserve) to provide defined monetary assistance to eligible victims who are depicted in child pornography that is the basis of certain convictions. The Department will make payment from the Reserve to an eligible individual pursuant to a court order issued under the AVAA, upon receipt of the order, and requisite information from the claimant.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.
2. *The Title of the Form/Collection:* Defined Monetary Assistance Victims Reserve.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* No form number. Sponsor: Executive Office for United States Attorneys.
4. *Affected public who will be asked or required to respond, as well as the obligation to respond: Affected Public:* individuals or households. The obligation to respond is voluntary and required to obtain or retain a benefit.
5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Ex:* The total or estimated number of respondents for this new collection is 150. The time per response is 2 hours to complete the form.
6. *An estimate of the total annual burden (in hours) associated with the collection: Ex:* The total estimated annual burden hours for this collection 300 burden hours (150 × 120 min = 300 hours.)
7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $.47,000.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
Victim Reserve (recordkeeping and reporting)	150	On occasion	150	2	300
Unduplicated Totals	*150*		*150*		*300*

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: October 27, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–24108 Filed 10–31–23; 8:45 am]

BILLING CODE 4410–07–P

LEGAL SERVICES CORPORATION

Notice of Intent To Award—Grant Awards for the Delivery of Civil Legal Services to Eligible Low-Income Clients Beginning January 1, 2024

AGENCY: Legal Services Corporation.

ACTION: Announcement of the Legal Services Corporation's intent to make FY2024 grant awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants to provide effective and efficient delivery of high-quality civil legal services to eligible low-income clients, starting January 1, 2024.

DATES: All comments and recommendations must be received on or before the close of business on December 1, 2023.

ADDRESSES: Basic Field Grant Awards, Legal Services Corporation; 3333 K Street NW, Third Floor, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Christine Williams, Program Manager for Basic Field Competition, Office of Program Performance, at (202) 295–1602 or *williamsc@lsc.gov.*

SUPPLEMENTARY INFORMATION: Under LSC's Notice of Funds Available published on March 14, 2023, 86 FR 14344, and the Notice of Change in Service Areas on April 14, 2023, 88 FR 24451, and LSC's grant application process beginning on April 14, 2023, LSC intends to award funds to organizations that provide civil legal services in the indicated service areas. Applicants for each service area are listed below. The grant award amounts below are estimates based on the FY2023 grant awards to each service area. The funding estimates may change based on the final FY2024 appropriation. In addition, Agricultural Worker service area population estimates are subject to change based on Department of Labor review and comments LSC receives during the 30-day comment period.

LSC will post all updates and changes to this notice at *https://www.lsc.gov/grants/basic-field-grant/basic-field-awards.* Interested parties are asked to visit *https://www.lsc.gov/grants/basic-field-grant* regularly for updates on the LSC grants process.

Name of applicant organization	State	Service area	Estimated annualized 2024 funding
Legal Services Alabama, Inc	AL	AL–4	$8,573,697
Alaska Legal Services Corporation	AK	AK–1	1,199,104
Alaska Legal Services Corporation	AK	NAK–1	815,380
Legal Aid of Arkansas, Inc	AR	AR–6	2,132,844
Center for Arkansas Legal Services	AR	AR–7	3,195,926
American Samoa Legal Aid	AS	AS–1	387,448
Community Legal Services, Inc	AZ	MAZ	501,028
Community Legal Services, Inc	AZ	AZ–3	7,513,849

Name of applicant organization	State	Service area	Estimated annualized 2024 funding
Southern Arizona Legal Aid, Inc	AZ	AZ–5	3,014,504
Southern Arizona Legal Aid, Inc	AZ	NAZ–6	961,025
DNA-Peoples Legal Services, Inc	AZ	AZ–2	644,904
DNA-Peoples Legal Services, Inc	AZ	NAZ–5	3,934,252
California Indian Legal Services, Inc	CA	CA–1	43,760
California Indian Legal Services, Inc	CA	NCA–1	1,332,026
Greater Bakersfield Legal Assistance, Inc	CA	CA–2	1,622,974
Central California Legal Services	CA	CA–26	4,050,745
Legal Aid Foundation of Los Angeles	CA	CA–29	7,978,571
Neighborhood Legal Services of Los Angeles County	CA	CA–30	5,402,852
Inland Counties Legal Services, Inc	CA	CA–12	6,198,340
Legal Services of Northern California, Inc	CA	CA–27	5,241,413
Legal Aid Society of San Diego, Inc	CA	CA–14	3,722,237
California Rural Legal Assistance, Inc	CA	MCA	4,695,557
California Rural Legal Assistance, Inc	CA	CA–31	6,310,053
Bay Area Legal Aid	CA	CA–28	5,534,244
Community Legal Aid SoCal	CA	CA–19	4,654,803
Colorado Legal Services	CO	MCO	329,999
Colorado Legal Services	CO	CO–6	6,088,851
Colorado Legal Services	CO	NCO–1	144,793
Statewide Legal Services of Connecticut, Inc	CT	CT–1	4,145,987
Pine Tree Legal Assistance, Inc	CT	NCT–1	23,604
Neighborhood Legal Services Program of the District of Columbia	DC	DC–1	1,102,756
Legal Services Corporation of Delaware, Inc	DE	DE–1	1,261,169
Community Legal Services of Mid-Florida, Inc	FL	FL–15	6,704,396
Florida Rural Legal Services, Inc	FL	MFL	1,071,020
Florida Rural Legal Services, Inc	FL	FL–17	5,664,175
Legal Services of Greater Miami, Inc	FL	FL–5	4,994,036
Legal Services of North Florida, Inc	FL	FL–13	2,126,279
Bay Area Legal Services, Inc	FL	FL–16	5,204,754
Three Rivers Legal Services, Inc	FL	FL–14	3,175,785
Coast to Coast Legal Aid of South Florida, Inc	FL	FL–18	3,198,576
Atlanta Legal Aid Society, Inc	GA	GA–1	4,913,392
Georgia Legal Services Program	GA	MGA	732,369
Georgia Legal Services Program	GA	GA–2	11,089,071
Micronesian Legal Services Corporation	GU	GU–1	436,644
Legal Aid Society of Hawaii	HI	HI–1	1,804,983
Legal Aid Society of Hawaii	HI	NHI–1	345,365
Iowa Legal Aid	IA	MIA	318,696
Iowa Legal Aid	IA	IA–3	3,842,326
Idaho Legal Aid Services, Inc	ID	MID	456,991
Idaho Legal Aid Services, Inc	ID	ID–1	1,930,193
Idaho Legal Aid Services, Inc	ID	NID–1	97,951
Legal Aid Chicago	IL	MIL	296,778
Legal Aid Chicago	IL	IL–6	7,874,809
Land of Lincoln Legal Aid, Inc	IL	IL–3	3,721,169
Prairie State Legal Services, Inc	IL	IL–7	5,410,052
Indiana Legal Services, Inc	IN	MIN	210,227
Indiana Legal Services, Inc	IN	IN–5	9,239,665
Kansas Legal Services, Inc	KS	KS–1	3,936,597
Legal Aid of the Bluegrass	KY	KY–10	2,156,656
Legal Aid Society	KY	KY–2	1,870,535
Appalachian Research and Defense Fund of Kentucky	KY	KY–5	2,339,297
Kentucky Legal Aid	KY	KY–9	1,879,266
Acadiana Legal Service Corporation	LA	LA–15	5,263,277
Southeast Louisiana Legal Services Corporation	LA	LA–13	4,831,319
Volunteer Lawyers Project of the Boston Bar Association	MA	MA–11	2,958,768
South Coastal Counties Legal Services	MA	MA–12	1,382,776
Northeast Legal Aid, Inc	MA	MA–4	1,124,634
Community Legal Aid, Inc	MA	MA–10	2,064,596
Maryland Legal Aid	MD	MDE	34,647
Maryland Legal Aid	MD	MMD	156,338
Maryland Legal Aid	MD	MD–1	6,326,581
Pine Tree Legal Assistance, Inc	ME	MMX–1	404,683
Pine Tree Legal Assistance, Inc	ME	ME–1	1,612,793
Pine Tree Legal Assistance, Inc	ME	NME–1	97,177
Michigan Advocacy Program	MI	MMI	738,224
Michigan Advocacy Program	MI	MI–12	2,409,811
Legal Services of Eastern Michigan	MI	MI–14	2,285,530
Lakeshore Legal Aid	MI	MI–13	5,887,227
Legal Services of Northern Michigan, Inc	MI	MI–9	1,092,659
Legal Aid of Western Michigan	MI	MI–15	3,044,262

Name of applicant organization	State	Service area	Estimated annualized 2024 funding
Michigan Indian Legal Services, Inc	MI	NMI–1	248,19
Legal Aid Service of Northeastern Minnesota	MN	MN–1	582,526
Central Minnesota Legal Services, Inc	MN	MN–6	2,254,194
Legal Services of Northwest Minnesota Corporation	MN	MN–4	492,712
Southern Minnesota Regional Legal Services, Inc	MN	MMN	567,250
Southern Minnesota Regional Legal Services, Inc	MN	MN–5	2,128,740
Anishinabe Legal Services, Inc	MN	NMN–1	360,310
Legal Aid of Western Missouri	MO	MMO	219,112
Legal Aid of Western Missouri	MO	MO–3	3,013,660
Legal Services of Eastern Missouri, Inc	MO	MO–4	2,677,599
Mid-Missouri Legal Services Corporation	MO	MO–5	752,002
Legal Services of Southern Missouri	MO	MO–7	2,718,700
Micronesian Legal Services Corporation	MP	MP–1	2,189,788
North Mississippi Rural Legal Services, Inc	MS	MS–9	2,536,094
Mississippi Center for Legal Services	MS	MS–10	3,950,471
Mississippi Center for Legal Services	MS	NMS–1	125,327
Montana Legal Services Association	MT	MMT	184,823
Montana Legal Services Association	MT	MT–1	1,421,534
Montana Legal Services Association	MT	NMT–1	240,065
Legal Aid of North Carolina, Inc	NC	MNC	841,538
Legal Aid of North Carolina, Inc	NC	NC–5	16,042,018
Legal Aid of North Carolina, Inc	NC	NNC–1	329,047
Southern Minnesota Regional Legal Services, Inc	ND	MND	148,536
Legal Services of North Dakota	ND	ND–3	802,879
Legal Services of North Dakota	ND	NND–3	406,131
Legal Aid of Nebraska	NE	MNE	254,263
Legal Aid of Nebraska	NE	NE–4	2,008,376
Legal Aid of Nebraska	NE	NNE–1	49,837
603 Legal Aid	NH	NH–1	1,127,845
Legal Services of Northwest Jersey, Inc	NJ	NJ–15	756,320
South Jersey Legal Services, Inc	NJ	MNJ	185,406
South Jersey Legal Services, Inc	NJ	NJ–20	3,012,913
Northeast New Jersey Legal Services Corporation	NJ	NJ–18	2,501,531
Essex-Newark Legal Services Project, Inc	NJ	NJ–8	1,296,736
Central Jersey Legal Services, Inc	NJ	NJ–17	1,970,255
DNA-Peoples Legal Services, Inc	NM	NM–1	300,688
DNA-Peoples Legal Services, Inc	NM	NNM–2	34,254
New Mexico Legal Aid	NM	MNM	221,415
New Mexico Legal Aid	NM	NM–5	4,024,004
New Mexico Legal Aid	NM	NNM–4	700,532
Nevada Legal Services, Inc	NV	NV–1	4,623,270
Nevada Legal Services, Inc	NV	NNV–1	200,483
Legal Aid Society of Northeastern New York, Inc	NY	NY–21	2,091,335
Neighborhood Legal Services, Inc	NY	NY–24	1,905,125
Nassau/Suffolk Law Services Committee, Inc	NY	NY–7	1,990,870
Legal Services NYC	NY	NY–9	15,767,245
Legal Assistance of Western New York, Inc	NY	NY–23	2,587,596
Legal Aid Society of Mid-New York, Inc	NY	MNY	402,123
Legal Aid Society of Mid-New York, Inc	NY	NY–22	2,615,416
Legal Services of the Hudson Valley	NY	NY–20	2,689,504
Community Legal Aid Services, Inc	OH	OH–20	2,954,190
Legal Aid Society of Greater Cincinnati	OH	OH–18	2,477,113
The Legal Aid Society of Cleveland	OH	OH–21	3,384,321
Ohio State Legal Services	OH	OH–24	4,874,803
Legal Aid of Western Ohio, Inc	OH	MOH	258,340
Legal Aid of Western Ohio, Inc	OH	OH–23	4,137,546
Oklahoma Indian Legal Services, Inc	OK	NOK–1	1,234,480
Legal Aid Services of Oklahoma, Inc	OK	MOK	354,994
Legal Aid Services of Oklahoma, Inc	OK	OK–3	6,746,569
Legal Aid Services of Oregon	OR	MOR	662,291
Legal Aid Services of Oregon	OR	OR–6	5,070,374
Legal Aid Services of Oregon	OR	NOR–1	278,321
Philadelphia Legal Assistance Center	PA	MPA	499,354
Philadelphia Legal Assistance Center	PA	PA–1	4,252,530
MidPenn Legal Services, Inc	PA	PA–25	3,713,694
Neighborhood Legal Services Association	PA	PA–8	2,025,522
North Penn Legal Services, Inc	PA	PA–24	2,961,822
Summit Legal Aid	PA	PA–27	1,646,773
Northwestern Legal Services	PA	PA–26	1,062,629
Legal Aid of Southeastern Pennsylvania	PA	PA–23	1,978,497
Puerto Rico Legal Services, Inc	PR	MPR	74,578
Puerto Rico Legal Services, Inc	PR	PR–1	16,313,964

Name of applicant organization	State	Service area	Estimated annualized 2024 funding
Community Law Office, Inc	PR	PR–2	381,614
Rhode Island Legal Services, Inc	RI	RI–1	1,333,661
South Carolina Legal Services, Inc	SC	MSC	328,404
South Carolina Legal Services, Inc	SC	SC–8	8,109,537
East River Legal Services	SD	SD–2	585,331
Dakota Plains Legal Services, Inc	SD	SD–4	656,404
Dakota Plains Legal Services, Inc	SD	NSD–1	1,407,733
Legal Aid of East Tennessee	TN	TN–9	3,631,438
Memphis Area Legal Services, Inc	TN	TN–4	1,980,595
Legal Aid Society of Middle Tennessee and the Cumberlands	TN	TN–10	4,407,477
West Tennessee Legal Services, Inc	TN	TN–7	940,648
Legal Aid of NorthWest Texas	TX	TX–14	12,928,681
Lone Star Legal Aid	TX	TX–13	16,926,880
Texas RioGrande Legal Aid, Inc	TX	MSX–2	3,491,115
Texas RioGrande Legal Aid, Inc	TX	TX–15	15,951,018
Texas RioGrande Legal Aid, Inc	TX	NTX–1	47,187
Utah Legal Services, Inc	UT	MUT	130,779
Utah Legal Services, Inc	UT	UT–1	3,295,336
Utah Legal Services, Inc	UT	NUT–1	124,037
Legal Services of Northern Virginia, Inc	VA	VA–20	2,402,141
Southwest Virginia Legal Aid Society, Inc	VA	VA–15	1,183,690
Legal Aid Society of Eastern Virginia	VA	VA–16	2,004,764
Central Virginia Legal Aid Society, Inc	VA	MVA	375,743
Central Virginia Legal Aid Society, Inc	VA	VA–18	1,746,313
Virginia Legal Aid Society, Inc	VA	VA–17	1,145,353
Blue Ridge Legal Services, Inc	VA	VA–19	1,163,760
Legal Services of the Virgin Islands, Inc	VI	VI–1	287,739
Legal Services Vermont	VT	VT–1	672,330
Northwest Justice Project	WA	MWA	1,230,446
Northwest Justice Project	WA	WA–1	7,664,201
Northwest Justice Project	WA	NWA–1	429,491
Legal Action of Wisconsin, Inc	WI	MWI	570,722
Legal Action of Wisconsin, Inc	WI	WI–5	5,272,036
Judicare Legal Aid	WI	WI–2	1,361,792
Judicare Legal Aid	WI	NWI–1	233,875
Legal Aid of West Virginia, Inc	WV	WV–5	3,395,116
Legal Aid of Wyoming, Inc	WY	WY–4	693,615
Legal Aid of Wyoming, Inc	WY	NWY–1	260,534

These grants will be awarded under the authority conferred on LSC by section 1006(a)(1) of the Legal Services Corporation Act, 42 U.S.C. 2996e(a)(l). Grant awards are made to ensure civil legal services are provided in every service area, although no listed organization is guaranteed a grant award. Grants will become effective, and grant funds will be distributed, on or about January 1, 2024.

LSC issues this notice pursuant to 42 U.S.C. 2996f(f). Comments and recommendations concerning potential grantees are invited and should be delivered to LSC within 30 days from the date of publication of this notice.

(Authority: 42 U.S.C. 2996f(f); 42 U.S.C. 2996g(e).)

October 27, 2023.

Stefanie Davis,

Deputy General Counsel and Ethics Officer, Legal Services Corporation.

[FR Doc. 2023–24129 Filed 10–31–23; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

[NCUA–2023–0117]

The NCUA Staff Draft 2024–2025 Budget Justification

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The NCUA's staff draft ''detailed business-type budget'' is being made available for public review as required by federal statute. The proposed resources will finance the agency's annual operations and capital projects, both of which are necessary for the agency to accomplish its mission of protecting the system of cooperative credit and its member-owners through effective chartering, supervision, regulation, and insurance. The briefing schedule and comment instructions are included in the supplementary information section.

DATES: Requests to deliver an in-person statement at the November 16, 2023, budget briefing must be received on or before November 8, 2023. Written statements and presentations for those scheduled to appear at the budget briefing must be received on or before 9 a.m. Eastern, November 13, 2023.

Written comments may be submitted by November 21, 2023.

ADDRESSES: You may submit comments by any of the following methods (please send comments by one method only):

• *In-person presentation at public budget briefing:* submit requests to deliver a statement at the briefing to *BudgetBriefing@ncua.gov* by November 8, 2023. Include your name, title, affiliation, mailing address, email address, and telephone number. The NCUA Board Secretary will inform you by November 9, 2023, if you have been approved to make a presentation. In order to present at the public meeting, you must submit a statement. Your statement must be submitted to *BudgetBriefing@ncua.gov* by 9 a.m. Eastern, November 13, 2023. Your presentation must be delivered in person at the public budget briefing.

You will be allotted five minutes during the budget briefing to deliver your remarks.

• *Written comments without an in-person presentation:* submit written comments by November 21, 2023, through the Federal eRulemaking Portal: *https://www.regulations.gov.* The docket number is NCUA–2023–0117. Follow the instructions for submitting comments.

• Copies of the NCUA Draft 2024–2025 Budget Justification and associated materials are also available on the NCUA website at *https://www.ncua.gov/About/Pages/budget-strategic-planning/supplementary-materials.aspx.*

FOR FURTHER INFORMATION CONTACT: Eugene H. Schied, Chief Financial Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6571.

SUPPLEMENTARY INFORMATION: The following itemized list details the sections in this Notice made available for public review:

I. The NCUA Budget in Brief
II. Introduction and Strategic Context
III. Key Themes of the Proposed 2024–2025 Budget
IV. Operating Budget
V. Capital Budget
VI. Share Insurance Fund Administrative Budget
VII. Financing the NCUA's Programs
VIII. Appendix A: Supplemental Budget Information
IX. Appendix B: Capital Projects

Section 212 of the Economic Growth, Regulatory Relief, and Consumer Protection Act amended 12 U.S.C. 1789(b)(1)(A) to require the NCUA Board (Board) to ''on an annual basis and prior to the submission of the detailed business-type budget make publicly available and publish in the **Federal Register** a draft of the detailed business-type budget.'' Although 12 U.S.C. 1789(b)(1)(A) requires publication of a ''business-type budget'' only for the agency operations arising under the Federal Credit Union Act's subchapter on insurance activities, in the interest of transparency the Board is providing the NCUA's entire staff draft budget for 2024–2025 in this Notice.

The staff draft budget details the resources required to support NCUA's mission. The staff draft budget includes personnel and dollar estimates for three major budget components: (1) the Operating Budget; (2) the Capital Budget; and (3) the Share Insurance Fund Administrative Budget. The resources proposed in the staff draft budget are to carry out the agency's operations in 2024 and 2025. This document is a draft, staff-level budget proposal made available to the NCUA Board members and the public for their consideration and comment. The NCUA Board directed the NCUA Executive Director to develop the staff draft budget under delegated authority. The staff draft budget may change based on public comments, Board member decisions, and staff's ongoing consideration of estimates and programs that impact the budget.

The NCUA Chief Financial Officer will present the staff draft budget at a budget briefing open to the public and scheduled for Thursday, November 16, 2023, at 2:00 p.m. Eastern at the NCUA headquarters building, 1775 Duke Street, Alexandria, Virginia 22314. Interested parties unable to attend in person may visit the agency's homepage (*https://www.ncua.gov/*) to access the provided webcast link.

If you wish to participate in the briefing and deliver a statement, you must email a request to by November 8, 2023. Your request must include your name, title, affiliation, mailing address, email address, and telephone number. Statements must be delivered in person at the briefing. The NCUA will work to accommodate as many public statements as possible at the November 16, 2023, budget briefing. The Board Secretary will inform you if you have been approved to make a presentation and you will be allotted five minutes during the budget briefing to deliver your remarks. A written copy of your statement must be delivered to the Board Secretary by email at by 9 a.m. Eastern, November 13, 2023. In addition to delivering their remarks at the budget briefing, registered presenters will be provided the opportunity to ask questions of NCUA staff about the staff draft budget. The initial round of questions will be limited to five minutes per presenter, and one subsequent round of questions, limited to five minutes per presenter, may be permitted by the Chairman if time allows.

Written comments on the staff draft budget will also be accepted by November 21, 2023, through the Federal eRulemaking Portal: *https://www.regulations.gov.* The docket number is NCUA–2023–0117. Commenters should follow the portal instructions for submitting comments.

All comments should provide specific, actionable recommendations about the staff draft budget rather than general remarks. The NCUA Board will review and consider any comments from the public prior to approving the NCUA 2024–2025 budget.

By the National Credit Union Administration Board on October 26, 2023.

Melane Conyers-Ausbrooks,

Secretary of the Board.

I. The NCUA Budget in Brief

Proposed 2024 and 2025 Budgets

The National Credit Union Administration's (NCUA) *2022–2026 Strategic Plan* sets forth the agency's goals and objectives that form the basis for determining resource needs and allocations. The agency's annual budgets provide the resources to execute the strategic plan, to implement important initiatives, and to undertake the NCUA's major programs: examination and supervision, insurance, credit union development, consumer financial protection, and asset management.[1]

[1] Budget information presented in this document excludes funding for the Central Liquidity Facility (CLF), which has its own budget reviewed and decided upon separately by the CLF Board.

2024–2025 PROPOSED NCUA BUDGET RESOURCES

Budget	2023 Board Approved Budget	2024 Proposed Budget	Change (2023-2024)	Change Percent (2023-2024)	2025 Proposed Budget	Change (2024-2025)	Change Percent (2024-2025)	2023 Pos*	2024 Pos*	2025 Pos*	Position Change (23–24)	Position Change (24–25)
Operating Budget	$ 344,158,000	$ 382,115,000	$ 37,957,000	11.0%	$ 418,870,000	$ 36,755,000	9.6%	1,220	1,248	1,251	28	3
Capital Budget	$ 11,276,000	$ 7,257,000	$ (4,019,000)	-35.6%	$ 10,000,000	$ 2,743,000	37.8%	-	-	-	-	-
Share Insurance Fund Admin. Budget	$ 4,956,000	$ 5,136,000	$ 180,000	3.6%	$ 4,725,000	$ (411,000)	-8.0%	-	-	-	-	-
Total	**$360,390,000**	**$394,508,000**	**$34,118,000**	**9.5%**	**$ 433,595,000**	**$ 39,087,000**	**9.9%**	**1,220**	**1,248**	**1,251**	**28**	**3**

* All position levels exclude positions funded by the Central Liquidity Facility (CLF).

The NCUA's 2024–2025 staff draft budget justification includes three separate budgets: the Operating Budget, the Capital Budget, and the National Credit Union Share Insurance Fund (Share Insurance Fund) Administrative Expenses Budget. Combined, these three budgets total $394.5 million for 2024, which is $8.7 million lower than the $403.2 million 2024 funding level approved by the NCUA Board as part of the two-year 2023–2024 budget.

Three significant factors, when combined, account for most of the 9.5 percent increase in the total budget between 2023 and 2024:

1. A proposed net increase of 11 new positions and incorporating into the 2024 budget 17 existing positions currently unfunded in the 2023 budget.[2] These positions will support critical areas necessary to operate as an effective federal financial regulator capable of addressing a range of emerging issues and increase the 2024 budget by approximately $5.9 million compared to 2023.
2. An increase of $18.2 million for current employee compensation in 2024 compared to 2023. This increase accounts for merit pay raises for the NCUA's employees as required by the Collective Bargaining Agreement and expected inflationary cost increases for employee benefits.
3. An increase of $10.7 million in funding for contracted services for 2024 compared to 2023. Most of the increase in the contracted services category includes funding to address new and evolving operational risks such as cybersecurity threats and for tools used to identify and resolve credit union system risk concerns such as interest rate risk, credit risk, and industry concentration risk. Growth in the contracted services budget category also results from new operations and maintenance costs associated with recent capital investments. Other costs include price inflation for core agency business operation systems such as accounting and payroll processing and various other recurring support costs.

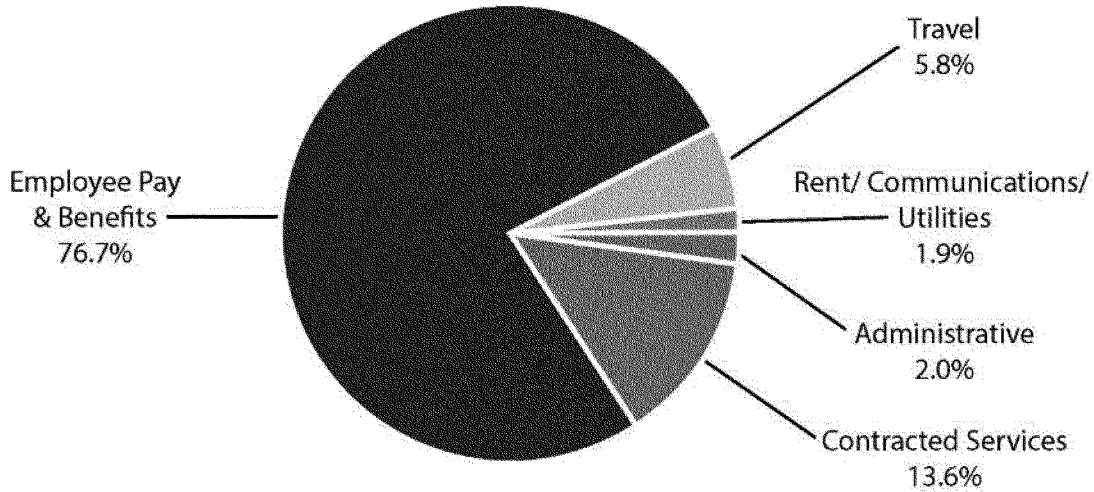
Recent economic trends, including higher inflation and competitive labor markets, have also contributed to increased costs for the NCUA to conduct its work without a significant degradation in agency capabilities.

Proposed 2024 Operating Budget: $382.1 Million

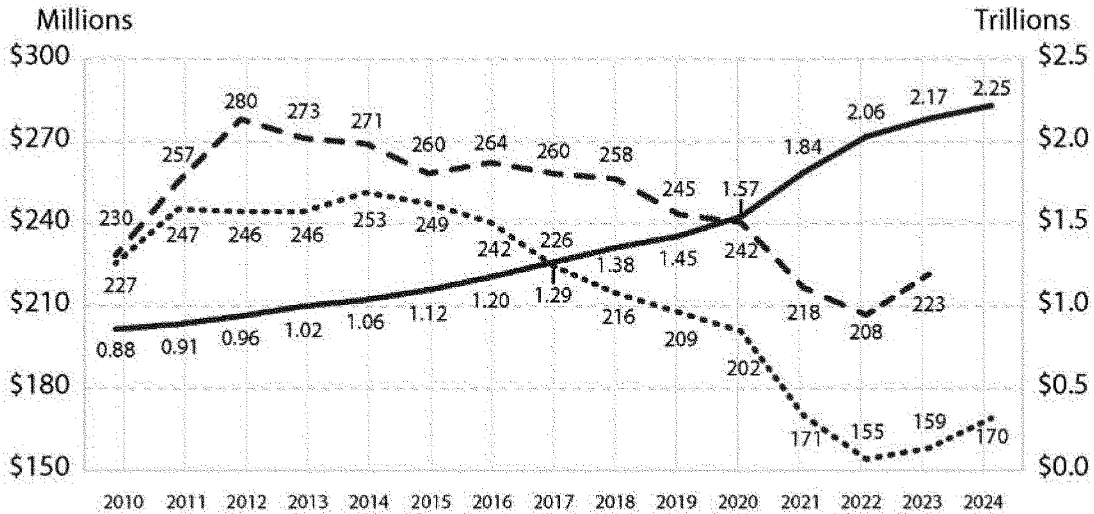
The proposed 2024 Operating Budget increases approximately $38.0 million, or 11 percent, compared to the 2023 Board-approved Operating Budget.

The following chart presents the major categories of spending supported by the proposed 2024 Operating Budget.

[2] These positions are also known as "overhire" positions and are funded by surplus pay and benefits budgets that result from vacancies.



As shown in the following chart, the relative size of the NCUA budget (dotted line) has generally decreased when compared to balance sheets at federally insured credit unions (FICU, solid line).



Source: NCUA Annual Budgets, Call Reports, FDIC, OCC, and Federal Reserve financial reports

*Budget per million $ of FICU assets is calculated as the fiscal year's budget divided by the previous year's end-of-year assets (e.g., 2024 proposed budget ($382.1M) / projected FICU assets as of 2023Q4 ($2.3T) = $170 of NCUA budget per $1M in FICU assets).

Proposed 2024 Operating Budget Summary

(Dollars in Millions)	Budget	Change from 2023 Budget	Percent Change*	Description
2024 Operating Budget	**$382.1**	↑ **$38.0**	**+ 11.0%**	
Total Staffing (positions)	**1,248**	↑ **28**	**+ 2.3%**	The 2024 position level increases by 28 positions from 1,220 authorized by the Board in 2023.**
Budget Category				
Pay & Benefits	**$293.3**	↑ **$26.2**	**+ 9.8%**	The pay and benefits adjustment includes funding for the proposed staffing increase of 28 positions, net, for critical areas necessary to operate as an effective federal financial regulator capable of addressing emerging issues. Additionally, the increase in pay and benefits includes merit and locality pay changes anticipated for 2024.
Travel	**$22.0**	↓ **$0.005**	**+ 0.0%**	The travel budget decreases by $5,000 in 2024 compared to 2023.
Rent, Communications, & Utilities	**$7.1**	↑ **$0.8**	**+ 13.0%**	Rent, communications, and utilities budgets maintain essential working space, telecommunications, data capacity, and network support. The 2024 increase results primarily from new costs for rent and data services for a new disaster recovery site.
Administrative	**$7.6**	↑ **$0.3**	**+ 4.4%**	Administrative expenses primarily support operational requirements, Federal Financial Institutions Examination Council (FFIEC) fees, relocation expenses, and employee supplies.
Contracted Services	**$52.1**	↑ **$10.7**	**+ 25.7%**	Contracted services reflect costs incurred when products and services are acquired in the commercial marketplace and include critical mission support services, such as information technology hardware and software development support, accounting and auditing services, and specialized subject matter expertise. The increase in this category includes funding to address new and evolving risks and for tools used to identify and resolve them, new operations and maintenance costs associated with recent capital investments, and price inflation for core agency business operation systems.

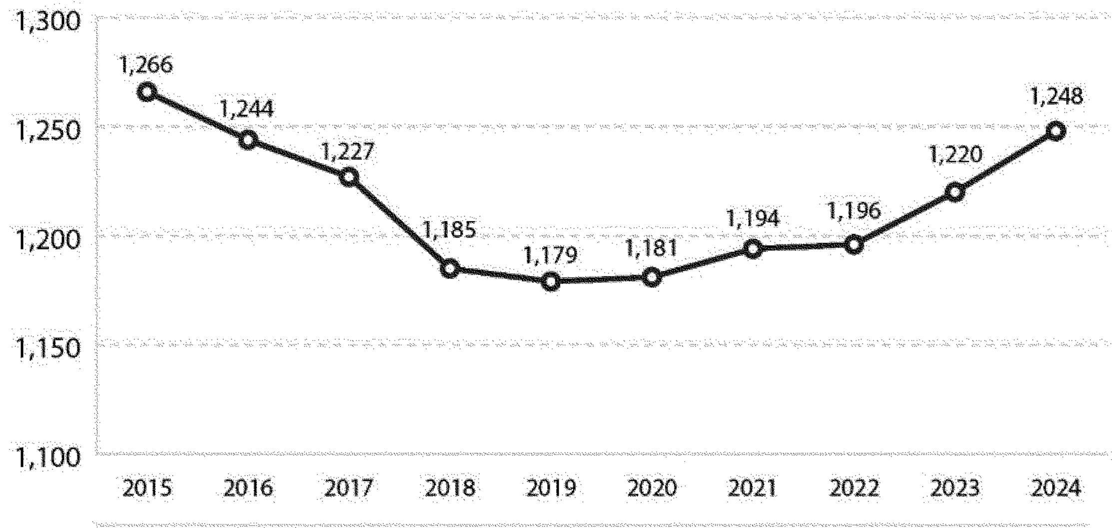
* Percentage change is based upon exact amounts reflected in the table, ''2024–2025 Proposed NCUA Operating Budget Summary''.

** Total staffing levels for 2024 and 2025 do not include five positions funded by the CLF.

Total Staffing. The proposed 2024 Operating Budget includes 1,248 positions.[3] This is a net increase of 28 positions (11 new positions and 17 existing, unfunded positions being moved on budget) compared to the 2023 levels approved by the Board. Details of the proposed increases in positions are discussed later in this document.

Despite significant credit union asset growth, total NCUA staffing is still below the 2015 level, as shown in the following chart.

[3] This document reflects NCUA staffing levels as positions in order to simplify the presentation of current and proposed employee levels. At times in the past, the NCUA reflected budgeted staffing levels as full-time equivalents (FTEs), which is a presentation that accounts for staffing vacancies, part-time schedules, and other variability in employee levels.



Note: NCUA staffing in this chart excludes positions funded by the CLF.

The Operating Budget estimate for 2025 is $418.9 million and includes 3 additional positions compared to the 2024 level.

Proposed 2025 Operating Budget Summary

(Dollars in Millions)	Budget	Change from 2023 Budget	Percent Change*	Description
2025 Operating Budget	$418.9	↑ $36.8	+ 9.6%	
Total Staffing (positions)	1,251	↑ 3	+ 0.2%	The 2025 position level increases by 3 positions from 1,248 recommended for 2024.
Budget Category				
Pay & Benefits	$308.2	↑ $14.9	+ 5.1%	The pay and benefits budget is projected to increase in 2025 to fund increased compensation for on-board employees and the cost of new staff hired in 2024 and 2025.
Travel	$23.9	↑ $1.9	+ 8.6%	Travel costs are projected to increase modestly due to expected inflation and a national training conference planned for 2025 for NCUA employees.
Rent, Communications, & Utilities	$7.5	↑ $0.4	+ 5.6%	Rent, communications, and utilities costs are projected to increase modestly to reflect a national training conference planned for 2025 for NCUA employees.
Administrative	$7.7	↑ $0.1	+ 1.6%	Administrative expenses are projected to increase slightly to reflect a national training conference planned for 2025 for NCUA employees.
Contracted Services	$71.6	↑ $19.4	+ 37.2%	Contracted services reflect costs incurred for products and services acquired in the commercial marketplace. The proposed 2024 budget for contracted services includes an offset of $18 million from projected prior-year budget surpluses, which is not expected to be available again in 2025.

* Percentage change is based upon exact amounts reflected in the table, ''2024–2025 Proposed NCUA Operating Budget Summary.''

Proposed 2024 Capital Budget: $7.3 Million

The proposed 2024 Capital Budget is $4.0 million lower than the 2023 Board-approved budget.

The Capital Budget supports the NCUA's ongoing effort to modernize its information technology infrastructure and applications. Funding in the Capital Budget for upgrades to or replacement of obsolete information technology systems is lower in 2024 than in 2023, as is the 2024 capital investment for continued enhancement of the Modern Examination and Risk Identification Tool (MERIT) examination system. Other information technology investments in the proposed 2024 Capital Budget include funds to ensure that agency systems comply with evolving cybersecurity requirements required of all federal agencies, enhancements to agency information security, upgrades to old legacy systems, and various hardware investments to refresh agency networks and ensure staff have the tools necessary to achieve the agency's mission.

The Capital Budget also includes $477,000 for NCUA facility maintenance and improvements.

Proposed 2024 Share Insurance Fund Administrative Expenses: $5.1 Million

The proposed 2024 Share Insurance Fund Administrative Expenses Budget is $0.2 million higher than the 2023 Board-approved budget. The Share Insurance Fund Administrative Expenses Budget funds the tools and technology used by the Office of National Examinations and Supervision (ONES) to oversee credit union-run stress testing for the largest credit unions, travel for state examiners attending NCUA-sponsored training, audit support for the Share Insurance Fund's financial statements, and certain insurance-related expenses for Asset Management and Assistance Center (AMAC) operations.

II. Introduction and Strategic Context

History

For more than 100 years, credit unions have provided financial services to their members. Credit unions are not-for-profit financial cooperatives created to serve a membership with a common bond.

The Federal Credit Union Act will turn 90 years old in 2024. President Franklin Roosevelt signed the Federal Credit Union Act into law on June 26, 1934, in the midst of the Great Depression. The law's goal was to make credit available to Americans and promote thrift through a national system of nonprofit, cooperative credit unions.

The NCUA is the independent federal agency established in 1970 by the U.S. Congress to regulate, charter, and supervise federal credit unions. With the backing of the full faith and credit of the United States, the NCUA operates and manages the National Credit Union Share Insurance Fund, insuring the deposits of the account holders in all federal credit unions and the vast

majority of state-chartered credit unions.

As of June 30, 2023, the NCUA is responsible for the regulation and supervision of 4,686 federally insured credit unions, which have approximately 137.7 million members and more than $2.2 trillion in assets across all states and U.S. territories.[4]

Authority

Pursuant to the Federal Credit Union Act, authority for management of the NCUA is vested in the NCUA Board. It is the Board's responsibility to determine the resources necessary to carry out the NCUA's responsibilities under the Act.[5] The Board is authorized to expend such funds and perform such other functions or acts as it deems necessary or appropriate in accordance with the rules, regulations, or policies it establishes.[6]

Upon determination of the budgeted annual expenses for the agency's operations, the Board determines a fee schedule to assess federal credit unions. The Board gives consideration to the ability of federal credit unions to pay such a fee and the necessity of the expenses the NCUA will incur in carrying out its responsibilities in connection with federal credit unions.[7] In December 2020, the Board approved a final rule with changes to its regulation and methodology for determining the operating fees due from federal credit unions.[8] In July 2023, the Board requested comments from the public about changes to the methodology the Board uses to determine how it apportions operating fees, specifically the exemption threshold below which federal credit unions would not be required to pay the operating fee.[9] The Board will consider public comments received by the due date specified in the **Federal Register** notice, and if the Board decides to revise the methodology for computing the operating fee, such changes will be reflected in future Board communications.

Pursuant to the law, fees collected are deposited in the agency's Operating Fund at the Treasury of the United States, and those fees are expended by the Board to defray the cost of carrying out the agency's operations, including the examination and supervision of federal credit unions.[10] In accordance with its authority to use the Share Insurance Fund to carry out its insurance-related responsibilities, the Board approved an Overhead Transfer Rate methodology and authorized the Office of the Chief Financial Officer to transfer resources from the Share Insurance Fund to the Operating Fund to account for insurance-related expenses.[11]

Mission, Goals, and Strategy

The proposed budget for 2024–2025 supports the agency's third year implementing its *2022–2026 Strategic Plan.* Throughout 2024 and 2025, the NCUA will continue fulfilling its mission of ''*protecting the system of cooperative credit and its member-owners through effective chartering, supervision, regulation, and insurance.*'' The agency's three strategic goals are:

1. Ensure a safe, sound, and viable system of cooperative credit that protects consumers.
2. Improve the financial well-being of individuals and communities through access to affordable and equitable financial products and services.
3. Maximize organizational performance to enable mission success.

The NCUA's strategic plan is the foundation for the agency's performance management and resource allocation processes. The annual performance plan functions as the agency's operational plan for each calendar year. It outlines the annual or short-term objectives, strategies, and corresponding performance goals and activities that contribute to the accomplishment of the agency's strategic goals. The NCUA budget provides the resources necessary for the agency to implement its strategic priorities and related programs and activities, to identify key challenges facing the credit union industry, and to leverage agency strengths to help credit unions address those challenges.

Appendix A provides additional information about how the budget aligns to the NCUA's strategic goals.

Federal Compliance Costs

As a federal agency, the NCUA is required to devote significant resources to numerous activities required by federal law, regulations, or, in some cases, Executive Orders. These requirements drive how many of the agency's activities are implemented and the associated costs. These compliance activities affect the level of resources needed in areas such as information technology acquisitions and management, human capital processes, financial management processes and reporting, privacy compliance, and physical and cybersecurity programs.

Financial Management

Federal law, regulations, and government-wide guidance promulgated by the Office of Management and Budget (OMB), the Government Accountability Office (GAO), and the Department of the Treasury place numerous requirements on federal agencies, including the NCUA, regarding the management of public funds. Government-wide financial management compliance requirements address topics such as financial statement audits, improper payments, prompt payments, internal controls, and procurement audits, enterprise risk management, strategic planning, and public reporting of financial and other information.

Information Technology

There are numerous laws, regulations, and required guidance concerning information technology used by the federal government. Many of the requirements cover information technology security, such as the Federal Information Security Modernization Act. Other requirements cover records management, paperwork reduction, acquisition, cybersecurity spending, accessible technology, and continuity.

Human Capital and Equal Opportunity

Like other federal agencies, the NCUA is subject to an array of human capital-related laws, regulations, and other mandatory guidance issued by the Office of Personnel Management (OPM), the Equal Employment Opportunity Commission, and OMB. Human capital compliance requirements include procedures related to hiring, management engagement with public unions and collective bargaining, employee discipline and removal procedures, required training for supervisors and employees, employee work-life and benefits programs, equal employment opportunity and required diversity and inclusion programs, and storage and retention of human resource records. The NCUA is also required by law to maintain comparability with other federal bank regulatory agencies when setting and adjusting the total amount of compensation and benefits for employees.

Security

The NCUA's security posture is driven by numerous legal and regulatory requirements covering the full range of security functions. The NCUA is

[4] *Source:* The NCUA quarterly call report data, Q2 2023.

[5] *See* 12 U.S.C. 1752a(a).

[6] *See* 12 U.S.C. 1766(i)(2).

[7] *See* 12 U.S.C. 1755(a)–(b).

[8] *See https://www.govinfo.gov/content/pkg/FR-2020-12-31/pdf/2020-28490.pdf.*

[9] *See https://www.regulations.gov/document/NCUA-2023-0072-0001.*

[10] *See* 12 U.S.C. 1755(d).

[11] *See* 12 U.S.C. 1783(a).

required to comply with mandatory requirements for personnel security, physical security, emergency management and continuity, communications and information security, and insider threat standards. In addition to meeting specific legislative mandates, as a federal agency the NCUA is required to follow guidance from, but not limited to, the Office of the Director of National Intelligence, the Department of Defense, OPM, and the Federal Emergency Management Agency.

Audits and Program Oversight

The NCUA and its operations are subject to review by independent auditors. Like any other U.S. employer, the NCUA may be audited by the Internal Revenue Service for compliance with relevant tax laws and regulations. Similarly, the NCUA is subject to audit for compliance with government-wide requirements in areas like records management (National Archives and Records Administration) and delegated personnel authorities (OPM).

Other oversight audits include the NCUA's financial statement audits, which must be conducted for all four of its funds on both an operating (calendar year) and reporting year (federal fiscal year) basis. In addition, to help ensure the agency's cybersecurity, the law subjects the NCUA to annual audits of its information technology systems and data management practices, as specified in the Federal Information Security Modernization Act.

The Government Accountability Office and the NCUA Office of Inspector General (OIG) are statutorily authorized to oversee and audit the performance of NCUA's programs in order to identify and attempt to prevent waste, fraud, and abuse of public resources. Further, and in addition to programmatic audits that the OIG conducts each year, the NCUA OIG formally reviews all material losses to the National Credit Union Share Insurance Fund.

Other Compliance Activities

The NCUA also has other general compliance activities that cross numerous offices and add to the NCUA's budget. For example, the NCUA is also required to comply with the Privacy Act, the Freedom of Information Act, the Government in the Sunshine Act, multiple laws and regulations related to government ethics standards, and various reporting, training, and other requirements set forth by the Federal Credit Union Act and other statutes. Additionally, the Dodd-Frank Wall Street Reform and Consumer Protection Act established requirements for the NCUA to administer and periodically report on various diversity-related matters at the agency and within the credit union system.

III. Key Themes of the Proposed 2024–2025 Budget

Overview

The proposed 2024–2025 budget includes funding for the NCUA to increase staffing in critical areas necessary to operate as an effective federal financial regulator capable of addressing emerging issues and responding to changes in economic conditions that may impact the credit union system.

The percentage of insured shares in credit unions with composite CAMELS ratings 1 and 2 has been in decline since December 2021.[12] Between the reporting periods of December 31, 2021, and June 30, 2023, credit unions with composite CAMELS 3 ratings and insured shares greater than $500 million increased from 15 to 42, and their collective assets increased from $11.3 billion to $47.7 billion—an increase of 322%.

The NCUA is seeing rising levels of interest rate and liquidity risk within the system. There has been an increase in compliance and fair lending concerns as well. There is also the potential for increased credit risk, especially among families with increasingly stressed household budgets and the post-pandemic uncertainties in the commercial real estate market. These risks can play out in rising delinquency rates for various loan types, including auto loans and credit cards.

The NCUA must have the necessary resources to continue to monitor credit union performance and mitigate risks through the examination process, offsite monitoring, and tailored supervision, consistent with its mission.

The NCUA employees are the agency's most valuable resource for achieving its mission, and the agency is committed to a workforce with integrity, accountability, transparency, inclusivity, and proficiency.[13] The agency will continue investing in its workforce through training and development, ensuring employees have the skills they need to do their work effectively.

The proposed 2024–2025 budget includes investments across a range of agency priorities, including:

- Ensuring robust cybersecurity in the credit union system and at the agency.
- Recalibrating examination and supervisory oversight over credit unions with assets between $10 billion and $15 billion to reflect risks.
- Adding new regional specialist examiners dedicated to areas of emerging complexity and risk within the credit union system such as electronic payment systems, consumer compliance, and Bank Secrecy Act (BSA) compliance.
- Improving financial inclusion and access through the NCUA's Advancing Communities through Credit, Education, Stability, and Support initiative.
- Providing program and staff resources to increase assistance to small credit unions and credit unions designated as minority depository institutions (MDIs).
- Right-sizing the NCUA's examination of credit unions' compliance with consumer financial protection laws and regulations.
- Investing in information technology systems and infrastructure to bolster the agency's supervisory capabilities.

The efficiency and effectiveness of the agency's workforce depends upon the availability of modern analytical tools and the resiliency of the NCUA's information technology systems. The NCUA is committed to implementing its new technology responsibly and delivering secure, reliable, and innovative solutions. The investments funded in the NCUA's Capital Budget will provide the tools and technology the workforce needs to achieve the NCUA mission.

Cybersecurity

The NCUA's cybersecurity program focuses on two main efforts: supervision of credit union cybersecurity programs and protection of the agency's systems, assets, data, and mission capabilities.

Cyberattacks continue to pose significant risks to all organizations. Because of continued attacks on the nation's financial sector and the broader national critical infrastructure, the NCUA places credit union cybersecurity as a top enterprise and supervisory priority.

---

[12] NCUA's composite CAMELS rating consists of an assessment of a credit union's Capital adequacy, Asset quality, Management, Earnings, Liquidity risk, and Sensitivity to market risk. The CAMELS rating system is designed to take into account and reflect all significant financial, operational and management factors field staff assess in their valuation of credit unions' performance and risk profiles. CAMELS ratings range from 1 to 5, with 1 being the best rating. Credit unions with a composite CAMELS rating of 3 exhibit some degree of supervisory concern in one or more components. CAMELS 4 credit unions generally exhibit unsafe or unsound practices, and CAMELS 5 institutions demonstrate extremely unsafe or unsound practices and conditions. NCUA collectively refers to CAMELS 4 and 5 credit unions as ''troubled credit unions.''

[13] *See https://ncua.gov/files/agenda-items/strategic-plan-20220317.pdf,* page 6.

Supervision of Credit Union Cybersecurity

The NCUA engages in interagency cybersecurity preparedness as a member of the Federal Financial Institutions Examination Council (FFIEC) and of the Financial and Banking Information Infrastructure Committee. The NCUA monitors cyber threats identified by federal and non-federal sources and shares relevant information about them with the credit union industry and financial sector partners.

The NCUA maintains a team within the Office of Examination and Insurance dedicated to developing and maintaining supervisory policies, procedures, and tools and examiner training for cybersecurity. The regions and the Office of National Examinations and Supervision employ 30 highly trained regional information security specialists for information security examinations and supervision of credit unions.

In 2023, the agency deployed an updated information security examination program. All credit unions will periodically receive an information security examination as part of the agency's new Information Security Examination Program (ISEP). The ISEP uses a risk-focused approach to examine credit unions' information security, providing examiners flexibility to focus on areas of material current or potential risk relevant to each credit union's unique business model. The objectives of an information security examination include:

- Evaluating management's ability to recognize, assess, monitor, and manage information systems and technology-related risks.
- Assessing whether the credit union has sufficient expertise to adequately plan, direct, and manage information systems and technology operations.
- Determining whether the board of directors has adopted and implemented adequate information systems and technology-related policies and procedures.
- Evaluating the adequacy of internal information systems and technology controls and oversight to safeguard member information.

The NCUA built and maintains the Automated Cybersecurity Evaluation Toolbox (ACET) to help credit unions voluntarily assess their level of cybersecurity preparedness. The tool incorporates appropriate cybersecurity standards and practices established for financial institutions. The tool maps each of its declarative statements to the practices found in the *FFIEC Information Technology Examination Handbook,* regulatory guidance, and leading industry standards like the National Institute of Standards and Technology's Cybersecurity Framework. The ACET also provides a plain-language explanation and references for each of the statements included within the assessment.

Enhanced and continuing examiner training related to information security and evolving cyber risks is planned for 2024.

Protection of the Agency's Information and Systems

The NCUA's approach to agency cybersecurity is based on requirements established by federal statute such as the Federal Information Security Management and Federal Information Security Modernization Acts, and government-wide policy such as the National Institute of Standards and Technology's Cybersecurity Framework, and Executive Order 14028, *Improving the Nation's Cybersecurity.* The proposed 2024 budget includes over $20 million for the cost of compliance with and implementation of these requirements, of which $4.3 million is budgeted for capital investments. It is important to note that many government cybersecurity requirements are not necessarily expected of non-governmental entities; however, as a federal agency the NCUA is obligated to carry them out.

Examination Workforce

In 2021, a cross-agency working group at the NCUA conducted an internal review to determine the appropriate level of specialist positions required to ensure compliance with the Bank Secrecy Act (BSA) and consumer financial protection laws and regulations. The review evaluated staffing needs for three potential regional specialist groups in the areas of electronic payment systems, consumer compliance, and the BSA. Unlike other specialist areas where credit union asset size is a reasonable basis for allocating supervisory resources, BSA and consumer compliance risks are not necessarily concentrated in a particular asset group.

The 2021 review recommended that the agency develop BSA and consumer compliance specialist programs. The proposed 2024 budget supports the second phase of this effort by adding 27 new regional examination staff—including specialists and supervisory positions. These specialist positions are offset by a reduction of general examiner positions spread across each of the NCUA's three regions.

Starting in January 2023, federally insured credit unions with less than $15 billion in total assets generally are supervised by the NCUA regional office corresponding to their headquarters location, while ONES continues supervising federally insured credit unions with $15 billion or more in total assets. Supervising regional large credit unions with between $10 billion and $15 billion in assets requires additional resources for the regions. Therefore, the proposed 2024 budget includes the equivalent of five additional examiner positions to account for the enhanced examination and supervision needs for these institutions related to size, scale, and scope.

Support for Small Credit Unions and Minority Depository Institutions

Small credit unions with less than $100 million in assets and MDIs are uniquely positioned to improve financial inclusion by offering their communities access to safe and affordable credit and other services. The NCUA's Small Credit Union and MDI Support Program is designed to support and preserve these credit unions. This program provides dedicated resource hours for field staff to conduct this important work, and the proposed 2024 budget continues to support this important effort.

Program assistance focuses on identifying available resources, providing training and guidance, and supporting credit union management in their efforts to address operational matters. Additional benefits of the program are expected to include:

- Building greater awareness of the unique needs of small credit unions and MDIs and their role serving underserved communities.
- Expanding opportunities for these credit unions to receive support through NCUA grants, training, and other initiatives.
- Furthering partnerships with organizations and industry mentors that can support small credit unions and MDIs.

Fair Lending and Consumer Financial Protection

Fair and equitable access to credit is vital to the credit union system and members of credit unions. The NCUA uses onsite examinations, supervision contacts, and data analysis to ensure credit unions comply with consumer financial protection and fair lending laws and regulations. The proposed 2024 budget includes 13 additional regional consumer compliance specialists and an increase in examination time for consumer

financial protection reviews equivalent to 11 examiners to increase the agency's review of consumer financial protection and fair lending laws and regulations, especially at institutions with greater consumer impact or indications of potential violations.

Financial Inclusion

Credit unions are an important part of the financial services industry and can play a key role in helping families achieve financial freedom by building generational wealth, helping entrepreneurs to get their small businesses off the ground, and helping to create jobs and strengthen communities. The NCUA has a role to play in making sure that credit unions can support overlooked or underserved areas.

The NCUA will build on the work done in 2023 to better understand credit union challenges and opportunities in providing fair and affordable financial products to minority, unbanked, and underbanked households. The Innovation and Access and CURE teams plan to use this information to help credit unions understand the challenges in communities with limited financial services and to enhance and facilitate the Small Credit Union and MDI Support program. The NCUA will continue its active engagement with credit union industry leaders and stakeholders to help new, small, low-income-designated, and MDI credit unions to grow and prosper.

NCUA Organizational Changes

The staff draft budget proposes a new Office of the Executive Secretary, which is a common function in many other federal agencies. The new office will centralize responsibility for the NCUA's policy review and decision-making processes, coordinate the clearance and submission of all policy documents to the Chairman and the NCUA Board, as appropriate, for review and approval, and facilitate discussions between the NCUA's program offices to align appropriate policies, among other things. Policy documents include regulations, recommendation memos, action memos, briefing memos, responses to correspondence, reports to Congress, and other policy documents. Appendix A includes a separate table illustrating the budget for the proposed Office of the Executive Secretary.

IV. Operating Budget

Overview

The NCUA Operating Budget provides the resources required for the agency to conduct activities prescribed by the Federal Credit Union Act. These mandates include: (1) chartering new federal credit unions; (2) approving field of membership applications of federal credit unions; (3) promulgating regulations and providing guidance; (4) performing regulatory compliance and safety and soundness examinations; (5) implementing and administering enforcement actions, such as prohibition orders, orders to cease and desist, orders of conservatorship and orders of liquidation; and (6) administering the National Credit Union Share Insurance Fund. The NCUA must also implement mandates required by other statutes including those related to BSA compliance, consumer financial protection, and diversity, equity, and inclusion.

Operating Budget Categories

There are five major expenditure categories in the Operating Budget. This section explains how these expenditures support the NCUA's operations and presents a transparent overview of the Operating Budget.

2024–2025 PROPOSED NCUA OPERATING BUDGET SUMMARY

Budget Cost Category	2023 Board Approved Budget	2024 Proposed Budget	2023-2024 Change	Change Percent	2025 Proposed Budget	2024-2025 Change	Change Percent
Employee compensation	267,101,000	293,260,000	26,159,000	9.8%	308,170,000	14,910,000	5.1%
Salaries	184,983,000	203,196,000	18,213,000	9.8%	214,484,000	11,288,000	5.6%
Benefits	82,118,000	90,064,000	7,946,000	9.7%	93,686,000	3,622,000	4.0%
Travel	22,027,000	22,022,000	(5,000)	0.0%	23,922,000	1,900,000	8.6%
Rent/Comm/Utilities	6,292,000	7,111,000	819,000	13.0%	7,511,000	400,000	5.6%
Administrative	7,265,000	7,585,000	320,000	4.4%	7,710,000	125,000	1.6%
Contracted Services	41,473,000	52,137,000	10,664,000	25.7%	71,557,000	19,420,000	37.2%
Total	**$ 344,158,000**	**$ 382,115,000**	**37,957,000**	**11.0%**	**$ 418,870,000**	**36,755,000**	**9.6%**

Pay and Benefits

Pay and benefits increase by $26.2 million in 2024, or 9.8 percent compared to 2023, for a total of $293.3 million. Pay and benefits costs make up approximately 76.7 percent of the annual NCUA Operating Budget. There are four primary drivers of increased costs in 2024 for the pay and benefits category:

- Merit and locality pay increases for the NCUA's employees are paid in accordance with the agency's Collective Bargaining Agreement (CBA) and its merit-based pay system.
- Contributions for employee retirement to the Federal Employee Retirement System (FERS), which are set by OPM based on actuarial estimates and cannot be negotiated or changed by the NCUA. The mandatory FERS contribution rate increases total NCUA benefits costs by 4.9 percent in 2024 compared to 2023. OPM's current assumptions for actuarial valuation of FERS remain unchanged in 2024 but remain a significant cost driver for the agency's pay and benefits growth. Because the NCUA must contribute 18.4 percent of employee salaries to the retirement fund in 2024, the estimated impact on the NCUA budget is an increase of approximately $4.0 million in mandatory payments.
- Contributions for employee health insurance are also set by OPM and

cannot be negotiated or changed by the NCUA. This mandatory contribution increases total NCUA benefits costs by 2.1 percent in 2024 compared to 2023. The annual OPM estimate for the 2024 government share of the Federal Employees Health Benefits Program (FEHBP) premiums is expected to be released in October 2023, and the budget will be updated if there is any material change to estimated FEHBP costs.

• The employee salary and benefits category also includes costs associated with other mandatory employer contributions such as Social Security, Medicare, transportation subsidies, unemployment, and workers' compensation. The limit on employee earnings subject to Social Security taxes increased in 2024 and applies to all employers in the United States. The projected additional employer Social Security contributions that result from this increase account for approximately 3 percent of the total adjustment to employee salaries.

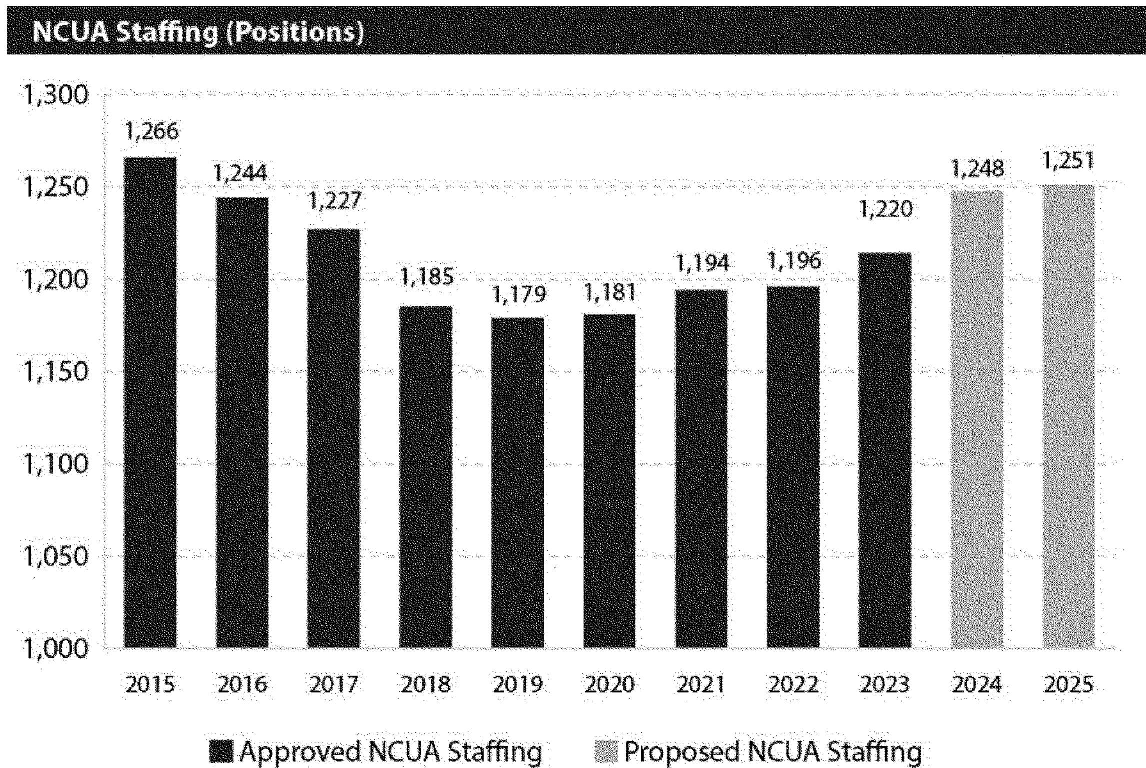
Attracting a well-qualified workforce requires the agency to pay competitive salaries. In 2024, the NCUA's compensation levels will continue to ''maintain comparability with other federal bank regulatory agencies'' as required by the Federal Credit Union Act.[14] More than 85 percent of the NCUA workforce has earned a bachelor's degree or higher, compared to approximately 35 percent of the private-sector workforce.

The pay and benefits budget includes all employee pay raises for 2024, such as merit and locality increases consistent with the CBA in place for 2023, and those for promotions, reassignments, and other changes, as described below. Consistent with other federal pay systems, the NCUA's compensation includes base pay and locality pay components.

The proposed 2024 Operating Budget supports a total agency staffing level of 1,248 positions.[15] This is a net increase of 28 positions, or 2.3 percent, compared to the agency's 2023 staffing level. The net increase includes 11 new positions and incorporates into the 2024 budget 17 existing positions currently unfunded in the 2023 budget. The first-year cost of the 11 net new positions for 2024 is estimated to be approximately $1.9 million. The cost for 2024 of the 17 existing positions currently unfunded is estimated to be approximately $4.0 million.

The proposed 2024–2025 budget includes funding for the NCUA to increase permanent staffing in critical areas necessary to operate more effectively and address emerging issues. The staffing levels proposed for 2024 also reflect the resource requirements that support the NCUA's continued efforts to ensure its examination processes keep pace with the growing scale and complexity of the credit union system while the agency enhances the efficiency and effectiveness of its supervisory efforts.

The chart illustrates the NCUA's staffing levels in recent years.[16]



Note: Total NCUA staffing excludes positions funded by the CLF.

The proposed changes for the NCUA's 2024 staffing level include:

• Adding 27 specialist examiner and specialist supervisor positions to the NCUA regional staff, 20 of which the

[14] The Federal Credit Union Act states that, ''In setting and adjusting the total amount of compensation and benefits for employees of the Board, the Board shall seek to maintain comparability with other federal bank regulatory agencies.'' *See* 12 U.S.C. 1766(j)(2).

[15] Does not include five positions assigned to the Central Liquidity Facility.

[16] The 2024–2025 budget reflects NCUA staffing levels as positions to simplify the presentation of current and proposed employee levels. In past years, the NCUA reflected budgeted staffing levels as full-time equivalents (FTEs), which is a presentation that accounts for vacant positions, part-time work, and other variability in employee levels. Although the actual number of persons employed at the NCUA varies throughout the year, using the count of positions is simpler.

NCUA Board approved as part of the 2023–2024 budget and an additional seven related to enhanced consumer financial protection examinations. The number of large, complex credit unions continues to increase through mergers and membership growth, which necessitates a broader array of experts in the field to support the examination and supervision of these institutions.

- Reducing the number of generalist examiners by a net of 22 positions across the NCUA's three regional offices. This adjustment includes an increase to examination and supervision time that is the equivalent of five examiner positions for the regional workload associated with overseeing credit unions with between $10 billion and $15 billion in assets.[17]
- Creating a new Office of the Executive Secretary with two dedicated staff positions authorized for 2024 and a third position for 2025. This office will centralize responsibility for coordinating the review of documents, related decision-making processes, and the clearance and submission of all documents to the NCUA Board members, as appropriate.
- Increasing the staff in the Office of the Ombudsman by one position. The Office of the Ombudsman was created as a separate office by the NCUA Board in the 2023 budget and an additional Associate Ombudsman position was approved for 2024 in that document.
- Adding two Deputy Director positions: one in the Office of Business Innovation and one in the Office of the Chief Ethics Counsel.
- Adding one new writer-editor position in the Office of External Affairs and Communications.
- Funding 17 positions previously unfunded but authorized within the total NCUA staffing plan. These positions include: four in the Office of National Examinations and Supervision, three in the Office of Examination and Insurance, two in the Office of Business Innovation, two in the Office of Credit Union Resources and Expansion, two in the Office of Human Resources, one in the Office of the Chief Financial Officer, one in the Office of the Chief Information Officer, one in the Office of Consumer Financial Protection, and one in AMAC.

The proposed 2025 budget for pay and benefits is estimated at $308.2 million, a $14.9 million increase from the 2024 level. Included within this total is the full-year cost impact of new positions proposed for 2024 (approximately $0.8 million), $0.2 million for three new positions (one in the Office of the Executive Secretary, one in the Office of General Counsel, and one in the Office of Continuity and Security Management), the estimated merit and locality pay increases consistent with the recent pay inflation (approximately $10.6 million), and associated increases in benefits for all employees (approximately $3.3 million).

Travel

The proposed travel budget decreases slightly by $5,000 in 2024 when compared to 2023, for a total of $22.0 million. The travel cost category includes expenses for employees' airfare, lodging, meals, auto rentals, reimbursements for privately owned vehicle usage, and other travel-related expenses. These are necessary expenses for examiners' onsite work in credit unions. Close to two-thirds of the NCUA's workforce is comprised of field staff who spend part of their time traveling to conduct the examination and supervision program. The NCUA staff also travel for routine and specialized training and other work assignments. In 2024, the NCUA expects its staff will participate in a combination of in-person and virtual training to help control travel expenses.

During the COVID–19 pandemic, the agency and its employees transitioned to an offsite examination posture, developing new procedures and processes to continue examination and supervisory work. In 2024, the NCUA continues the process of conducting portions of examinations offsite, which is expected to constrain the growth of future travel budgets. Despite significant inflationary cost growth in travel-related expenses such as hotel charges, airfares, and car rentals, the 2024 budget for travel does not grow compared to the 2023 level, given a lower frequency of travel with more work being conducted virtually compared to pre-pandemic levels.

The proposed 2025 budget for travel is estimated to be $23.9 million, or an 8.6 percent increase compared to the 2024 level. This budget level reflects an expectation for modest travel-related cost inflation and travel to support a national training conference planned for 2025.

Rent, Communications, and Utilities

The proposed budget for rent, communications, and utilities increases by $0.8 million in 2024, or 13 percent compared to 2023, for a budget of $7.1 million. The 2024 increase is driven almost entirely by the costs required to stand up new disaster recovery and continuity of operations sites because the previous location for these required functions will be decommissioned at the end of 2023.

Funding in this budget category pays for facilities costs, telecommunications services, data storage, and information technology network support. Telecommunications charges include leased data lines, domestic and international voice lines (including mobile), and other network charges. Telecommunications costs also include the circuits and any associated usage fees for providing voice or data telecommunications service between data centers, office locations, the internet, and any customer, supplier, or partner.

The rent, communications, and utilities budget category also finances the cost of the office utilities, meeting space rental for offsite events, and postage expenses. Lease costs for the Southern and Western Region office buildings are included in this category, and the total for both of these leases is approximately $1.3 million in 2024. The annual utility costs for the headquarters and regional offices are estimated at $461,000 for 2024.

The proposed 2025 budget for the rent, communications, and utilities category is $7.5 million, or a 5.6 percent increase compared to 2024.

Administrative Expenses

Administrative expenses a proposed increase of $0.3 million in 2024, or 4.4 percent compared to 2023, for a budget of $7.6 million. The increase to the administrative expenses budget category largely results from inflationary cost increases for supplies, materials, printing, and subscription expenses expected in 2024.

Recurring costs in the administrative expenses category include the annual reimbursements to the FFIEC, employee relocation expenses, recruitment and advertising expenses, shipping, printing, subscriptions, examiner training and meeting supplies, office furniture, and employee supplies and materials. As part of the FFIEC, the NCUA shares in costs for certain joint actions and services that affect the financial services industry. The proposed 2024 draft budget includes an estimated increase of $340,000 to the FFIEC annual reimbursement. Any revisions to this initial estimated budget will be included in the NCUA's final 2024 budget.

[17] Starting in January 2023, federally insured credit unions with less than $15 billion in total assets generally are supervised by the NCUA region corresponding to the location where they are chartered, while the Office of National Examinations and Supervision (ONES) continues supervising federally insured credit unions with $15 billion or more in total assets.

Within administrative expenses, the proposed 2024 budget includes $1.3 million for employee relocations, which is consistent with the 2023 funding levels. Relocation costs are paid by the NCUA to employees who are competitively selected for a promotion or new job within the agency in a different geographic area than where they live.

The proposed 2025 budget for administrative expenses is $7.7 million, or a 1.6 percent increase from the level proposed in the 2024 budget.

Contracted Services

The proposed budget for contracted services increases by $10.7 million in 2024, or 25.7 percent compared to 2023, for a total budget of $52.1 million.[18] This increase reflects a combination of inflationary pressures on the cost of contracted services and additional initiatives described in more detail later in this document.

Contracted services funding pays for products and services acquired in the commercial marketplace and includes critical mission support services such as information technology hardware and software support, accounting and auditing services, and specialized subject matter expertise. The majority of funding in the contracted services category supports the NCUA's supervision framework, including tools used to identify and address risk concerns such as interest rate risk, credit risk, and industry concentration risk. Further, funding within contracted services is used to address new and evolving operational risks such as cybersecurity threats.

Acquiring specific expertise or services from contract providers is often the most cost-effective way for the NCUA to accomplish its mission. Such services include critical mission support such as information technology equipment and software development, accounting and auditing services, and specialized subject matter expertise that enable staff to focus on executing core mission requirements.

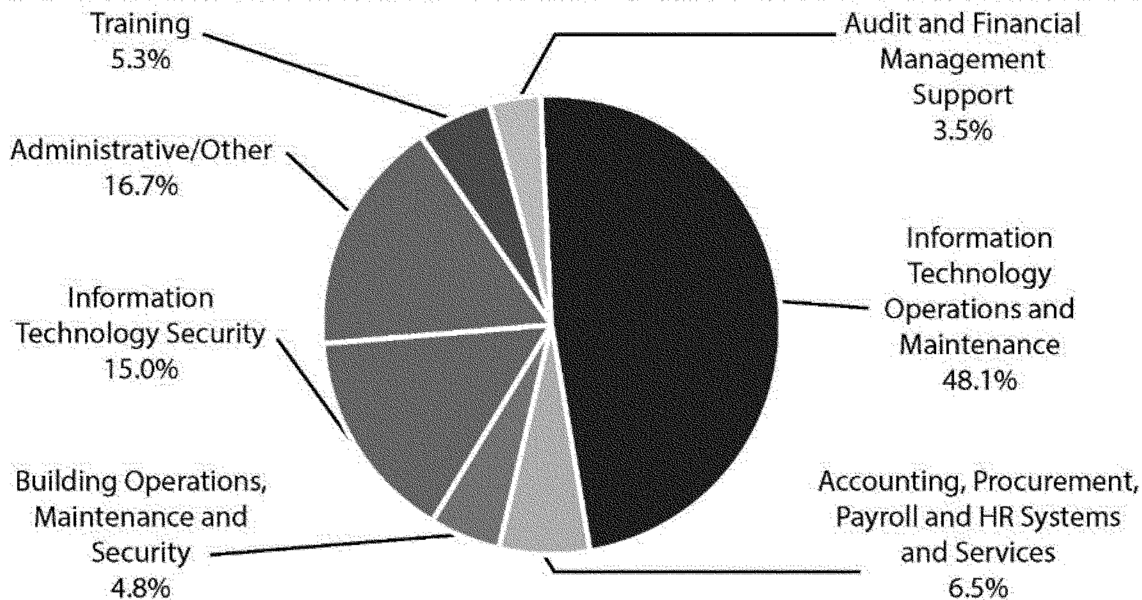
Growth in the contracted services budget category results primarily from new operations and maintenance costs associated with capital investments. Other costs include core agency business operation systems such as accounting and payroll processing, and various recurring costs, as described in the following seven major categories:

- Information Technology Operations and Maintenance (48.1 percent of contracted services)
  - Information technology network support services and help desk support
  - Contractor program and web support and network and equipment maintenance services
  - Administration of software products such as Microsoft Office, SharePoint, and audio-visual services
- Administrative Support and Other Services (16.7 percent of contracted services)
  - Examination and supervision program support
  - Technical support for examination and cybersecurity training programs
  - Equipment maintenance services
  - Legal services and other expert consulting support
  - Other administrative mission support services for the NCUA central office
- Information Technology Security (15.0 percent of contracted services)
  - Enhanced secure data storage and operations
  - Information security programs
  - Security system assessment services
- Accounting, Procurement, Payroll, and Human Resources Systems (6.5 percent of contracted services)
  - Accounting and procurement systems and support
  - Human resources, payroll, and employee services
  - Equal employment opportunity and diversity programs
- Training (5.3 percent of contracted services)
  - Technical and specialized training and professional development for staff
- Building Operations, Maintenance, and Security (4.8 percent of contracted services)
  - Headquarters facility operations and maintenance
  - Building security and continuity programs
  - Personnel security and administrative programs
- Audit and Financial Management Support (3.5 percent of contracted services)
  - Annual audit support services
  - Material loss reviews
  - Investigation support services
  - Financial management support services

In addition, the Office of the Chief Financial Officer projects that the agency will have a smaller surplus at the end of 2023 than in past years. Since 2021, the NCUA has used unspent budget amounts from previous years to reduce its budget levels in the following year. Of the total $10.7 million increase in contracted services for 2024, approximately $5.0 million of the increase results from a lower surplus projection than the amount assumed for 2023. The NCUA estimates that the agency will end 2023 having underspent the Board-approved budgets (current and prior years) by approximately $18.0 million. The proposed 2024 budget uses the $18.0 million projected surplus to offset the costs of planned contracted services spending in 2024, reducing the agency's overall 2024 budget by the same amount. Therefore, the total planned amount for contracted services in 2024 is approximately $70.1 million, an increase of $5.5 million, or 8.4 percent compared to the total 2023 spending level.

The following pie chart illustrates the breakout of the seven categories for the total proposed 2024 contracted services budget of $70.1 million, of which $18.0 million is funded from prior year available balances.

[18] The total budget for Contracted Services in 2024 before offsets of prior year unspent funds is estimated to be $70.1 million.



Note: Minor rounding differences may occur in totals.

Major programs within the contracted services category include:

• *Training requirements for the examiner workforce.* The NCUA's most important resource is its highly educated, experienced, and skilled workforce. It is important that staff have the proper knowledge, skills, and abilities to perform assigned duties and meet emerging needs. Each year, examiners complete a wide range of training classes to ensure their skills and industry knowledge are kept up to date, including in core areas such as capital markets, consumer compliance, and specialized lending. Major training deliverables for 2024 include examiner training development, including subject matter expert conferences, and a planned leadership forum for all the NCUA's executives and managers. The NCUA continues to control training costs with a blended schedule of both in-person and virtual sessions.

Contracted service providers, in partnership with the NCUA subject matter experts, will develop and design training classes for examiners and continue the ongoing review of the NCUA's examiner course curriculum. In addition, the NCUA partners with OPM to develop and certify principal examiner assessments that reflect current regulations and examination processes. The NCUA's Learning Management System will continue to be updated to include a Career Resource Center. Additionally, contracted service providers and central office staff will continue providing organizational development, leadership development programs, and teambuilding training.

• *Information security program.* This NCUA program supports ongoing efforts to strengthen the agency's cybersecurity and ensure its compliance with the Federal Information Security Modernization Act and other standards for federal agencies.

• *Agency financial management services, human resources technology support, and payroll services.* The NCUA contracts for these back-office support services with the U.S. Department of Transportation's Enterprise Service Center (DOT/ESC) and the General Services Administration. The NCUA's human resource system, HR Links, also adopted by other federal agencies, is a shared solution that automates routine human resource tasks and improves time and attendance functionality.

• *Audit.* The NCUA's OIG contracts with an accounting firm to conduct the annual audit of the agency's four permanent funds. The results of these audits are posted annually on the NCUA website and are included as part of the agency's Annual Report.

A significant share of the budget for contracted services finances ongoing information technology infrastructure support for the agency. The 2024 budget includes the fourth year of funding for operations and maintenance of the MERIT system, which replaced the legacy Automated Integrated Regulatory Examination System (AIRES) in 2021. Several of the NCUA's other core information technology systems and processes also require additional contract support in 2024, which results in increased costs for contracted services, as described below.

Within the budget for the Office of Chief Information Officer, an additional $3.5 million compared to the 2023 budget level is required for:

• Cybersecurity capabilities and implementing the provisions of Executive Order 14028, *Improving the Nation's Cybersecurity.*

• Information technology infrastructure services and operations and maintenance labor support for the new MERIT system and NCUA legacy systems.

• Application tools that support the new MERIT system and other mission critical and business applications.

Within the Office of Human Resources, the contracted services budget increases by $1.3 million compared to the 2023 budget level, primarily for additional resources to support the reasonable accommodation needs and services for current and potential new employees.

The Office of Minority and Women Inclusion's (OMWI) contract budget increases by $258,000 compared to the 2023 budget level. In 2024, these increased funds will support development of a survey administered by a third-party for credit unions to self-assess their current diversity and inclusion practices.

Within the Office of Business Innovation, the contracted services budget increases by $208,078 compared

to the 2023 budget level. These funds will provide contract support for the agency's information system security processes and fund a survey administered by a third party about credit unions' examination experiences.

The Asset Management Assistance Center's contracted services budget increases by $149,000 compared to the 2023 budget level. These funds will support the development of tools to automate various business processes and connect AMAC data with systems.

Within the Office of General Counsel, the contracted services budget increases by $65,000 compared to the 2023 budget level. The increase will support market research in 2024 for an appropriate e-Discovery solution to ensure the agency sufficiently meets its legal obligations to respond to electronic discovery requests.

The proposed contracted services budget for 2025 is $71.6 million. Excluding the $18.0 million carryover in 2024, this is a net increase of $1.4 million, or approximately 2.0 percent.

V. Capital Budget

Overview

Annually, the NCUA carries out a rigorous review process to identify the agency's needs for information technology, facility improvements and repairs, and other multi-year capital investments. The NCUA staff review the agency's inventory of information technology systems, information technology hardware, and owned facilities and equipment to determine what requires repair, major renovation, or replacement. The staff then make recommendations for prioritized investments to the NCUA Board.

The proposed 2024 Capital Budget is $7.3 million. The Capital Budget funds the NCUA's long-term investments. The 2024 Capital Budget provides $6.8 million for information technology development projects and investments and $477,000 for central office building minor construction and maintenance projects.

Information technology systems and hardware require significant capital expenditures for modern organizations. The 2024 Capital Budget's highest priorities include continuing investments to bolster the NCUA's cybersecurity posture and enable the agency to comply with Executive Order 14028 along with enhancements to the MERIT platform.

The budget also supports ongoing efforts to modernize the NCUA's information technology infrastructure and applications through the Information Technology Infrastructure, Platform and Security Refresh project, and makes investments to improve the agency's management and analysis of data through the Data Collection and Sharing Solution project. Finally, the 2024 Capital Budget supports two multi-year projects: one to develop a personnel security system in compliance with the Trusted Workforce 2.0 directive from the Office of the Director of National Intelligence and OPM and another to use technology to streamline and automate NCUA processes for reviewing field of membership and new charter requests from credit unions and organizing groups.

Routine repairs and lifecycle-driven property renovations are also necessary to properly maintain investments in the NCUA-owned properties. Each year the NCUA assesses the physical condition of the agency's properties to determine the need for essential repairs, replacement of building systems that have reached the end of their engineered lives, or renovations required to support changes in the agency's organizational structure or address revisions to building standards and codes. The 2024 Capital Budget includes funding for the costs associated with routine repairs, maintenance, and lifecycle-driven property renovations for the agency's Alexandria headquarters. Following an assessment and recommendations presented to the Board, a decision was made to sell the NCUA-owned office building in Austin. Because the specific schedule for selling the building is still to be determined, proceeds from this transaction are not factored into the 2024 budget.

2024–2025 PROPOSED NCUA CAPITAL BUDGET

	2023 Board Approved Budget	2024 Proposed Budget	Change (2023-2024)	Change Percent (2023-2024)	2025 Proposed Budget	Change (2024-2025)	Change Percent (2024-2025)
Information technology investments	$ 10,304,000	$ 6,780,000	$ (3,524,000)	-34.2%	$ 9,520,000	$ 2,740,000	40.4%
Capital building improvements and repairs	$ 972,000	$ 477,000	$ (495,000)	-50.9%	$ 480,000	$ 3,000	0.6%
Total	**$ 11,276,000**	**$ 7,257,000**	**$ (4,019,000)**	**-35.6%**	**$ 10,000,000**	**$ 2,743,000**	**37.8%**

Detailed descriptions of all proposed 2024 capital projects, including a discussion of how each project helps the agency achieve its goals and objectives, are provided in Appendix B.

Summary of Capital Projects

Executive Order on Improving the Nation's Cybersecurity ($2.4 Million)

The purpose of this capital investment is to ensure the NCUA complies with Executive Order 14028, *Improving the Nation's Cybersecurity.* The project will ensure the NCUA achieves and maintains various capabilities, including use of multi-factor authentication, a zero-trust architecture, and cloud-based compute and storage resources.

Information Technology Infrastructure, Platform, and Security Refresh ($1.3 Million)

This capital project will replace outdated or end-of-life network and platform hardware, as well as continue efforts to prepare the NCUA for cloud computing adoption. This investment helps ensure business continuity and efficient operations by improving system availability and stability. Proposed projects for 2024 include refreshing hardware and software, and the acquisition costs associated with the agency's new disaster recovery site.

CURE Process Automation ($1.1 Million)

This capital investment supports the development of initial requirements and scoping to design an external facing portal for credit unions and organizing groups to submit their field of membership and new charter requests.

Onboarding/Offboarding Solution and Personnel Security Case Management System ($0.6 Million)

The purpose of this project is to develop a new personnel security management system for NCUA in compliance with the Trusted Workforce 2.0 directive promulgated by the Office of the Director of National Intelligence (ODNI) and OPM. This new system will centralize personnel security case management and serve as a repository for agencywide onboarding/offboarding actions.

Examination and Supervision Solution/MERIT Enhancements ($0.5 Million)

Investments in the MERIT platform in 2024 will enhance data processing capacity, improve user efficiency and productivity, and automate data import and error checking processes. Capital investments will support MERIT improvements that will allow examiners to import data from the Information Security Examination (ISE) Toolbox, provide a centralized mechanism for regional and central office staff to track and access credit union administrative action records, and automate the process for state supervisory authority/credit union access requests.

Microsoft Power Platform ($0.5 Million)

This capital investment will support NCUA adoption of the Microsoft Power Platform (MPP) line of business intelligence and process automation tools. The budget funds the acquisition of professional services to assist in developing a governance plan to monitor and manage the usage of MPP tools across the NCUA while providing enhanced internal agency customer support.

Data Collection and Sharing Solution ($0.2 Million)

This multi-year project will assist NCUA examination staff by streamlining business process related to case, document, and content management to improve efficiency and decrease data entry errors. During 2023, a prototype was developed that automated current business workflows and streamlined data collection and sharing. The proposed 2024 Capital Budget supports pilot testing of the prototype among a subset of offices, integrating lessons learned into refined business requirements, drafting user guides and training materials, and conducting training for end users.

NCUA Website Development ($0.1 Million)

This project provides for ongoing improvements to the NCUA's websites, such as an improved user experience and general maintenance needs. In addition, the NCUA will develop a gated content solution for specific audiences to provide a level of privacy and security for accessing information, such as conference materials, by requiring a login and password similar to other remote and virtual conference systems.

Headquarters Building Minor Construction and Maintenance Projects ($0.5 Million)

The proposed 2024 budget supports the NCUA's multi-year headquarters building improvement plan that identifies projects that can be completed incrementally, prioritizing the replacement of health and safety infrastructure such as the fire suppression system. The building is 30 years old, and many original components require replacement. The ongoing multi-year approach recognizes the critical building management and maintenance needs while reducing the potential budgetary impact of such projects in a single budget year.

VI. Share Insurance Fund Administrative Expenses Budget

Overview

The Share Insurance Fund Administrative Expenses Budget funds direct costs associated with authorized Share Insurance Fund activities.[19] Direct costs to the Share Insurance Fund include items such as data subscriptions and technology tools for ONES' analysis of large credit unions, travel for state examiners attending NCUA-sponsored training, and audit support for the Share Insurance Fund's financial statements. Beginning in 2023, the NCUA Board approved certain insurance-related expenses for AMAC operations as part of the Share Insurance Fund Administrative Budget.

The Share Insurance Fund Administrative Expenses Budget also pays for costs associated with the corporate resolution program and related NCUA Guaranteed Notes (NGN) program. On June 14, 2021, the last outstanding NGN Trust matured. Given the significantly reduced size of the legacy asset portfolio in the corporate asset management estates, the proposed 2024 budget for the corporate resolution program continues to decrease compared to the 2023 funding levels.

Budget Requirements and Description

The proposed 2024 Share Insurance Fund Administrative Expenses Budget is $5.1 million, which is $0.2 million, or 3.6 percent, higher than 2023.

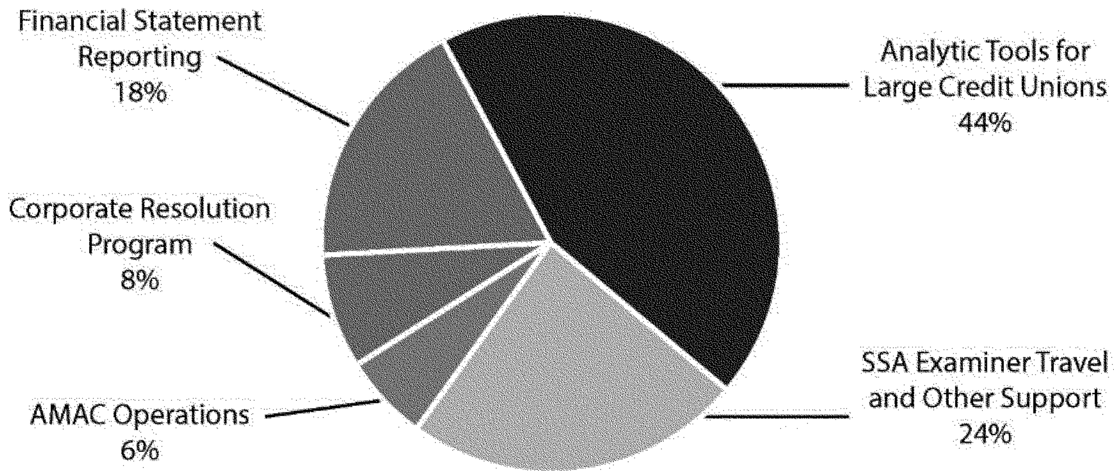
The proposed 2024 budget increase is primarily driven by an increase in projected costs for contracts needed to support the analysis of large credit unions, costs of AMAC activities, and inflationary growth in the cost of audit support. The proposed 2024 Share Insurance Fund Administrative Expenses Budget includes:

- $2.2 million for operating and maintenance costs of the Asset and Liabilities Management system, which allows the NCUA to build internal analytical capabilities to conduct supervisory stress testing analyses and to perform other quantitative risk assessments of large credit unions.
- $0.3 million for certain insurance-related activities and expenses of AMAC, such as consulting expenses necessary to avoid or attempt to prevent a liquidation or conservatorship and staff travel for consultation on complex or problem cases.
- $1.0 million for state examiner travel to NCUA-sponsored training classes and $0.2 million to ensure that state supervisory authorities can securely and efficiently access NCUA applications and the NCUA's MERIT system for state examination and supervision activities. The 2023 budget included similar amounts for these activities.
- $0.9 million for financial reporting, including the annual financial audit and for contractor support to ensure effective internal controls for the fund.
- $0.3 million for corporate resolution program legacy asset waterfall models and $0.1 million for valuation analysis support and data. These budget items decreased by 59.2 percent from 2022 to 2023. As the remaining legacy assets are sold and the program comes to a close, the associated budget continues to decrease and falls by 31.7 percent from 2023 to 2024.

BILLING CODE 7535–01–P

[19] Direct costs do not include any costs that are shared with the Operating Fund through the Overhead Transfer Rate, and with payments available upon requisition by the Board, without fiscal year limitation, for insurance under section 1787 of this title, and for providing assistance and making expenditures under section 1788 of this title in connection with the liquidation or threatened liquidation of insured credit unions as it may determine to be proper.

2024 Share Insurance Fund Administrative Expenses Budget



2024–2025 SHARE INSURANCE FUND ADMINISTRATIVE EXPENSES BUDGET

	2023 Board Approved Budget	2024 Proposed Budget	Change (2023-2024)	Change Percent (2023-2024)	2025 Proposed Budget
SIF Direct Expenses					
Travel					
State Examiner Training	994,000	1,015,000	21,000	2.1%	1,015,000
Staff travel for problem cases	15,000	15,000	-	0.0%	15,000
Subtotal, Travel (SIF Direct Expenses)	**1,009,000**	**1,030,000**	**21,000**	**2.1%**	**1,030,000**
Administrative Expenses					
Analytic Tools for Large Credit Unions	30,000	116,000	86,000	286.7%	116,000
Shipping and Miscellaneous Admin	48,000	54,000	6,000	12.5%	54,000
Subtotal Administrative Expenses (SIF Direct Expenses)	**78,000**	**170,000**	**92,000**	**117.9%**	**170,000**
Contracted Services					
Analytic Tools for Large Credit Unions	2,025,000	2,155,000	130,000	6.4%	2,155,000
Financial Accounting, Audit Support, Bank Charges and Other Support	897,000	925,000	28,000	3.1%	925,000
SSA costs for MERIT	216,000	216,000	-	0.0%	216,000
Corp. Resolution Study (2022), legal, other contracts	129,000	229,000	100,000	77.5%	229,000
Subtotal, Contracted Services (SIF Direct Expenses)	**3,267,000**	**3,525,000**	**258,000**	**7.9%**	**3,525,000**
Total, SIF Direct Expenses	**4,354,000**	**4,725,000**	**371,000**	**8.5%**	**4,725,000**
Corporate Resolution Program					
Personnel Compensation	-	-	-	0.0%	-
Travel	-	-	-	0.0%	-
Administrative Expenses					
Software and Data Subscriptions	402,000	311,000	(91,000)	-22.6%	-
Contracted Services					
Valuation Services, Contract Support, Training	200,000	100,000	(100,000)	-50.0%	-
Total, Corporate Resolution Program	**602,000**	**411,000**	**(191,000)**	**-31.7%**	-
Total SIF Administrative Expenses Budget	**$ 4,956,000**	**$ 5,136,000**	**$ 180,000**	**3.6%**	**$ 4,725,000**

BILLING CODE 7535–01–C

The proposed 2025 budget supports similar workload and resources for the Share Insurance Fund, which at $4.7 million is $0.4 million lower than the proposed 2024 level. With the anticipated wind-down of the program in 2024 (subject to the status of ongoing litigation), there is no corporate

resolution budget planned for 2025 at this time.

VII. Financing the NCUA's Programs

Overview

The NCUA incurs various expenses to achieve its statutory mission, including those involved in examining and supervising federally insured credit unions. The NCUA Board adopts an Operating Budget, a Capital Budget, and a Share Insurance Fund Administrative Expenses Budget each year to fund the majority of the costs to operate the agency.[20] When formulating the annual budget, the NCUA is mindful that its funding comes from credit unions and strives to operate in an efficient, effective, transparent, and fully accountable manner.

The Federal Credit Union Act authorizes two primary sources to fund the Operating Budget:

1. Requisitions from the Share Insurance Fund ''for such administrative and other expenses incurred in carrying out the purposes of [Title II of the Act] as [the Board] may determine to be proper,'' [21] and

2. ''[F]ees and assessments (including income earned on insurance deposits) levied on insured credit unions under [the Act].'' [22] Among the fees levied under the Act are annual Operating Fees, which are required for federal credit unions under 12 U.S.C. 1755 ''and may be expended by the Board to defray the expenses incurred in carrying out the provisions of [the Act,] including the examination and supervision of [federal credit unions].''

Taken together, these authorities effectively require the Board to determine which expenses are appropriately paid from each source while giving the Board broad discretion in allocating expenses.

In 1972, the Government Accountability Office recommended the NCUA adopt a method for allocating Operating Budget costs — that is, the portion of the NCUA's budget funded by requisitions from the Share Insurance Fund and the portion covered by Operating Fees paid by federal credit unions.[23] The NCUA has since used an allocation methodology known as the Overhead Transfer Rate (OTR) to determine how much of the Operating Budget to fund with a requisition from the Share Insurance Fund.

The NCUA uses the OTR methodology to allocate agency expenses between these two primary funding sources. Specifically, the OTR is the formula the NCUA uses to allocate insurance-related expenses to the Share Insurance Fund under Title II of the Act. Almost all other operating expenses are funded through collecting annual Operating Fees paid by federal credit unions.[24]

Two statutory provisions directly limit the Board's discretion with respect to Share Insurance Fund requisitions for the NCUA's Operating Budget and, hence, the OTR. First, expenses funded from the Share Insurance Fund must carry out the purposes of Title II of the Act, which relate to share insurance.[25] Second, the NCUA may not fund its entire Operating Budget through charges to the Share Insurance Fund.[26]

The NCUA conducts a comprehensive workload analysis annually. This analysis estimates the amount of time necessary to conduct examinations and supervise federally insured credit unions in order to carry out the NCUA's dual mission as insurer and regulator. This analysis starts with a field-level review of every federally insured credit union to estimate the number of workload hours needed for the year. These estimates are informed by the overall parameters of the NCUA's examination program, as most recently updated by the Exam Flexibility Initiative approved by the Board.[27] The workload estimates are then refined by regional managers and submitted to the NCUA headquarters for the annual budget proposal. The OTR methodology accounts for the costs of the NCUA, not the costs of state regulators. Therefore, there are no calculations made for state examiner hours.

Overhead Transfer Rate

There have not been any major changes to the parameters of the examination program since the current OTR methodology went into effect.[28] The minor variations in the OTR since 2018 are the result of routine, small fluctuations in the variables that affect the OTR, including normal fluctuations in the workload budget from one calendar year to the next.

The NCUA Board approved the current methodology for calculating the OTR at its November 2017 open meeting.[29] In 2020, the Board published in the **Federal Register** a request for comment regarding the OTR methodology but did not propose or adopt any changes to the current methodology.[30] The OTR is designed to cover the NCUA's costs of examining and supervising the risk to the Share Insurance Fund posed by all federally insured credit unions, as well as the costs of administering the fund. The OTR represents the percentage of the agency's operating budget paid for by a transfer from the Share Insurance Fund. Federally insured credit unions are not billed for and do not have to remit the OTR amount; instead, it is transferred directly to the Operating Fund from the Share Insurance Fund. This transfer, therefore, represents a cost to all federally insured credit unions.

Based on the Board-approved methodology and the proposed budget, the OTR for 2024 is estimated to be 61.8 percent, 60 basis points lower than for 2023.[31] Thus, 61.8 percent of the total 2024 Operating Budget is estimated to be paid out of the Share Insurance Fund. The remaining 38.2 percent of the Operating Budget is estimated to be paid for by Operating Fees collected from federal credit unions. The explicit and implicit distribution of total Operating Budget costs for federal credit unions and federally insured, state-chartered credit unions (FISCUs) is outlined in the table below:

[20] Some costs are directly charged to the Share Insurance Fund when appropriate to do so. For example, costs for training and equipment provided to State Supervisory Authorities are directly charged to the Share Insurance Fund.

[21] 12 U.S.C. 1783(a).

[22] 12 U.S.C. 1766(j)(3). Other sources of income for the Operating Budget have included interest income, funds from publication sales, parking fee income, and rental income.

[23] *https://www.gao.gov/products/b-1640314-31.*

[24] Annual Operating Fees must ''be determined according to a schedule, or schedules, or other method determined by the NCUA Board to be appropriate, which gives due consideration to the expenses of the [NCUA] in carrying out its responsibilities under the [Act] and to the ability of [federal credit unions] to pay the fee.'' 12 U.S.C. 1755(b).

[25] 12 U.S.C. 1783(a).

[26] The Act in 12 U.S.C. 1755(a) states, ''[i]n accordance with rules prescribed by the Board, each [federal credit union] shall pay to the [NCUA] an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed.'' *See also* 12 U.S.C. 1766(j)(3).

[27] The Exam Flexibility Initiative started with the January 1, 2017, examination cycle, and it allows for extended examination cycles for eligible credit unions. Letters to Credit Unions 16–CU–12, December 2016.

[28] On November 16, 2017, the NCUA Board adopted a new methodology for calculating the Overhead Transfer Rate starting with the 2018 Overhead Transfer Rate. 82 FR 55644, November 22, 2017.

[29] 82 FR 55644 (Nov. 22, 2017).

[30] *https://www.federalregister.gov/documents/2020/08/31/2020-17009/request-for-comment-regarding-national-credit-union-administration-overhead-transfer-rate.*

[31] *https://www.federalregister.gov/documents/2020/12/28/2020-28487/overhead-transfer-rate-methodology-and-operating-fee-schedule-methodology.*

2024 Estimated Distribution: Overhead Transfer Rate and Operating Fee

Est. Share of the Operating Budget covered by:	Federal Credit Unions	Federally Insured, State-Chartered Credit Unions
Federal Credit Union Operating Fee	38.2%	0.0%
Overhead Transfer Rate x Percent of Insured Shares	31.0% (61.8% x 50.2%)	30.8% 61.8% x 49.8%
Total	**69.2%**	**30.8%**

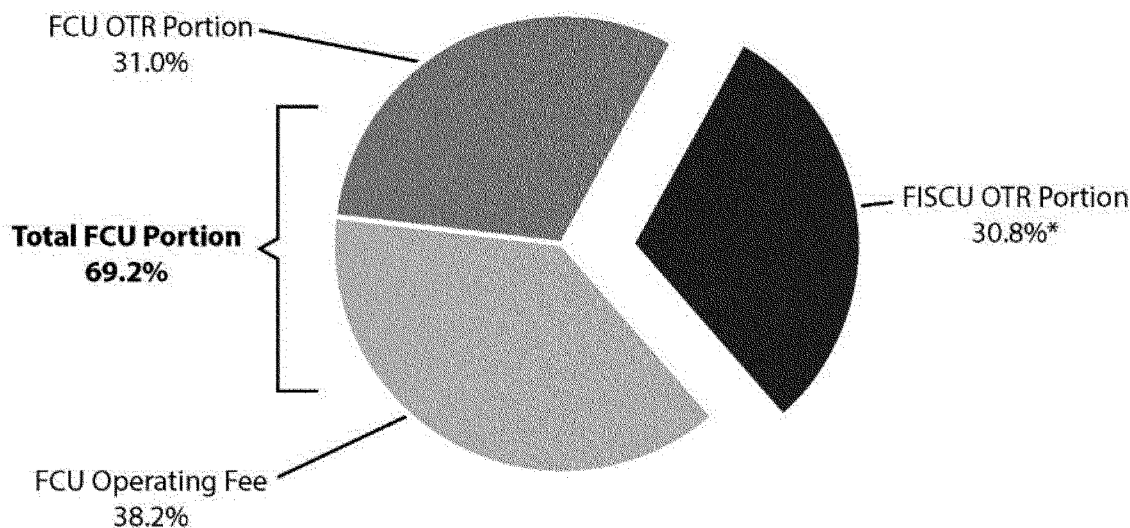
** Insured Shares are as of June 2023.*

To determine the funds transferred from the Share Insurance Fund to the Operating Fund, the OTR is applied to actual expenses incurred each month. Therefore, the rate calculated by the OTR formula is multiplied by each month's actual operating expenditures and the product of that calculation is transferred from the Share Insurance Fund to the Operating Fund. This monthly reconciliation to actual operating expenditures captures the variance between actual and budgeted amounts, so when the NCUA's expenditures are less than budgeted, the amount charged to the Share Insurance Fund is also less — and those lower expenditures benefit both federally chartered and federally insured, state-chartered credit unions.

The primary driver of the change in the estimated 2024 OTR is a decline in state credit union examination and supervision hours in the proposed budget for 2024. This reduction in state examination and supervision hours causes the weighted allocation of hours applied to NCUA in Principle 2 of the OTR methodology of the calculation to also decline.[32] While the proposed 2024 Operating Budget increases from 2023, the slightly lower weighted allocation of hours results in a nominal increase in insurance related costs and an overall decline in the OTR.

The following chart illustrates the share of the proposed 2024 Operating Budget that would be paid by federal credit unions (69.2%) and federally insured, state-chartered credit unions (30.8%).

2024 Distribution of Operating Budget Costs



**Note: FISCUs typically pay supervisory fees to their respective State Supervisory Authority.

Operating Fee

The Board delegated authority to the Chief Financial Officer to administer the methodology approved by the Board for calculating the Operating Fee and to set the fee schedule as calculated per the approved methodology. In 2020, the Board approved and published in the **Federal Register** the current Operating Fee methodology, which forms the basis for how the Operating Fee is calculated in this section.[33] Consistent with its triennial schedule for regulatory reviews, the NCUA requested public comment about the Operating Fee methodology in 2023. In the request, the NCUA sought comment on increasing the asset threshold that exempts smaller credit unions from paying an operating fee from $1 million to $2 million. Additionally, the request for public comment solicited feedback on the current three-tier operating fee schedule and other specific suggestions that

[32] The NCUA does not charter state-chartered credit unions and is not the prudential regulator for them. The NCUA's role with respect to FISCUs is as insurer. Therefore, all examination and supervision work and other agency costs attributable to insured state-chartered credit unions is allocated as 100 percent insurance related. FISCUs typically pay supervisory fees to their respective State Supervisory Authority.

[33] *See https://www.govinfo.gov/content/pkg/FR-2020-12-31/pdf/2020-28490.pdf.*

would increase the equitable distribution of the Operating Fee.

To determine the annual Operating Fee assessed on natural person federal credit unions using the current methodology, the NCUA first calculates the average of total assets reported in the preceding four calendar quarters available at the time of the calculation, net of any reported Paycheck Protection Program loans. Credit unions with assets less than $1 million are not assessed an Operating Fee and their assets are therefore excluded from this calculation. If the Board approves increasing the threshold to exempt more credit unions from paying the Operating Fee, the assets of those credit unions would be similarly excluded.

Based on the Board-approved Operating Fee methodology, which is summarized in the following tables, the share of the proposed 2024 budget funded by the Operating Fee is $140.7 million. This equates to 0.01288 percent of the actual average of natural person federal credit union assets for the four calendar quarters ending on June 30, 2023. The calculated Operating Fee rate for 2024, using the current $1 million exemption threshold, increases 19.59 percent compared to the rate in 2023. If the exemption threshold were raised to $2 million, the calculated Operating Fee rate for 2024 would increase 19.61 percent compared to the rate in 2023, and a difference of two basis points compared to the fee growth at the $1 million exemption level. Both of these computations are shown in the table on the following page.

As part of the Board-approved Operating Fee methodology, the NCUA can adjust the share of the budget funded by the Operating Fee based on an analysis of the agency's future cash flow requirements compared to past years' collections that were not spent as planned. Any projected surplus cash from past years' fee collections not required to finance agency operations can accordingly be used to lower the Operating Fee share of the proposed budget. Because such cash surpluses result from past years' Operating Fee collections, they do not offset the portion of the budget funded by the OTR. As the final 2024–2025 budget is prepared for consideration by the NCUA Board, the Chief Financial Officer will evaluate the agency's cash position and make a recommendation about any surplus cash that can be credited to the operating fee.

To set the assessment scale for 2024, total growth in natural person federal credit union assets is calculated as the change between the average of the four most-current quarters (that is, the third and fourth quarters of 2022 and the first two quarters of 2023) and the previous four quarters (that is, the third and fourth quarters of 2021 and the first two quarters of 2022), which is calculated as 4.6 percent. Asset level dividing points are likewise increased by this same growth rate in order to preserve the same relative relationship of the scale to the applicable asset base.

BILLING CODE 7535–01–P

PROJECTED FISCAL YEAR 2024 OPERATING FEE REQUIREMENTS

($ in millions)

			2024 Draft Budget	
			$1 million exemption	$2 million exemption
1	Proposed Operating Budget		$ 382.115	$ 382.115
2	Add Capital Investments		$ 7.257	$ 7.257
3	Miscellaneous Revenue		$ (0.378)	$ (0.378)
4	**Operating Budget to apply OTR**		**$388.994**	**$388.994**
5	Overhead Transfer Rate	**61.8%**	$(240.398)	$(240.398)
6	Interest Income		$ (7.562)	$ (7.562)
7	**Net** (sum lines 4 - 6)		**$141.034**	**$141.034**
8	Operating Fund adjustment			
9	**Budgeted Operating Fee/Capital Requirements** (sum lines 7 - 8)		**$141.034**	**$141.034**
10	Corporate Federal CU Operating Fees		$ (0.325)	$ (0.325)
11	**Natural Person FCU Operating Fees Required** (sum lines 9 - 10)		**$140.709**	**$140.709**
12	Fees projected with Asset Growth of	**4.6%**	$ (117.659)	$ (117.639)
13	**Difference** (lines 11 & 12)		**$23.049**	**$23.070**
14	**Average Rate Adjustment Indicated** (line 13 divided by line 12)		**19.59%**	**19.61%**

Operating Fee Scale

To illustrate the rate for each asset tier for which Operating Fees are charged, the tables below show the effect of the average 19.59 percent increase in the Operating Fee for natural person federal credit unions, using the current $1 million exemption threshold. The tables also show the effect of the average 19.61 percent increase in the Operating Fee for natural person federal credit unions using the $2 million exemption threshold. The corporate federal credit union rate scale remains unchanged from prior years.

PROPOSED 2024 OPERATING FEE SCALE

2023 Natural Person Federal Credit Union Scale

Asset Level			Operating Fee Assessment				
$0	TO	$1,000,000	$0.00				
$1,000,000	TO	$2,260,754,620	$0.00	+	0.00016409	X total assets over	$0.00
$2,260,754,620	TO	$6,841,009,515	$370,971	+	0.00004782	X total assets over	$2,260,754,620
$6,841,009,515	AND	Over	$590,007	+	0.00001597	X total assets over	$6,841,009,515

2024 (Proposed) Natural Person Federal Credit Union Scale - $1 million exemption

Projected FCU asset growth rate	4.58%	Change in asset level dividing points
Operating fee rate change	19.59%	Change in assessment rate percentages

Asset Level			Operating Fee Assessment				
$0	TO	$1,000,000	$0.00				
$1,000,000	TO	$2,364,246,595	$0.00	+	0.00019624	X total assets over	$0.00
$2,364,246,595	TO	$7,154,174,676	$463,960	+	0.00005719	X total assets over	$2,364,246,595
$7,154,174,676	AND	Over	$737,896	+	0.00001910	X total assets over	$7,154,174,676

2024 (Proposed) Natural Person Federal Credit Union Scale - $2 million exemption

Projected FCU asset growth rate	4.58%	Change in asset level dividing points
Operating fee rate change	19.61%	Change in assessment rate percentages

Asset Level			Operating Fee Assessment				
$0	TO	$2,000,000	$0.00				
$2,000,000	TO	$2,364,246,595	$0.00	+	0.00019627	X total assets over	$0.00
$2,364,246,595	TO	$7,154,174,676	$464,031	+	0.00005720	X total assets over	$2,364,246,595
$7,154,174,676	AND	Over	$738,015	+	0.00001911	X total assets over	$7,154,174,676

FY2024 (Proposed) Corporate Federal Credit Union Scale

Asset Level			Operating Fee Assessment				
$50,000,000	TO	$100,000,000	$10,665	+	0.00019870	X total assets over	$50,000,000
$100,000,000	AND	Over	$20,600	+	0.00001230	X total assets over	$100,000,000

VIII. Appendix A: Supplemental Budget Information

Budget by Strategic Goal

The table below shows the combined total of the 2024 Operating and Capital Budgets, organized by the NCUA's three current strategic goals.

Strategic Goal	2024 Proposed Budget	
	Dollars (in Millions)	Positions
Goal 1: Ensure a safe, sound, and viable system of cooperative credit that protects consumers	$251.17	1,022
Goal 2: Improve the financial well-being of individuals and communities through access to affordable and equitable financial products and services	$17.33	64
Goal 3: Maximize organizational performance to enable mission success	$116.58	152
Office of Inspector General	$4.29	10
Total	**$389.37**	**1,248**

Budgets for the Offices of the Board, Executive Director, Executive Secretary, Ombudsman, General Counsel, Ethics Counsel, External Affairs and Communications, and Chief Financial Officer and the Capital Budget are allocated across all strategic goals.

Note: Position totals do not include five positions funded by the Central Liquidity Facility and minor rounding differences may occur in totals.

Office Budget Summary

2024–2025 PROPOSED NCUA OPERATING BUDGET

Office	2023 Board Approved Budget	2024 Proposed Budget	2023 – 2024 Change		2025 Proposed Budget	2024 – 2025 Change		Authorized Positions		
								2023	2024	2025
Eastern Region	57,631,578	58,234,649	603,070	1.0%	60,883,981	2,649,333	4.5%	261	263	263
Southern Region	49,385,910	51,928,285	2,542,375	5.1%	54,614,679	2,686,394	5.2%	231	232	232
Western Region	55,104,513	57,627,428	2,522,915	4.6%	60,510,491	2,883,063	5.0%	245	247	247
Office of National Examinations and Supervision	14,340,394	16,987,934	2,647,540	18.5%	17,777,913	789,979	4.7%	50	54	54
Supervision and Examination	**176,462,395**	**185,303,295**	**8,840,900**	**5.0%**	**194,312,064**	**9,008,769**	**4.9%**	**787**	**796**	**796**
Office of the Board	3,813,901	3,998,314	184,414	4.8%	4,097,424	99,110	2.5%	13	13	13
Office of the Executive Director	3,386,986	4,180,635	793,649	23.4%	4,338,230	157,595	3.8%	10	10	10
Federal Financial Institutions Examination Council	2,135,000	2,475,000	340,000	15.9%	2,475,000	-	0.0%	-	-	-
Office of the Executive Secretary	-	445,988	445,988	N/A	754,083	308,095	69.1%	-	2	3
Office of the Ombudsman	339,459	676,174	336,715	99.2%	795,502	119,328	17.6%	2	3	3
Office of Ethics Counsel	2,127,397	2,449,803	322,406	15.2%	2,757,567	307,764	12.6%	7	8	8
Office of Business Innovation	3,657,128	4,809,653	1,152,525	31.5%	5,137,481	327,828	6.8%	12	15	15
Office of Continuity and Security Management	5,443,326	5,707,907	264,581	4.9%	5,935,614	227,707	4.0%	12	12	13
Office of Minority and Women Inclusion	3,916,527	4,423,899	507,372	13.0%	4,563,315	139,416	3.2%	10	10	10
Office of the Chief Economist	2,586,511	2,963,274	376,762	14.6%	3,090,371	127,098	4.3%	8	8	8
Office of Consumer Financial Protection	7,307,512	8,117,882	810,371	11.1%	8,489,463	371,581	4.6%	30	31	31
Office of the Chief Financial Officer	23,080,362	25,264,361	2,183,999	9.5%	25,906,479	642,118	2.5%	54	55	55
Cross-cutting agency expenses	(19,815,549)	(13,364,422)	6,451,127	-32.6%	4,635,356	17,999,778	134.7%	-	-	-
Office of the Chief Information Officer	55,686,497	62,589,982	6,903,485	12.4%	64,571,033	1,981,051	3.2%	49	50	50
Credit Union Resources and Expansion	9,380,550	11,023,394	1,642,844	17.5%	11,552,028	528,634	4.8%	39	41	41
Office of Examination & Insurance	15,705,823	16,705,766	999,943	6.4%	17,439,401	733,635	4.4%	50	53	53
Office of General Counsel	13,780,880	14,926,034	1,145,154	8.3%	15,697,857	771,823	5.2%	46	46	47
Office of Inspector General	4,072,247	4,290,027	217,780	5.3%	4,439,316	149,289	3.5%	10	10	10
Office of Human Resources	20,284,090	22,857,168	2,573,077	12.7%	25,071,172	2,214,004	9.7%	45	47	47
Office of External Affairs and Communication	5,464,076	6,379,533	915,457	16.8%	6,634,118	254,585	4.0%	14	15	15
Asset Management and Assistance Center	5,342,884	6,416,332	1,073,448	-	6,702,126	285,794	4.5%	22	23	23
Mission Support	**167,695,605**	**196,811,705**	**29,116,100**	**17.4%**	**224,557,936**	**27,746,231**	**14.1%**	**433**	**452**	**455**
Total Operating Budget	**$344,158,000**	**$382,115,000**	**$37,957,000**	**11.0%**	**$418,870,000**	**$36,755,000**	**9.6%**	**1,220**	**1,248**	**1,251**

Note: Minor rounding differences may occur in totals.

Office Budgets

OFFICE OF THE CHAIRMAN: 2024-2025 BUDGET SUMMARY	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**4.0**	**4.0**	**-**	**0.0%**	**4.0**	**-**	**0.0%**
Employee Compensation	1,008,399	1,089,761	81,361	8.1%	1,118,596	28,835	2.6%
Salaries	711,637	765,019	53,382	7.5%	786,996	21,977	2.9%
Benefits	296,763	324,742	27,979	9.4%	331,600	6,858	2.1%
Travel	50,000	50,000	-	0.0%	50,000	-	0.0%
Rent /Comm/Util	2,250	2,250	-	0.0%	2,250	-	0.0%
Administrative	10,000	10,000	-	0.0%	10,000	-	0.0%
Contracted Services	43,000	39,000	(4,000)	-9.3%	39,000	-	0.0%
Total	**$ 1,113,649**	**$ 1,191,011**	**$ 77,361**	**6.9%**	**$ 1,219,846**	**$ 28,835**	**2.4%**

BOARD MEMBER HAUPTMAN: 2024–2025 BUDGET SUMMARY	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**3.0**	**3.0**	**-**	**0.0%**	**3.0**	**-**	**0.0%**
Employee Compensation	713,132	752,009	38,877	5.5%	765,530	13,521	1.8%
Salaries	500,283	525,639	25,357	5.1%	536,161	10,522	2.0%
Benefits	212,849	226,370	13,521	6.4%	229,369	3,000	1.3%
Travel	50,000	50,000	-	0.0%	50,000	-	0.0%
Rent /Comm/Util	6,750	6,750	-	0.0%	6,750	-	0.0%
Administrative	14,000	14,000	-	0.0%	14,000	-	0.0%
Contracted Services	83,000	83,000	-	0.0%	83,000	-	0.0%
Total	**$ 866,882**	**$ 905,759**	**$ 38,877**	**4.5%**	**$ 919,280**	**$ 13,521**	**1.5%**

BOARD MEMBER HOOD: 2024–2025 BUDGET SUMMARY	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**3.0**	**3.0**	**-**	**0.0%**	**3.0**	**-**	**0.0%**
Employee Compensation	803,036	784,822	(18,215)	-2.3%	800,058	15,237	1.9%
Salaries	569,061	551,586	(17,475)	-3.1%	563,464	11,878	2.2%
Benefits	233,976	233,236	(740)	-0.3%	236,595	3,359	1.4%
Travel	65,000	65,000	-	0.0%	65,000	-	0.0%
Rent /Comm/Util	6,750	6,750	-	0.0%	6,750	-	0.0%
Administrative	14,000	14,000	-	0.0%	14,000	-	0.0%
Contracted Services	98,000	98,000	-	0.0%	98,000	-	0.0%
Total	**$ 986,786**	**$ 968,572**	**$ (18,215)**	**-1.8%**	**$ 983,808**	**$ 15,237**	**1.6%**

Note: Minor rounding differences may occur in totals.

OFFICE OF THE BOARD: 2024–2025 BUDGET SUMMARY

	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**13.0**	**13.0**	**-**	**-**	**13.0**	**-**	**0.0%**
Employee Compensation	3,300,151	3,484,564	184,414	5.6%	3,583,674	99,110	2.8%
Salaries	2,329,860	2,452,739	122,879	5.3%	2,529,034	76,295	3.1%
Benefits	970,290	1,031,825	61,535	6.3%	1,054,641	22,815	2.2%
Travel	169,000	169,000	-	0.0%	169,000	-	0.0%
Rent /Comm/Util	17,750	16,250	(1,500)	-8.5%	16,250	-	0.0%
Administrative	39,000	40,500	1,500	3.8%	40,500	-	0.0%
Contracted Services	288,000	288,000	-	0.0%	288,000	-	0.0%
Total	**$ 3,813,901**	**$ 3,998,314**	**$ 184,414**	**4.8%**	**$ 4,097,424**	**$ 99,110**	**2.5%**

OFFICE OF THE EXECUTIVE DIRECTOR: 2024–2025 BUDGET SUMMARY

	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions*	**10.0**	**10.0**	**-**	**0.0%**	**10.0**	**-**	**0.0%**
Employee Compensation	2,841,236	3,284,885	443,649	15.6%	3,442,480	157,595	4.8%
Salaries	2,006,694	2,318,339	311,645	15.5%	2,439,545	121,206	5.2%
Benefits	834,542	966,546	132,004	15.8%	1,002,935	36,389	3.8%
Travel	30,000	30,000	-	0.0%	30,000	-	0.0%
Rent /Comm/Util	20,000	20,000	-	0.0%	20,000	-	0.0%
Administrative	2,150,250	2,500,250	350,000	16.3%	2,500,250	-	0.0%
ED Core	15,250	25,250	10,000	65.6%	25,250	-	0.0%
FFIEC	2,135,000	2,475,000	340,000	15.9%	2,475,000	-	0.0%
Contracted Services	480,500	820,500	340,000	70.8%	820,500	-	0.0%
Total	**$ 5,521,986**	**$ 6,655,635**	**$ 1,133,649**	**20.5%**	**$ 6,813,230**	**$ 157,595**	**2.4%**

OFFICE OF THE EXECUTIVE SECRETARY: 2024–2025 BUDGET SUMMARY

	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions		**2.0**	**2.0**		**3.0**	**1.0**	**50.0%**
Employee Compensation		375,988	375,988	-	684,083	308,095	81.9%
Salaries		267,454	267,454	-	486,289	218,835	81.8%
Benefits		108,535	108,535	-	197,794	89,259	82.2%
Travel		10,000	10,000	-	10,000	-	-
Rent /Comm/Util		-	-	-	-	-	-
Administrative		-	-	-	-	-	-
Contracted Services		60,000	60,000	-	60,000	-	-
Total		**$ 445,988**	**$ 445,988**	**-**	**$ 754,083**	**$ 308,095**	**69.1%**

Note: Minor rounding differences may occur in totals.

OFFICE OF THE OMBUDSMAN: 2024–2025 BUDGET SUMMARY							
	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**2.0**	**3.0**	**1.0**	**50.0%**	**3.0**	**-**	**0.0%**
Employee Compensation	324,459	661,174	336,715	103.8%	780,502	119,328	18.0%
Salaries	235,719	465,925	230,206	97.7%	549,628	83,703	18.0%
Benefits	88,741	195,249	106,509	120.0%	230,874	35,625	18.2%
Travel	5,000	5,000	-	-	5,000	-	0.0%
Rent /Comm/Util	2,000	2,000	-	-	2,000	-	0.0%
Administrative	1,000	1,000	-	-	1,000	-	0.0%
Contracted Services	7,000	7,000	-	-	7,000	-	0.0%
Total	**$ 339,459**	**$ 676,174**	**$ 336,715**	**99.2%**	**$ 795,502**	**$ 119,328**	**17.6%**

OFFICE OF ETHICS COUNSEL: 2024–2025 BUDGET SUMMARY							
	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**7.0**	**8.0**	**1.0**	**14.3%**	**8.0**	**-**	**0.0%**
Employee Compensation	1,969,608	2,339,551	369,943	18.8%	2,647,315	307,764	13.2%
Salaries	1,414,524	1,669,627	255,103	18.0%	1,901,980	232,354	13.9%
Benefits	555,084	669,924	114,840	20.7%	745,335	75,410	11.3%
Travel	15,000	15,000	-	0.0%	15,000	-	0.0%
Rent /Comm/Util	4,200	-	(4,200)	-100.0%	-	-	0.0%
Administrative	3,000	3,000	-	0.0%	3,000	-	0.0%
Contracted Services	135,589	92,252	(43,337)	-32.0%	92,252	-	0.0%
Total	**$ 2,127,397**	**$ 2,449,803**	**$ 322,406**	**15.2%**	**$ 2,757,567**	**$ 307,764**	**12.6%**

OFFICE OF BUSINESS INNOVATION: 2024–2025 BUDGET SUMMARY							
	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**12.0**	**15.0**	**3.0**	**25.0%**	**15.0**	**-**	**0.0%**
Employee Compensation	3,198,282	4,103,729	905,447	28.3%	4,431,557	327,828	8.0%
Salaries	2,269,788	2,905,330	635,542	28.0%	3,149,066	243,737	8.4%
Benefits	928,494	1,198,400	269,905	29.1%	1,282,491	84,091	7.0%
Travel	95,700	133,800	38,100	39.8%	133,800	-	0.0%
Rent /Comm/Util	8,100	9,000	900	11.1%	9,000	-	0.0%
Administrative	6,300	6,300	-	0.0%	6,300	-	0.0%
Contracted Services	348,746	556,824	208,078	59.7%	556,824	-	0.0%
Total	**$ 3,657,128**	**$ 4,809,653**	**$ 1,152,525**	**31.5%**	**$ 5,137,481**	**$ 327,828**	**6.8%**

Note: Minor rounding differences may occur in totals.

OFFICE OF CONTINUITY AND SECURITY MANAGEMENT: 2024–2025 BUDGET SUMMARY							
	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**12.0**	**12.0**	**-**	**-**	**13.0**	**1.0**	**8.3%**
Employee Compensation	3,113,687	3,403,080	289,393	9.3%	3,630,787	227,707	6.7%
Salaries	2,208,430	2,414,873	206,444	9.3%	2,583,121	168,248	7.0%
Benefits	905,257	988,206	82,949	9.2%	1,047,666	59,460	6.0%
Travel	20,000	25,000	5,000	25.0%	25,000	-	0.0%
Rent /Comm/Util	57,200	55,000	(2,200)	-3.8%	55,000	-	0.0%
Administrative	36,000	36,000	-	0.0%	36,000	-	0.0%
Contracted Services	2,216,439	2,188,827	(27,612)	-1.2%	2,188,827	-	0.0%
Total	**$ 5,443,326**	**$ 5,707,907**	**$ 264,581**	**4.9%**	**$ 5,935,614**	**$ 227,707**	**4.0%**

OFFICE OF MINORITY AND WOMEN INCLUSION: 2024–2025 BUDGET SUMMARY							
	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**10.0**	**10.0**	**-**	**0.0%**	**10.0**	**-**	**0.0%**
Employee Compensation	2,662,993	2,904,975	241,982	9.1%	3,044,391	139,416	4.8%
Salaries	1,886,248	2,062,228	175,980	9.3%	2,170,044	107,816	5.2%
Benefits	776,745	842,747	66,002	8.5%	874,346	31,600	3.7%
Travel	61,100	69,725	8,625	14.1%	69,725	-	0.0%
Rent /Comm/Util	14,650	11,550	(3,100)	-21.2%	11,550	-	0.0%
Administrative	182,315	184,180	1,865	1.0%	184,180	-	0.0%
Contracted Services	995,469	1,253,469	258,000	25.9%	1,253,469	-	0.0%
Total	**$ 3,916,527**	**$ 4,423,899**	**$ 507,372**	**13.0%**	**$ 4,563,315**	**$ 139,416**	**3.2%**

OFFICE OF THE CHIEF ECONOMIST: 2024–2025 BUDGET SUMMARY							
	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**8.0**	**8.0**	**-**	**0.0%**	**8.0**	**-**	**0.0%**
Employee Compensation	2,347,767	2,629,911	282,143	12.0%	2,757,008	127,098	4.8%
Salaries	1,679,964	1,885,251	205,287	12.2%	1,983,815	98,564	5.2%
Benefits	667,803	744,659	76,856	11.5%	773,194	28,534	3.8%
Travel	20,000	20,000	-	0.0%	20,000	-	0.0%
Rent /Comm/Util	4,200	4,200	-	0.0%	4,200	-	0.0%
Administrative	210,230	304,849	94,619	45.0%	304,849	-	0.0%
Contracted Services	4,314	4,314	-	0.0%	4,314	-	0.0%
Total	**$ 2,586,511**	**$ 2,963,274**	**$ 376,762**	**14.6%**	**$ 3,090,371**	**$ 127,098**	**4.3%**

Note: Minor rounding differences may occur in totals.

OFFICE OF CONSUMER FINANCIAL PROTECTION: 2024–2025 BUDGET SUMMARY							
	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**30.0**	**31.0**	**1.0**	**3.3%**	**31.0**	**-**	**0.0%**
Employee Compensation	6,644,152	7,491,112	846,961	12.7%	7,862,693	371,581	5.0%
Salaries	4,664,683	5,240,507	575,824	12.3%	5,522,696	282,189	5.4%
Benefits	1,979,469	2,250,605	271,136	13.7%	2,339,998	89,392	4.0%
Travel	236,437	472,475	236,038	99.8%	472,475	-	0.0%
Rent /Comm/Util	42,543	36,795	(5,748)	-13.5%	36,795	-	0.0%
Administrative	23,880	17,500	(6,380)	-26.7%	17,500	-	0.0%
Contracted Services	360,500	100,000	(260,500)	-72.3%	100,000	-	0.0%
Total	**$ 7,307,512**	**$ 8,117,882**	**$ 810,371**	**11.1%**	**$ 8,489,463**	**$ 371,581**	**4.6%**

OFFICE OF THE CHIEF FINANCIAL OFFICER: 2024–2025 BUDGET SUMMARY							
	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**54.0**	**55.0**	**1.0**	**1.9%**	**55.0**	**-**	**0.0%**
Employee Compensation	14,513,938	17,352,238	2,838,300	19.6%	18,039,134	686,896	4.0%
Salaries	10,394,754	11,679,282	1,284,528	12.4%	12,204,131	524,849	4.5%
OCFO	8,750,156	9,885,627	1,135,471	13.0%	10,410,669	525,042	5.3%
Crosscutting	1,644,598	1,793,655	149,057	9.1%	1,793,462	(193)	0.0%
Benefits	4,119,184	5,672,956	1,553,772	37.7%	5,835,003	162,047	2.9%
OCFO	3,703,765	4,182,687	478,922	12.9%	4,344,763	162,076	3.9%
Crosscutting	415,419	1,490,269	1,074,850	258.7%	1,490,240	(29)	0.0%
Travel	100,483	50,240	(50,243)	-50.0%	50,240	-	0.0%
OCFO	100,000	50,000	(50,000)	-50.0%	50,000	-	0.0%
Crosscutting	483	240	(243)	-50.3%	240	-	0.0%
Rent /Comm/Util	1,458,259	1,972,875	514,616	35.3%	1,972,875	-	0.0%
OCFO	1,458,000	1,972,300	514,300	35.3%	1,972,300	-	0.0%
Crosscutting	259	575	316	122.0%	575	-	0.0%
Administrative	2,028,293	2,068,480	40,187	2.0%	2,023,480	(45,000)	-2.2%
OCFO	680,000	718,000	38,000	5.6%	673,000	(45,000)	-6.3%
Crosscutting	1,348,293	1,350,480	2,187	0.2%	1,350,480	-	0.0%
Contracted Services	(14,836,160)	(9,543,894)	5,292,266	-35.7%	8,456,106	18,000,000	-188.6%
OCFO	8,388,441	8,455,747	67,306	0.8%	8,455,747	-	0.0%
Crosscutting	(23,224,601)	(17,999,641)	5,224,960	-22.5%	359	18,000,000	-100.0%
Total	**$ 3,264,813**	**$ 11,899,939**	**$ 8,635,126**	**264.5%**	**$ 30,541,835**	**$ 18,641,896**	**156.7%**
OCFO Total	23,080,362	25,264,361	2,183,999	9.5%	25,906,479	642,118	2.5%
Crosscutting	(19,815,549)	(13,364,422)	6,451,127	-32.6%	4,635,356	17,999,778	-134.7%

Note: Minor rounding differences may occur in totals.

OFFICE OF THE CHIEF INFORMATION OFFICER: 2024–2025 BUDGET SUMMARY

	2023 Board Approved Budget	2024 Proposed Budget	2023-2024 Change	Change Percent	2025 Proposed Budget	2024-2025 Change	Change Percent
Positions	**49.0**	**50.0**	**1.0**	**2.0%**	**50.0**	**-**	**0.0%**
Employee Compensation	11,882,390	14,461,669	2,579,279	21.7%	15,222,719	761,051	5.3%
Salaries	8,427,312	10,257,174	1,829,862	21.7%	10,844,102	586,929	5.7%
Benefits	3,455,078	4,204,495	749,417	21.7%	4,378,617	174,122	4.1%
Travel	85,000	60,000	(25,000)	-29.4%	60,000	-	0.0%
Rent /Comm/Util	2,753,863	3,580,607	826,744	30.0%	3,580,607	-	0.0%
Administrative	30,000	30,000	-	0.0%	30,000	-	0.0%
Contracted Services	40,935,244	44,457,706	3,522,462	8.6%	45,677,706	1,220,000	2.7%
Total	**$ 55,686,497**	**$ 62,589,982**	**$ 6,903,486**	**12.4%**	**$ 64,571,033**	**$ 1,981,051**	**3.2%**

OFFICE OF NATIONAL EXAMINATIONS AND SUPERVISION: 2024–2025 BUDGET SUMMARY

	2023 Board Approved Budget	2024 Proposed Budget	2023-2024 Change	Change Percent	2025 Proposed Budget	2024-2025 Change	Change Percent
Positions	**50.0**	**54.0**	**4.0**	**8.0%**	**54.0**	**-**	**0.0%**
Employee Compensation	12,930,035	15,268,184	2,338,149	18.1%	16,058,163	789,979	5.2%
Salaries	9,102,957	10,808,978	1,706,021	18.7%	11,418,189	609,211	5.6%
Benefits	3,827,078	4,459,206	632,128	16.5%	4,639,973	180,767	4.1%
Travel	1,005,000	1,300,000	295,000	29.4%	1,300,000	-	0.0%
Rent /Comm/Util	34,400	50,000	15,600	45.3%	50,000	-	0.0%
Administrative	61,950	44,040	(17,910)	-28.9%	44,040	-	0.0%
Contracted Services	309,009	325,710	16,701	5.4%	325,710	-	0.0%
Total	**$ 14,340,394**	**$ 16,987,934**	**$ 2,647,540**	**18.5%**	**$ 17,777,913**	**$ 789,979**	**4.7%**

OFFICE OF CREDIT UNION RESOURCES AND EXPANSION: 2024–2025 BUDGET SUMMARY

	2023 Board Approved Budget	2024 Proposed Budget	2023-2024 Change	Change Percent	2025 Proposed Budget	2024-2025 Change	Change Percent
Positions	**39.0**	**41.0**	**2.0**	**5.1%**	**41.0**	**-**	**0.0%**
Employee Compensation	8,280,550	10,043,394	1,762,844	21.3%	10,572,028	528,634	5.3%
Salaries	5,800,843	7,028,250	1,227,407	21.2%	7,430,498	402,248	5.7%
Benefits	2,479,707	3,015,144	535,437	21.6%	3,141,530	126,386	4.2%
Travel	300,000	350,000	50,000	16.7%	350,000	-	0.0%
Rent /Comm/Util	42,000	34,000	(8,000)	-19.0%	34,000	-	0.0%
Administrative	42,000	35,000	(7,000)	-16.7%	35,000	-	0.0%
Contracted Services	716,000	561,000	(155,000)	-21.6%	561,000	-	0.0%
Total	**$ 9,380,550**	**$ 11,023,394**	**$ 1,642,844**	**17.5%**	**$ 11,552,028**	**$ 528,634**	**4.8%**

Note: Minor rounding differences may occur in totals.

OFFICE OF EXAMINATION AND INSURANCE: 2024–2025 BUDGET SUMMARY

	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**50.0**	**53.0**	**3.0**	**6.0%**	**53.0**	**-**	**0.0%**
Employee Compensation	13,042,468	14,706,706	1,664,238	12.8%	15,440,341	733,635	5.0%
Salaries	9,271,480	10,400,782	1,129,302	12.2%	10,964,905	564,122	5.4%
Benefits	3,770,988	4,305,924	534,936	14.2%	4,475,436	169,512	3.9%
Travel	603,068	595,960	(7,108)	-1.2%	595,960	-	0.0%
Rent /Comm/Util	41,100	34,500	(6,600)	-16.1%	34,500	-	0.0%
Administrative	428,164	248,600	(179,564)	-41.9%	248,600	-	0.0%
Contracted Services	1,591,023	1,120,000	(471,023)	-29.6%	1,120,000	-	0.0%
Total	**$ 15,705,823**	**$ 16,705,766**	**$ 999,943**	**6.4%**	**$ 17,439,401**	**$ 733,635**	**4.4%**

OFFICE OF GENERAL COUNSEL: 2024–2025 BUDGET SUMMARY

	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**46.0**	**46.0**	**-**	**0.0%**	**47.0**	**1.0**	**2.2%**
Employee Compensation	13,248,880	14,348,034	1,099,154	8.3%	15,119,857	771,823	5.4%
Salaries	9,489,528	10,253,644	764,116	8.1%	10,841,553	587,909	5.7%
Benefits	3,759,352	4,094,390	335,038	8.9%	4,278,304	183,914	4.5%
Travel	100,000	90,000	(10,000)	-10.0%	90,000	-	0.0%
Rent /Comm/Util	10,000	3,000	(7,000)	-70.0%	3,000	-	0.0%
Administrative	7,000	5,000	(2,000)	-28.6%	5,000	-	0.0%
Contracted Services	415,000	480,000	65,000	15.7%	480,000	-	0.0%
Total	**$ 13,780,880**	**$ 14,926,034**	**$ 1,145,154**	**8.3%**	**$ 15,697,857**	**$ 771,823**	**5.2%**

OFFICE OF HUMAN RESOURCES: 2024–2025 BUDGET SUMMARY

	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**45.0**	**47.0**	**2.0**	**4.4%**	**47.0**	**-**	**0.0%**
Employee Compensation	11,720,037	13,713,160	1,993,122	17.0%	14,327,164	614,004	4.5%
Salaries	7,577,672	8,662,523	1,084,851	14.3%	9,130,520	467,997	5.4%
Benefits	4,142,365	5,050,637	908,271	21.9%	5,196,644	146,007	2.9%
Travel	3,066,000	2,460,000	(606,000)	-19.8%	3,260,000	800,000	32.5%
Rent /Comm/Util	409,700	328,600	(81,100)	-19.8%	728,600	400,000	121.7%
Administrative	1,150,100	1,165,950	15,850	1.4%	1,365,950	200,000	17.2%
Contracted Services	3,938,253	5,189,458	1,251,205	31.8%	5,389,458	200,000	3.9%
Total	**$ 20,284,090**	**$ 22,857,168**	**$ 2,573,077**	**12.7%**	**$ 25,071,172**	**$ 2,214,004**	**9.7%**

Note: Minor rounding differences may occur in totals.

OFFICE OF EXTERNAL AFFAIRS AND COMMUNICATION: 2024–2025 BUDGET SUMMARY

	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**14.0**	**15.0**	**1.0**	**6.7%**	**15.0**	**-**	**0.0%**
Employee Compensation	3,455,676	3,843,133	387,457	11.2%	4,127,718	284,585	7.4%
Salaries	2,439,214	2,708,939	269,724	11.1%	2,918,998	210,060	7.8%
Benefits	1,016,461	1,134,194	117,733	11.6%	1,208,720	74,526	6.6%
Travel	117,000	50,000	(67,000)	-57.3%	50,000	-	0.0%
Rent /Comm/Util	38,500	32,500	(6,000)	-15.6%	32,500	-	0.0%
Administrative	108,900	174,400	65,500	60.1%	144,400	(30,000)	-17.2%
Contracted Services	1,744,000	2,279,500	535,500	30.7%	2,279,500	-	0.0%
Total	**$ 5,464,076**	**$ 6,379,533**	**$ 915,457**	**16.8%**	**$ 6,634,118**	**$ 254,585**	**4.0%**

ASSET MANAGEMENT AND ASSISTANCE CENTER 2024–2025 BUDGET SUMMARY

	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**22.0**	**23.0**	**1.0**	**4.3%**	**23.0**	**-**	**0.0%**
Employee Compensation	5,024,744	5,952,098	927,354	18.5%	6,237,892	285,794	4.8%
Salaries	3,520,833	4,185,609	664,776	18.9%	4,404,281	218,673	5.2%
Benefits	1,503,911	1,766,489	262,578	17.5%	1,833,611	67,121	3.8%
Travel	139,200	125,280	(13,920)	-10.0%	125,280	-	0.0%
Rent /Comm/Util	15,015	6,113	(8,902)	-59.3%	6,113	-	0.0%
Administrative	45,425	65,341	19,916	43.8%	65,341	-	0.0%
Contracted Services	118,500	267,500	149,000	125.7%	267,500	-	0.0%
Total	**$ 5,342,884**	**$ 6,416,332**	**$ 1,073,448**	**20.1%**	**$ 6,702,126**	**$ 285,794**	**4.5%**

Note: Minor rounding differences may occur in totals.

EASTERN REGION: 2024–2025 BUDGET SUMMARY

	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**261.0**	**263.0**	**2.0**	**0.8%**	**261.0**	**(2.0)**	**-0.8%**
Employee Compensation	52,216,123	53,612,839	1,396,715	2.7%	56,162,171	2,549,333	4.8%
Salaries	35,777,477	37,079,964	1,302,487	3.6%	39,006,008	1,926,044	5.2%
Benefits	16,438,646	16,532,875	94,229	0.6%	17,156,164	623,289	3.8%
Travel	4,814,000	4,000,000	(814,000)	-16.9%	4,100,000	100,000	2.5%
Rent /Comm/Util	236,850	288,610	51,760	21.9%	288,610	-	0.0%
Administrative	226,620	189,200	(37,420)	-16.5%	189,200	-	0.0%
Contracted Services	137,985	144,000	6,015	4.4%	144,000	-	0.0%
Total	**$ 57,631,578**	**$ 58,234,649**	**$ 603,070**	**1.0%**	**$ 60,883,981**	**$ 2,649,333**	**4.5%**

SOUTHERN REGION: 2024–2025 BUDGET SUMMARY

	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**231.0**	**232.0**	**1.0**	**0.4%**	**231.0**	**(1.0)**	**-0.4%**
Employee Compensation	43,133,790	45,976,367	2,842,577	6.6%	48,162,761	2,186,394	4.8%
Salaries	29,357,447	31,633,713	2,276,267	7.8%	33,279,516	1,645,803	5.2%
Benefits	13,776,344	14,342,654	566,310	4.1%	14,883,246	540,592	3.8%
Travel	5,364,512	5,220,020	(144,492)	-2.7%	5,720,020	500,000	9.6%
Rent /Comm/Util	369,670	366,900	(2,770)	-0.7%	366,900	-	0.0%
Administrative	259,173	194,210	(64,963)	-25.1%	194,210	-	0.0%
Contracted Services	258,765	170,788	(87,977)	-34.0%	170,788	-	0.0%
Total	**$ 49,385,910**	**$ 51,928,285**	**$ 2,542,375**	**5.1%**	**$ 54,614,679**	**$ 2,686,394**	**5.2%**

WESTERN REGION: 2024–2025 BUDGET SUMMARY

	2023 Board Approved Budget	2024 Proposed Budget	2023–2024 Change	Change Percent	2025 Proposed Budget	2024–2025 Change	Change Percent
Positions	**245.0**	**247.0**	**2.0**	**0.8%**	**245.0**	**(2.0)**	**-0.8%**
Employee Compensation	48,349,313	50,170,328	1,821,015	3.8%	52,553,391	2,383,063	4.7%
Salaries	33,079,737	34,605,296	1,525,559	4.6%	36,400,989	1,795,692	5.2%
Benefits	15,269,575	15,565,031	295,456	1.9%	16,152,402	587,371	3.8%
Travel	5,644,000	6,745,000	1,101,000	19.5%	7,245,000	500,000	7.4%
Rent /Comm/Util	712,000	258,500	(453,500)	-63.7%	258,500	-	0.0%
Administrative	193,200	241,600	48,400	25.1%	241,600	-	0.0%
Contracted Services	206,000	212,000	6,000	2.9%	212,000	-	0.0%
Total	**$ 55,104,513**	**$ 57,627,428**	**$ 2,522,916**	**4.6%**	**$ 60,510,491**	**$ 2,883,063**	**5.0%**

Note: Minor rounding differences may occur in totals.

IX. Appendix B: Capital Projects

NATIONAL CREDIT UNION ADMINISTRATION: CAPITAL INVESTMENT PROJECTS			
Description	**2023 Board Approved**	**2024 Proposed**	**2025 Proposed**
Information Technology Investments			
Executive Order on Cybersecurity	3,070,000	2,408,000	3,480,000
Information Technology Infrastructure, Platform and Security Refresh	3,139,000	1,294,000	1,294,000
CURE Process Automation	-	1,100,000	-
Personnel Security Case Management System	-	630,000	800,000
MERIT Enhancements	1,260,000	540,000	2,430,000
Microsoft Power Platform	-	500,000	-
Data Collection and Sharing Solution	-	208,000	18,000
NCUA Website Development	100,000	100,000	100,000
Data Reporting Solution	-	-	1,100,000
Mobile Device Refresh	959,000	-	-
Enterprise Systems Modernization (ESM) Data Reporting Services	790,000	-	-
Continuous Diagnostics and Mitigation (CDM)	520,000	-	-
Independent Verification and Validation (IV&V) Testing Team	466,000	-	-
Consumer Access Process and Reporting Information System (CAPRIS)	400,000	-	-
Enterprise Data Program	350,000	-	-
Enhanced Testing Capability	250,000	-	-
Balances from completed prior-year projects	(1,000,000)	-	-
Anticipated Additional Information Technology Investments	-	-	298,000
Total, Information Technology Investments	**$ 10,304,000**	**$ 6,780,000**	**$ 9,520,000**
Capital building improvements and repairs			
Central Office maintenance and repair	472,000	477,000	480,000
Disaster recovery site move	500,000	-	-
Total, Capital building improvements and repairs	**$ 972,000**	**$ 477,000**	**$ 480,000**
Grand Total, Capital Projects	**$ 11,276,000**	**$ 7,257,000**	**$ 10,000,000**

Project name	Executive Order (EO) on Improving the Nation's Cybersecurity					
Project sponsor	Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: All NCUA External: All Credit Unions					
Budget	$ in thousands	2023	2024	2025	2026	2027
	Acquisition	$3,070	$2,408	$3,480	TBD	TBD
	Operations & Maintenance					
* Estimated budget for 2026 and 2027 will depend on the evolving guidance from OMB and the Cybersecurity and Infrastructure Security Agency (CISA) related to the various domains of the EO.						
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. This multi-year capital investment will enable the NCUA to comply with EO 14208, helping the NCUA achieve Strategic Objective 3.2, to "deliver an efficient organizational design supported by improved business processes and innovation."					
Project description	The purpose of the EO on cybersecurity capital investment is to ensure the NCUA complies with EO 14208, *Improving the Nation's Cybersecurity*. The project will enable appropriate applications to use Multi-Factor Authentication, implement Zero Trust Architecture for the NCUA's infrastructure and applications, and shift certain storage resources from on-premise to a cloud service provider.					

Project name	Information Technology (IT) Infrastructure, Platform and Security Refresh					
Project sponsor	Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: All NCUA					
Budget	$ in thousands	2023	2024	2025	2026	2027
	Acquisition	$3,139	$1,294	$1,294	TBD	TBD
	Operations & Maintenance	$1,068	$2,461	TBD	TBD	TBD
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. This capital investment will help the NCUA achieve strategic objective 3.2, to "deliver improved business processes supported by secure, innovative, and reliable technology solutions and data" by identifying and implementing service improvements to replace end-of-life and unsupported systems currently in place at the NCUA. This investment reduces the impact of continuing to leverage services with increased risk of vulnerabilities and/or agency mission impacting outages by implementing more secure and user enhanced services.					
Project description	This project will allow the NCUA Office of the Chief Information Officer to perform refresh of network and platform hardware, as well as migrate new data and infrastructure components to the cloud. Investment in these projects helps ensure business continuity and efficient operations by improving system availability, stability, and security. Projects include refreshing hardware, software, and the professional services required to migrate and harden the IT services for production readiness.					

Project name	**CURE Process Automation**					
Project sponsor	Credit Union Resources and Expansion					
Customers/ beneficiaries	Internal: CURE staff External: All credit unions and organizing groups					
Budget	**$ in thousands**	**2023**	**2024**	**2025**	**2026**	**2027**
	Acquisition	$0	$1,100	$0	$0	$0
	Operations and Maintenance	$0	$0	TBD	TBD	TBD
Link to NCUA strategic goals	Goal 2: Improve the financial well-being of individuals and communities through access to affordable and equitable financial products and services. This capital investment will support technology enhancements to increase transparency and efficiency associated with field of membership expansions and charters for new credit unions.					
Project description	The CURE Process Automation project will develop the requirements for and support the implementation of the tools and technology needed to provide a web-based portal for credit unions and organizing groups to submit their field of membership and new charter requests. This portal is expected to include forms for submission of information and data, the ability to upload supporting files, and a visible timeline so that submitters can see the progress on their application.					

Project name	**Onboarding/Offboarding Solution and Personnel Security Case Management System**					
Project sponsor	Office of Continuity and Security Management and Office of the Chief Information Officer					
Customers/ beneficiaries	NCUA offices					
Budget	**$ in thousands**	**2023**	**2025**	**2025**	**2026**	**2027**
	Acquisition	$0	$630	$800	TBD	TBD
	Operations & Maintenance	$0	$70	$100	$100	$100
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. Specifically, this work will help achieve strategic objective 3.2, "deliver improved business processes supported by secure, innovative, and reliable technology solutions and data."					
Project description	In May 2022, the Office of the Director of National Intelligence (ODNI) and the Office of Personnel Management (OPM) issued guidance enhancing the government-wide personnel vetting enterprise, known commonly as Trusted Workforce 2.0 (TW 2.0). Many of the TW 2.0 enhancements require improved tracking of onboarding and offboarding employees and contractors. The NCUA needs to upgrade its related systems to meet the requirements of TW 2.0. This project will develop a centralized personnel security case management system to serve as a repository for all agency onboarding and offboarding actions, consistent with guidance from ODNI and OPM.					

Project name	Modern Examination and Risk Identification Tool (MERIT) Enhancements					
Project sponsor	Office of Business Innovation and Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: E&I, ONES, Regions, OCIO, CURE, OHR, and OCFP External: Credit Unions, SSAs					
Budget	$ in thousands	2023*	2024*	2025	2026	2027
	Acquisition	$1,260	$540	$2,430	$750	$1,600
	Operations & Maintenance	11,828	$12,940	$12,619	$13,271	12,792
	*An additional $216K is funded in the proposed 2024 Share Insurance Fund Administrative Expenses Budget to support certain reviews of FISCUs.					
Link to NCUA strategic goals	Goal 1: Ensure a Safe and Sound Credit Union System. The MERIT system enables credit union examiners to fulfill NCUA strategic objective 1.2, "provide high-quality and efficient supervision," by providing a more effective and secure examination tool. Goal 3: Maximize organizational performance to enable mission success. The MERIT system enables credit union examiners to perform their work more efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation."					
Project description	In 2024, the NCUA will continue to invest in MERIT and its related suite of examination and supervision solution tools. Capital funding will be used to deploy new features, implement enhancements to improve the user experience, and increase staff efficiency by automating the testing process. In addition, this request supports enhancements to import data from the ISE Toolbox into. Finally, the proposed 2024 Share Insurance Fund Administrative Expenses Budget includes funding to modify MERIT to support reviews associated with credit union purchase and assumption agreements with other institutions.					

Project name	Microsoft Power Platform (MPP) Governance and Support					
Project sponsor	Office of the Chief Information Officer (OCIO)					
Customers/ beneficiaries	Internal: All NCUA Offices					
Budget	$ in thousands	2023	2024	2025	2026	2027
	Acquisition	$0	$500	$0	$0	$0
	Operations & Maintenance	$0	$0	$835	$876	$920
Link to NCUA strategic goals	Goal 1: Ensure a safe and sound credit union system. Providing support for the MPP will enable staff to better fulfill their responsibility to "provide high-quality and efficient supervision," which is strategic objective 1.2, by providing embracing citizen development for enterprise applications. Goal 3: Maximize organizational performance to enable mission success. The OCIO team will "deliver an efficient organizational design supported by improved business processes and innovation." The implementation and governance of these new MPP tools will ensure citizen developers have the appropriate support they need to establish effective capabilities in Power Apps, Power Automate, Power BI, and Power Virtual Agent tools.					
Project description	The MPP is a line of business intelligence, application development, and automation tools which are all part of the Microsoft Office 365 environment. These resources will support development of an MPP governance plan, effectively monitor and manage MPP usage across the NCUA, and provide IT support to agency users.					

Project name	**Data Collection and Sharing (DCS) Solution**					
Project sponsor	Office of Business Innovation & Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: All NCUA offices External: Credit Unions, Credit Union Service Organizations (CUSOs), Trade Organizations, Credit Union Members					
Budget	**$ in thousands**	**2023**	**2024**	**2025**	**2026**	**2027**
	Acquisition	$0	$208	$18	$0	$0
	Operations and Maintenance	$0	$0	$208	$226	$226
Link to NCUA strategic goals	Goal 1: Ensure a safe, sound, and viable system of cooperative credit that protects consumers. DCS will facilitate NCUA strategic objective 1.2, "provide effective and efficient supervision," by efficiently collecting and reporting data using improved technology and streamlining manual procedures into a workflow process to review and analyze data. Goal 3: Maximize organizational performance to enable mission success. DCS will improve the efficiency of the NCUA's primary work activities in support of NCUA strategic objective 3.2, "deliver improved business processes supported by secure, innovative, and reliable technology solutions and data." Specifically, implementing tools to support the NCUA's data collection, workflow management, content management, document management, and logging for assignment and transaction tracking.					
Project description	The DCS project will provide the NCUA staff with technology solutions that automate and streamline data collection/sharing processes to improve efficiency, decrease data entry errors, and reduce redundancy.					

Project name	**NCUA Website Development**					
Project sponsor	Office of External Affairs and Communications (OEAC)					
Customers/ beneficiaries	NCUA and Website Users (internal and external)					
Budget	**$ in thousands**	**2023**	**2024**	**2025**	**2026**	**2027**
	Acquisition	$100	$100	$100	$100	$100
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. The website updates and merger project will help the NCUA achieve strategic objective 3.2, "deliver improved business processes supported by secure, innovative, and reliable technology solutions and data."					
Project description	In 2024 the budget for NCUA website development will be used to improve cybersecurity standards and website capabilities. The funds will cover the implementation of measures to meet requirements of Executive Order 14028, *Improving the Nation's Cybersecurity,* and other projects to enhance website functionality, improve user experience, reduce duplication of efforts, and provide greater brand cohesion.					

[FR Doc. 2023–24032 Filed 10–31–23; 8:45 am]

BILLING CODE 7535–01–C

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1113; NRC–2023–0179]

Global Nuclear Fuel—Americas; Wilmington Nuclear Fuel Fabrication Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is reviewing the amendment submitted by the Global Nuclear Fuel—Americas (GNF–A) of Special Nuclear Materials (SNM) License SNM–1097 for the Wilmington

nuclear fuel fabrication facility located near Wilmington, North Carolina. The NRC has prepared an environmental assessment (EA) for this proposed license amendment in accordance with its regulations. Based on the EA, the NRC has concluded that a finding of no significant impact (FONSI) is appropriate. The NRC is also conducting a safety evaluation of the proposed license amendment.

DATES: The EA and FONSI referenced in this document are available on November 1, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0179 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2023–0179. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jean Trefethen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0867; email: *Jean.Trefethen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is reviewing a license amendment request (LAR) for license SNM–1097 for the GNF–A nuclear fuel fabrication facility located near Wilmington, North Carolina (ADAMS Accession No. ML22175A070). The licensee, GNF–A, is requesting authorization to possess and use special nuclear material to fabricate fuel using uranium enriched with up to 8 weight (wt) percent uranium 235 (U–235), also referred to as low enriched uranium plus.

The NRC staff has prepared a final EA as part of its review of this license amendment request in accordance with the requirements of part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' Based on the final EA, the NRC has determined that an environmental impact statement (EIS) is not required for this proposed action and a FONSI is appropriate. The NRC is also conducting a safety evaluation of the proposed license amendment pursuant to 10 CFR part 70, and the results will be documented in a separate Safety Evaluation Report (SER). If GNF–A's license amendment request is approved, the NRC will issue the license amendment following publication of this final EA and FONSI and the SER in the **Federal Register**.

II. Final Environmental Assessment Summary

GNF–A is requesting changes to amend license SNM–1097 for the GNF–A nuclear fuel fabrication facility to possess and use special nuclear material to fabricate fuel using uranium enriched with up to 8 wt percent U–235. The NRC has assessed the potential environmental impacts of the proposed action and the no-action alternative. The results of the NRC's environmental review can be found in the final EA (ADAMS Accession No. ML23291A150). The NRC staff performed its environmental review in accordance with the requirements in 10 CFR part 51. In conducting the environmental review, the NRC considered information in the LAR; communications with the North Carolina State Historic Preservation Office (SHPO); as well as information provided by the North Carolina State Clearinghouse.

Approval of GNF–A's proposed LAR would authorize GNF–A to possess and use U–235 enriched up to 8 percent instead of the current limit of up to 5 percent in fabrication of fuel for nuclear power production facilities. The licensee would continue to perform fuel fabrication activities inside the current buildings and would not conduct any construction or land disturbance activities associated with the proposed action. Additionally, the proposed action would not change staffing level, or the number of shipments of special nuclear material or quantity of waste generated at the site. Liquid and air effluents, from all operations are anticipated to remain below the regulatory limits in 10 CFR part 20. Therefore, the NRC staff finds that there would be no impacts to the following resources areas: land use, geology and soils, water resources, ecology, meteorology, climate, air quality, noise, transportation, visual and scenic resources, and socioeconomic resources.

As discussed in this EA, no significant radiological or non-radiological impacts are expected to result from approval of the proposed action. Occupational dose estimates associated with the proposed action are expected to be as low as reasonably achievable and within the limits identified in 10 CFR 20.1201. Approval of the proposed action is not expected to result in measurable radiation exposure to a member of the public. Approval of the LAR would not result in construction or land disturbance activities. Therefore, the NRC staff has determined that pursuant to 10 CFR 51.31, preparation of an EIS is not required for the proposed action, and pursuant to 10 CFR 51.32, a FONSI is appropriate.

Furthermore, the NRC staff determined that this LAR does not have the potential to cause effects on historic properties, assuming those were present; therefore, in accordance with 36 CFR 800.3(a)(1), no consultation is required under Section 106 of the National Historic Preservation Act. The NRC staff consulted with the North Carolina SHPO via email dated December 22, 2022, (ADAMS Accession No. ML22349A694). The North Carolina SHPO responded via email dated January 17, 2023, (ADAMS Accession No. ML23032A372), indicating that it concurred with the NRC's determination that if historic properties were present there would be no effects. The NRC staff, with the assistance of the U.S. Fish and Wildlife Service Information for Planning and Consultation project planning tool, determined that the proposed action would have ''no effect'' on listed species and/or critical habitat given that the proposed action does not include construction or ground-disturbing activities.

III. Finding of No Significant Impact

Based on its review of the proposed action in the EA, in accordance with the requirements in 10 CFR part 51, the NRC has concluded that the proposed action, amending NRC license SNM–1097 for the GNF–A nuclear fuel fabrication facility, located near Wilmington North Carolina, will not significantly affect the quality of the human environment. Therefore, the NRC has determined, pursuant to 10 CFR 51.31, that preparation of an EIS is not required for the proposed action and a FONSI is appropriate.

Dated: October 27, 2023.

For the Nuclear Regulatory Commission.

Michelle S. Rome,

Chief, Environmental Review Materials Branch, Division of Rulemaking, Environment, and Financial Support, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2023–24060 Filed 10–31–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0188]

Performance Review Boards for Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointments.

SUMMARY: The Nuclear Regulatory Commission (NRC) has announced appointments to the NRC Performance Review Board (PRB) responsible for making recommendations on performance appraisal ratings and performance awards for NRC Senior Executives and Senior Level System employees and appointments to the NRC PRB Panel responsible for making recommendations to the appointing and awarding authorities for NRC PRB members.

DATES: November 1, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0188 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0188. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search ''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.*
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mary A. Lamary, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3300, email: *Mary.Lamary@nrc.gov.*

SUPPLEMENTARY INFORMATION: The following individuals appointed as members of the NRC PRB are responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level System employees:

Daniel H. Dorman, Executive Director for Operations
Brooke P. Clark, General Counsel
Catherine Haney, Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs, Office of the Executive Director for Operations
Scott A. Morris, Deputy Executive Director for Reactor and Preparedness Programs, Office of the Executive Director for Operations
John B. Giessner, Regional Administrator, Region-III
Mirela Gavrilas, Director, Office of Nuclear Security and Incident Response
John W. Lubinski, Director, Office of Nuclear Materials and Safety Safeguards
Andrea D. Veil, Director, Office of Nuclear Reactor Regulation
David J. Nelson, Chief Information Officer
Howard K. Osborne, Chief Financial Officer
David L. Skeen, Director, Office of International Programs

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Bernice C. Ammon, Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel
Raymond V. Furstenau, Director, Office of Nuclear Regulatory Research
Raymond K. Lorson, Regional Administrator, Region I

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

Dated: October 26, 2023.

For the Nuclear Regulatory Commission.

Mary A. Lamary,

Secretary, Executive Resources Board.

[FR Doc. 2023–24052 Filed 10–31–23; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Renewal Without Change of an Existing Information Collection: Questionnaire for Public Trust Positions (SF 85P) and Supplemental Questionnaire for Selected Positions (SF 85P–S)

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM), Suitability Executive Agent Programs, is notifying the general public and other federal agencies that OPM proposes to request the Office of Management and Budget (OMB) to renew a previously-approved information collection, Questionnaire for Public Trust Positions (SF 85P) and Supplemental Questionnaire for Selected Positions (SF 85P–S).

DATES: Comments are encouraged and will be accepted until January 2, 2024.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any

personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by email to *SuitEAforms@opm.gov,* or by contacting Alexys Stanley, 202–606–1800, or U.S. Office of Personnel Management, Suitability Executive Agent Programs, P.O. Box 699, Slippery Rock, PA 16057.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13) as amended (44 U.S.C. chapter 35), OPM is soliciting comments for this collection (OMB No. 3206–0194). OPM is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Background

The Questionnaire for Public Trust Positions, SF 85P and Supplemental Questionnaire for Selected Positions, SF 85P–S, are information collections completed by applicants for, or incumbents of, Federal Government civilian positions, or positions in private entities performing work for the Federal Government under contract (SF 85P only). The collections are used as the basis of information for background investigations to establish that such persons are:

Suitable for employment or retention in Federal employment in a public trust position or fit for employment or retention in Federal employment in the excepted service when the duties to be performed are equivalent in degree of trust reposed in the incumbent to a public trust position;

Fit to perform work on behalf of the Federal Government pursuant to the Government contract, when the duties to be performed are equivalent in degree of trust reposed in the individual to a public trust position;

Eligible for physical and logical access to federally controlled facilities or information systems, when the duties to be performed by the individual are equivalent to the duties performed by an employee in a public trust position.

For applicants, the SF 85P and SF 85P–S are to be used only after a conditional offer of employment has been made. The SF 85P–S is supplemental to the SF 85P and is used only as approved by OPM, for certain positions such as those requiring carrying of a firearm. eApp (Electronic Application) is a web-based system application that houses the SF 85P and SF 85P–S. A variable in assessing burden hours is the nature of the electronic application. The electronic application includes branching questions and instructions which provide for a tailored collection from the respondent based on varying factors in the respondent's personal history. The burden on the respondent is reduced when the respondent's personal history is not relevant to a particular question. The question branches, or expands for additional details, only for those persons who have pertinent information to provide regarding that line of questioning. Accordingly, the burden on the respondent will vary depending on whether the respondent's personal history relates to the information collection.

OPM recommends renewal of the form without any proposed changes.

Analysis

Agency: Office of Personnel Management, Suitability Executive Agent Programs.

Title: Questionnaire for Public Trust Positions (SF 85P) and Supplemental Questionnaire for Selected Positions (SF 85P–S).

OMB Number: 3206–0258.

Affected Public: Individuals.

Number of Respondents: 152,700 (SF 85P); 16,700 (SF 85P–S).

Estimated Time per Respondent: 155 minutes (SF 85P); 10 minutes (SF 85P–S).

Total Burden Hours: 394,475 (SF 85P); 2,783 (SF 85P–S).

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2023–24121 Filed 10–31–23; 8:45 am]

BILLING CODE 6325–66–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98739; File No. S7–08–22]

Notice of the Text of the Amendment to the National Market System Plan Governing the Consolidated Audit Trail for Purposes of Short Sale-Related Data Collection

AGENCY: Securities and Exchange Commission.

ACTION: Notice of the text of amendment to national market system plan.

SUMMARY: The Securities and Exchange Commission (''Commission'') is publishing notice of the text of the adopted amendment to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'') in connection with the Commission's issuance of Release No. 34–98738, ''Short Position and Short Activity Reporting by Institutional Investment Managers'' (''Adopting Release''), published elsewhere in this issue of the **Federal Register**.

DATES: The effective date for the amendment to the CAT NMS Plan is January 2, 2024.

Compliance date: The compliance date for the amendment to the CAT NMS Plan is July 1, 2025.

FOR FURTHER INFORMATION CONTACT: Timothy M. Riley, Branch Chief; Patrice M. Pitts, Special Counsel; James R. Curley, Special Counsel; Jessica Kloss, Attorney-Advisor; Brendan McLeod, Attorney-Advisor; Roland Lindmayer, Attorney-Advisor; and Josephine Tao, Assistant Director, Office of Trading Practices, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, at (202) 551–5777.

SUPPLEMENTARY INFORMATION:

I. Background

In the Adopting Release, the Commission is adopting new 17 CFR 240.13f–2 (''Rule 13f–2'') and related Form SHO (referenced in 17 CFR 249.332) under the Securities Exchange Act of 1934 (''Exchange Act''). Rule 13f–2 requires certain institutional investment managers to report, on a monthly basis on new Form SHO, certain prescribed short position data and short activity data for certain equity securities. The Commission is not adopting the proposed amendment to the CAT NMS Plan that would have required the reporting to the Consolidated Audit Trail of ''buy to cover'' order marking. The Commission is adopting an amendment to the CAT

NMS Plan, pursuant to 17 CFR 242.608(a)(2) and (b)(2), to require the reporting to the Consolidated Audit Trail of reliance on the bona fide market making exception in Regulation SHO, with some non-substantive, technical changes with regard to the wording of the rule text.[1] This Notice is being given of the text of the adopted amendment to the CAT NMS Plan. For a full discussion of the adopted amendment to the CAT NMS Plan, see the Adopting Release.

II. Compliance Date

The Commission is setting a compliance date of 20 months from publication in the **Federal Register**, which is 18 months after the effective date of the Adopting Release.[2]

III. Statutory Authority and Text of the Amendment to the CAT NMS Plan

Pursuant to the Exchange Act and, particularly, Sections 2, 3, 5, 6, 11A(a)(3)(B), 15, 15A, 17(a) and (b), 19, and 23(a) thereof, 15 U.S.C. 78b, 78c, 78e, 78f, 78k–1, 78*o*, 78*o*–3, 78q(a) and (b), 78s, and 78w(a), and pursuant to Rules 608(a)(2) and (b)(2) thereunder, the Commission is amending the CAT NMS Plan in the manner set forth below.

Amend Section 6.4 of the CAT NMS Plan by modifying paragraphs (d)(ii)(B) and (C) and adding paragraph (d)(ii)(D).

The revisions read as follows. Additions are *italicized*; deletions are [bracketed].

* * * * *

Section 6.4 Data Reporting and Recording by Industry Members

* * * * *

(d) Required Industry Member Data

(i) No change.

(ii) No change.

(A) No change.

(1)–(3) No change.

(B) if the trade is cancelled, a cancelled trade indicator; [and]

(C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, and in accordance with Section 6.4(d)(iv), Customer Account Information and Customer Identifying Information for the relevant Customer[.]; *and*

(D) for the original receipt or origination of an order to sell an equity security, whether the order is for a short sale effected by a market maker in connection with bona fide market making activities in the security for which the exception in Rule 203(b)(2)(iii) of Regulation SHO is claimed.

[1] *See Short Position and Short Activity Reporting by Institutional Investment Managers,* Exchange Act Release No. 34–98738 (Oct. 13, 2023), at n. 38 and accompanying text.

[2] *Id.* at 141 (discussing compliance date for amendment to the CAT NMS Plan).

By the Commission.

Dated: October 13, 2023.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–23051 Filed 10–31–23; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20034 and #20035; TENNESSEE Disaster Number TN–20001]

Administrative Declaration of a Disaster for the State of Tennessee

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Tennessee dated 10/26/2023.

Incident: Severe Storms and Straight-line Winds.

Incident Period: 06/25/2023 through 06/26/2023.

DATES: Issued on 10/26/2023.

Physical Loan Application Deadline Date: 12/26/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 07/26/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan 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 Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Shelby

Contiguous Counties:

Tennessee: Fayette, Tipton

Arkansas: Mississippi, Crittenden

Mississippi: Desoto, Marshall

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 20034B and for economic injury is 200350.

The States which received an EIDL Declaration are Arkansas, Mississippi, Tennessee.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–24054 Filed 10–31–23; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2023–0028]

Privacy Act of 1974; System of Records

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, we are issuing public notice of our intent to modify an existing system of records entitled, Race and Ethnicity Collection System (60–0104), last published on August 24, 2009. This notice publishes details of the modified system as set forth below under the caption, SUPPLEMENTARY INFORMATION.

DATES: The system of records notice (SORN) is applicable upon its publication in today's **Federal Register**, with the exception of the new routine uses, which are effective December 1, 2023.

We invite public comment on the routine uses or other aspects of this SORN. In accordance with the Privacy Act of 1974, we are providing the public a 30-day period in which to submit comments. Therefore, please submit any comments by December 1, 2023.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, or through the Federal e-Rulemaking Portal at *http://www.regulations.gov.* Please reference docket number SSA–2023–0028. All comments we receive will be available for public inspection at the above address, and we will post them to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Elisa Vasta, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 966–5855, email: *elisa.vasta@ssa.gov* and Tristin Dorsey, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 966–5855, email: *tristin.dorsey@ssa.gov.*

SUPPLEMENTARY INFORMATION: We are modifying the system of records name from ''Race and Ethnicity Collection System (RECS), Social Security Administration (SSA)'' to ''Race and Ethnicity Collection System (RECS)'' to accurately reflect the system. We are clarifying the system location to recognize that we may also maintain records in a cloud-based environment. We are updating the system manager to reflect the accurate SSA office. We are updating the authority for the maintenance of the system to include sections 205(a) and 1110 of the Social Security Act. We are clarifying the purpose of the system to reflect SSA will use the information for research and statistical purposes.

In addition, we are clarifying the categories of individuals covered by the system and the categories of records maintained in the system for easier reading. We are expanding the record source categories to include individuals who utilize our electronic enumeration processes, existing SSA system of records, 60–0058—Master Files of Social Security Number (SSN) Holders and SSN Applications, and records generated by SSA internal processes. We are revising routine use No. 3 to incorporate gender-inclusive language, in support of Executive Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation. For routine use No. 4, we are expanding it to recognize disclosures to contractors and cooperative agreement awardees, and we are clarifying the purpose of the disclosure is for SSA program evaluation, research, and statistical reporting purposes. We are removing the list of technical requirements, but note that when we disclose under this routine use, we will still require a written agreement, which includes safeguards as we determine are appropriate and necessary.

We are clarifying the purpose for which SSA will disclose information in routine use No. 5, for consistency with language present in all SSA SORNs. We are modifying routine use Nos. 7 and 8 for easier reading. We are also adding a routine use to permit disclosures to the Centers for Medicare and Medicaid Services, if records or information were disclosed under applicable rules, regulations, and procedures in effect prior to the date of enactment for the Social Security Independence and Program Improvements Act of 1994.

Lastly, we are clarifying in the policies and practices for the storage of records that SSA will maintain records in electronic form only. We are updating the records retention and disposal schedule. We are modifying the administrative, technical, and physical safeguards for easier reading. We are modifying the record access procedures to remove references to telephone, for consistency with agency access regulations. We are modifying the notice throughout to correct miscellaneous stylistic formatting and typographical errors of the previously published notice, and to ensure the language reads consistently across multiple systems. We are republishing the entire notice for ease of reference.

In accordance with 5 U.S.C. 552a(r), we have provided a report to OMB and Congress on this modified system of records.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

SYSTEM NAME AND NUMBER:

Race and Ethnicity Collection System (RECS), 60–0104.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Social Security Administration, Office of Systems, Office of Systems Operations and Hardware Engineering, 6401 Security Boulevard, Baltimore, MD 21235–6401.

Information is also located in additional locations in connection with cloud-based services for business continuity purposes.

SYSTEM MANAGER(S):

Social Security Administration, Deputy Commissioner for Systems, Office of Enterprise Information Systems, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–5855.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a), 702, 704, and 1110 of the Social Security Act, as amended.

PURPOSE(S) OF THE SYSTEM:

We will use information in this system for research and statistical purposes only, to help us ensure all SSA customers are treated equitably.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on individuals for whom we have collected race and ethnicity information.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains records on individuals including, but not limited to, SSN; race and ethnicity data in accordance with Federal standards; and an indicator code identifying data source (*e.g.,* Social Security Number Application Process, Enumeration at Birth).

RECORD SOURCE CATEGORIES:

We obtain information in this system from the individual to whom the record pertains; individuals who utilize our electronic enumeration processes; and an existing SSA system of records, Master Files of SSN Holders and SSN Applications, 60–0058.

ROUTINE USES OF RECORDS COVERED BY THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

We will disclose records pursuant to the following routine uses; however, we will not disclose any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code (IRC), unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

1. To the Office of the President, in response to an inquiry from that office made at the request of the subject of the record or a third party on that person's behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a

record or a third party on that person's behalf.

3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such court or tribunal when:

(a) SSA, or any component thereof;

(b) any SSA employee in their official capacity;

(c) any SSA employee in their individual capacity when DOJ (or SSA, where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof when we determine that the litigation is likely to affect SSA or any of our components, SSA is a party to the litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before the tribunal is relevant and necessary to the litigation, provided, however, that in each case, we determine that such disclosure is compatible with the purpose for which the records were collected.

4. To contractors, cooperative agreement awardees, Federal agencies, State agencies, or a congressional support agency for SSA program evaluation, research, and statistical reporting purposes. We will disclose information under this routine use pursuant only to a written agreement, which sets forth the required safeguards as we determine are necessary and appropriate.

5. To contractors and other Federal agencies, as necessary, for assisting SSA in the efficient administration of its programs. We will disclose information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

6. To student volunteers, individuals working under a personal services contract, and others who technically do not have the status of Federal employees, when they are performing work for us, as authorized by law, and they need access to personally identifiable information (PII) in our records in order to perform their assigned agency functions.

7. To the National Archives Records Administration (NARA) under 44 U.S.C. 2904 and 2906.

8. To appropriate agencies, entities, and persons when:

(a) SSA suspects or has confirmed that there has been a breach of the system of records;

(b) SSA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, SSA (including its information systems, programs, and operations), the Federal Government, or national security; and

(c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with SSA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

9. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

(a) to enable them to ensure the safety of our employees and customers, the security of our workplace, and the operation of our facilities; or

(b) to assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of our facilities.

10. To another Federal agency or Federal entity, when we determine that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(a) responding to a suspected or confirmed breach; or

(b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

11. To the Centers for Medicare and Medicaid Services, as required by section 704(e) of the Social Security Act, records or information needed for research and statistical activities if the records or information are of such type that were disclosed under applicable rules, regulations, and procedures in effect before the date of enactment of the Social Security Independence and Program Improvements Act of 1994.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

We will maintain records in this system in electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

We will retrieve records in this system by SSN.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with NARA rules codified at 36 CFR 1225.16, we maintain records in accordance with General Records Schedule (GRS) 3.1: General Technology Management Records, item 012 and GRS 5.2: Transitory and Intermediary Records, item 020.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

We retain electronic files containing personal identifiers in secure storage areas accessible only by authorized individuals, including our employees and contractors, who have a need for the information when performing their official duties. Security measures include, but are not limited to, the use of codes and profiles, personal identification numbers and passwords, and personal identification verification cards. We restrict access to specific correspondence within the system based on assigned roles and authorized users. We use audit mechanisms to record sensitive transactions as an additional measure to protect information from unauthorized disclosure or modification. To the maximum extent consistent with approved research needs, we purge personal identifiers from microdata files prepared for purposes of research and subject these files to procedural safeguards to assure anonymity.

We annually provide authorized individuals, including our employees and contractors, with appropriate security awareness training that includes reminders about the need to protect PII and the criminal penalties that apply to unauthorized access to, or disclosure of, PII (5 U.S.C. 552a(i)(1)). Furthermore, authorized individuals with access to databases maintaining PII must annually sign a sanctions document that acknowledges their accountability for inappropriately accessing or disclosing such information.

RECORD ACCESS PROCEDURES:

Individuals may submit requests for information about whether this system contains a record about them by submitting a written request to the system manager at the above address, which includes their name, SSN, or other information that may be in this system of records that will identify them. Individuals requesting notification of, or access to, a record by mail must include: (1) a notarized statement to us to verify their identity; or (2) must certify in the request that they are the individual they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

Individuals requesting notification of, or access to, records in person must provide their name, SSN, or other information that may be in this system of records that will identify them, as well as provide an identity document,

preferably with a photograph, such as a driver's license. Individuals lacking identification documents sufficient to establish their identity must certify in writing that they are the individual they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

CONTESTING RECORD PROCEDURES:

Same as record access procedures. Individuals should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with our regulations at 20 CFR 401.65(a).

NOTIFICATION PROCEDURES:

Same as record access procedures. These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

74 FR 42727, Race and Ethnicity Collection System.

83 FR 54969, Race and Ethnicity Collection System.

[FR Doc. 2023–24049 Filed 10–31–23; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 12252]

Foreign Affairs Policy Board Meeting Notice

SUMMARY: The Department of State announces a meeting of the Foreign Affairs Policy Board to take place on December 7–8, 2023, at the Department of State, Washington, DC. The Foreign Affairs Policy Board will review and assess: Crisis in the Middle East; The International Dimensions of AI; New Perspectives on International Trade Policy; and The Global Migration Challenge.

FOR FURTHER INFORMATION CONTACT: Leslie Thompson at *ThompsonL2@state.gov* or 202–647–0531.

SUPPLEMENTARY INFORMATION: This meeting is in accordance with the Federal Advisory Committee Act, 5 U.S.C. 1001 *et seq.* Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1), it has been determined that this meeting will be closed to the public as the Board will be reviewing and discussing matters properly classified in accordance with Executive Order 13526.

(Authority: 5 U.S.C. 1009 and E.O. 13526.)

Leslie Thompson,

Designated Federal Officer, Office of Policy Planning, Department of State.

[FR Doc. 2023–24091 Filed 10–31–23; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket # FAA–2023–1942]

FAA Contract Tower Competitive Grant Program; Fiscal Year (FY) 2024 Funding Opportunity

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

ACTION: Notice of funding opportunity.

SUMMARY: The Department of Transportation (DOT), Federal Aviation Administration (FAA), announces the opportunity to apply for $20 million in FY 2024 Airport Infrastructure Grant funds for the FAA Contract Tower (FCT) Competitive Grant Program, made available under the Infrastructure Investment and Jobs Act of 2021 (IIJA), herein referred to as the Bipartisan Infrastructure Law (BIL). The purpose of the FCT Competitive Grant Program is to make annual grants available to eligible airports for airport-owned airport traffic control tower (ATCT) projects that address the aging infrastructure of the nation's airports.

DATES: Airport sponsors that wish to be considered for FY 2024 FCT Competitive Grant Program funding should submit an application that meets the requirements of this NOFO as soon as possible, but no later than 5:00 p.m. Eastern time, December 1, 2023.

ADDRESSES: Submit applications electronically at *https://www.faa.gov/bil/airport-infrastructure/fct* per instructions in this NOFO.

FOR FURTHER INFORMATION CONTACT: Robin K. Hunt, Manager, BIL Branch APP–540, FAA Office of Airports, at (202)267–3263 or our FAA BIL email address: *9-ARP-BILAirports@faa.gov.*

SUPPLEMENTARY INFORMATION: The FCT Competitive Grant Program will align with DOT's Strategic Framework FY 2022–2026 at *www.transportation.gov/administrations/office-policy/fy2022–2026-strategic-framework.* The FY 2024 FCT Competitive Grant Program will be implemented consistent with law and in alignment with the priorities in Executive Order 14052, *Implementation of the Infrastructure Investments and Jobs Act* (86 FR 64355), which are to invest efficiently and equitably, promote the competitiveness of the U.S. economy, improve job opportunities by focusing on high labor standards, strengthen infrastructure resilience to all hazards, including climate change, and to effectively coordinate with State, local, Tribal, and Territorial government partners.

Airports that submitted projects under the FY 2024 Airport Terminal Program NOFO (88 FR 63189), that meet the eligibility requirements outlined in C.1., do not need to resubmit under this NOFO.

A. Program Description

BIL established the FCT Competitive Grant Program, a competitive discretionary grant program, which provides $20 million in grant funding annually for five years (Fiscal Years 2022–2026) to sustain, construct, repair, improve, rehabilitate, modernize, replace, or relocate nonapproach control towers; acquire and install air traffic control, communications, and related equipment to be used in those towers; and construct a remote tower certified by the FAA including acquisition and installation of air traffic control, communications, or related equipment. The FAA is committed to advancing safe, efficient transportation, including projects funder under the FCT program. This Program also supports the President's goals to mobilize American ingenuity to build modern infrastructure and an equitable, clean energy future. In support of Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (86 FR 7009), the FAA encourages applicants to consider how the project will address the challenges faced by individuals in underserved communities and rural areas, as well as accessibility for persons with disabilities.

The FCT Competitive Grant Program falls under the project grant authority for the Airport Improvement Program (AIP) in 49 United States Code (U.S.C.) 47104. Per 2 Code of Federal Regulation (CFR) part 200—*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,* the AIP Federal Assistance Listings Number is 20.106, with the objective to assist eligible airports in the development and

improvement of a nationwide system that adequately meets the needs of civil aeronautics. The FY 2024 FCT Competitive Grant Program will be implemented consistent with the BIL and in alignment with the priorities in Executive Order 14052, *Implementation of the Infrastructure Investments and Jobs Act* (86 FR 64355), which are to invest efficiently and equitably, promote the competitiveness of the U.S. economy, improve opportunities for good-paying jobs with the free and fair choice to join a union by focusing on high labor standards, strengthen infrastructure resilience to all hazards, including climate change, and to effectively coordinate with State, local, Tribal, and Territorial government partners.

Consistent with statutory criteria and Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619), the FAA also seeks to fund projects under the FCT Competitive Grant Program that reduce greenhouse gas emissions and are designed with specific elements to address climate change impacts. Specifically, the FAA is looking to award projects that align with the President's greenhouse gas reduction goals, promote energy efficiency, support fiscally responsible land use and transportation efficient design, support development compatible with the use of sustainable aviation fuels and technologies, increase climate resilience, incorporate sustainable and less emissions-intensive pavement and construction materials as allowable, and reduce pollution.

The FAA will also consider projects that advance the goals of the Executive Orders listed under section E.2.

B. Federal Award Information

This NOFO announces up to $20,000,000, subject to availability of funds, for the Fiscal Year 2024 FCT Competitive Grant Program. The FCT Competitive Grant Program is a $100 million grant program, distributed as $20 million annually for five years (Fiscal Years 2022, 2023, 2024, 2025, and 2026).

The FAA will consider projects at an airport-owned Airport Traffic Control Tower (ATCT) that sustain, construct, repair, improve, rehabilitate, modernize, replace, or relocate nonapproach control towers; acquire and install air traffic control, communications, and related equipment to be used in those towers; or construct a remote tower certified by the FAA including acquisition and installation of air traffic control, communications, or related equipment. To date, there are no certified remote tower systems. The FAA is currently evaluating this technology to assess its suitability for use in the National Airspace System. In addition, these projects will also be evaluated based on overall impact on the National Airspace System, including age of facility, operational constraints, nonstandard facilities, or new FCT entrant requirements. This also includes applicable Executive Orders as listed in section E.2.

The FAA intends to publish a NOFO annually to announce additional funding made available, expected to be $20 million per year, for Fiscal Years 2025–2026.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants are those airport sponsors approved in the FAA's Contract Tower Program or Contract Tower Cost Share Program as defined in 49 U.S.C. 47124, and normally eligible for Airport Improvement Program (AIP) discretionary grants as defined in 49 U.S.C. 47115. The eligible applicants include a public agency, private entity, state agency, Indian Tribe, or Pueblo owning a public-use National Plan of Integrated Airport Systems (NPIAS) airport, the Secretary of the Interior for Midway Island airport, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

2. Cost Sharing or Matching

No cost sharing or matching is required. The Federal cost share of the FCT Competitive Grant Program is 100 percent for all airports eligible to receive grants.

3. Project Eligibility

All projects funded from the FCT Competitive Grant Program must be airport-owned ATCT projects that:

i. Sustain, construct, repair, improve, rehabilitate, modernize, replace, or relocate nonapproach control towers;

ii. Acquire and install air traffic control, communications, and related equipment to be used in those towers; or

iii. Construct a remote tower [1] certified by the FAA, including acquisition and installation of air traffic control, communications, or related equipment.

[1] To date, the FAA has no certified Remote Towers. The FAA is currently evaluating this technology to assess its suitability for use in the National Airspace System. Remote Tower information is located at *www.faa.gov/airports/planning_capacity/non_federal/remote_tower_systems/.*

D. Application and Submission Information

1. Address To Request Application Package

An application for FCT Competitive Grant Program projects, FAA Form 5100–144, *Bipartisan Infrastructure Law, Airport Terminal and Tower Project Information,* can be found at: *https://www.faa.gov/bil/airport-infrastructure/fct.*

Direct all inquiries regarding applications to the appropriate Regional Office (RO) or Airports District Office (ADO), at *https://www.faa.gov/about/office_org/headquarters_offices/arp/offices/regional_offices* or to the BIL Team at *9-ARP-BILAirports@faa.gov.*

2. Content and Form of Application Submission

Applicants are required to submit FAA Form 5100–144, *Bipartisan Infrastructure Law, Airport Terminal and Tower Project Information.* The applicant should submit Form 5100–144 as a fillable digitally signed PDF document via email. If the applicant cannot provide a digital signature, the application may be submitted as two documents: (1) the completed fillable PDF without a signature and (2) a scanned version of the completed application with a written signature. Applicants should follow the instructions and provide a response to applicable items on the Form.

The ''Submit by Email'' button at the bottom of the Form will generate an email for the applicant to send to the FAA BIL Team at: *9-ARP-BILAirports@faa.gov.* If the ''Submit by Email'' button does not generate an email the applicant can save the fillable PDF by selecting ''File≤Save As'' to save as a fillable PDF. Once saved, the applicant can email the application to the FAA BIL Team at *9-ARP-BILAirports@faa.gov.* The fillable PDF application must contain either a digital signature or the applicant's written signature.

Applicants selected to receive an FCT Competitive Grant Program grant will then be required to follow AIP grant application procedures prior to award, which include meeting all prerequisites for funding, and submission of Standard Form SF–424, *Application for Federal Assistance,* and FAA Form 5100–100, *Application for Development Projects.*

Airports covered under the FAA's State Block Grant Program or airports in a channeling act state should coordinate with their associated state agency on the process for deciding who should submit an application using the procedures listed above.

Applicants must address Administration and Departmental priorities in safety, climate change and sustainability, equity and workforce development which are further defined in section E.

Grant Funds, Sources and Uses of Project Funds: The FAA requests that each project application have a financial plan (or project budget) available for review upon request. Project budgets should show how different funding sources will share in each activity and present those data in dollars and percentages. The budget should identify other Federal funds the applicant is applying for or has been awarded, if any, that the applicant intends to use. Funding sources should be grouped into three categories: non-Federal, FCT, and other Federal with specific amounts from each funding source.

Sharing of Application Information: The FAA may share application information within the Department or with other Federal agencies if the FAA determines that sharing is relevant to the respective program's objectives.

All applicants, including those requesting full federal share of eligible project costs, should have a plan to address potential cost overruns as part of an overall funding plan.

3. Unique Entity Identifier and System for Award Management (SAM)

Applicants must comply with 2 CFR part 25—*Universal Identifier and System for Award Management.* All applicants must have a unique entity identifier provided by SAM. Additional information about obtaining a Unique Entity Identifier (UEI) and registration procedures may be found at *http://www.sam.gov.* Each applicant is required to: (1) be registered in SAM; (2) provide a valid UEI prior to grant award; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by the FAA. Under the FCT Competitive Grant Program, the UEI and SAM account must belong to the entity that has the legal authority to apply for, receive, and execute FCT Competitive Grant Program grants.

Once awarded, the FAA grant recipient must maintain the currency of its information in SAM until the grantee submits the final financial report required under the grant or receives the final payment, whichever is later. A grant recipient must review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term.

The FAA may not make an award until the applicant has complied with all applicable UEI and SAM requirements. If an applicant has not fully complied with the requirements by the time the FAA is ready to make an award, the FAA may determine that the applicant is not qualified to receive an award and use that determination as a basis for giving a Federal award to another applicant.

Non-Federal entities that have received a Federal award are required to report certain civil, criminal, or administrative proceedings to SAM to ensure registration information is current and complies with federal requirements. Applicants should refer to 2 CFR 200.113 for more information about this requirement.

4. Submission Dates and Times

Airports that wish to be considered for FY 2024 FCT Competitive Grant Program funding should submit an application that meets the requirements of this NOFO as soon as possible, but no later than 5 p.m. eastern time on December 1, 2023. Submit applications electronically to *9-ARP-BILAirports@faa.gov* per instructions in this NOFO. Airports that submitted projects under the FY 2024 Airport Terminal Program NOFO (88 FR 63189), that meet the eligibility requirements outlined in C.1., do not need to resubmit under this NOFO.

5. Funding Restrictions

All projects funded from the FCT Competitive Grant Program must be at airports approved in the FAA's Contract Tower Program or Contract Tower Cost Share Program defined in 49 U.S.C. 47124.

FCT Competitive Grant Program funds may not be used to support or oppose union organizing.

Pre-Award Authority: All project costs must be incurred after the grant execution date unless specifically permitted under 49 U.S.C. 47110(c). Certain airport development costs incurred before execution of the grant agreement, but after November 15, 2021, are allowable, only if certain conditions under 49 U.S.C. 47110(c)are met [see Table 3–60 of the AIP Handbook, FAA Order 5100.38 D Change 1, for specific guidance regarding when project costs can be incurred in relation to section 47110(c)].

6. Other Submission Requirements

Applications will only be accepted on FAA Form 5100–144 fillable PDF via email and must be received on or before December 1, 2023, 5:00 p.m. Eastern time. No other Forms of applications will be accepted.

E. Application Review Information

1. Criteria

Applications for FY 2024 FCT Competitive Grant Program will be rated using the following criteria:

i. Projects must meet eligibility requirements under the FCT Competitive Grant Program outlined under sections C.1 and C.3 above.

ii. The FAA will consider timeliness of implementation, with priority given to those projects, including ''design only'' projects, that can satisfy all statutory and administrative requirements for grant award by October 2024.

iii. ATCT projects will be evaluated based on the overall impact on the National Airspace System, including age of facility, operational constraints, nonstandard facility conditions, or new FCT entrant requirements.

iv. Priority will be given to projects that advance aviation safety or enhance air traffic efficiency.

v. The applicant should describe whether and how project delivery and implementation creates good-paying jobs with the free and fair choice to join a union to the greatest extent possible; the use of demonstrated strong labor standards, practices and policies (including for direct employees, contractors, and sub-contractors, and service workers on airport property); use of project labor agreements; distribution of workplace rights notices; union neutrality agreements; wage and/or benefit standards; safety and health standards; the use of Local Hire Provisions; [2] registered apprenticeships; joint-labor management partnerships; or other similar standards or practices. The applicant should describe how planned methods of project delivery and implementation (for example, use of Project Labor Agreements and/or Local Hire Provisions,[3] training, placement and the provision of supportive services for underrepresented workers) provide opportunities for all workers, including workers underrepresented in construction jobs, to be trained and placed in good-paying jobs directly related to the project. The FAA will consider this information in evaluating the application.

[2] IIJA div. B section 25019 provides authority to use geographical and economic hiring preferences, including local hire, for construction jobs, subject to any applicable State and local laws, policies, and procedures.

[3] Project labor agreement should be consistent with the definition and standards outlined in Executive Order 14063.

2. Review and Selection Process

Federal awarding agency personnel will evaluate applications based on how well the projects meet the criteria in E.1, including project eligibility, justification, readiness, and impact on the National Airspace System. The FAA will also consider how well projects advance the goals of the following Executive Orders: the President's January 20, 2021, Executive Order 13990, ''*Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*''; the President's January 20, 2021, Executive Order 13985, ''*Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*''; the President's January 27, 2021, Executive Order 14008, ''*Tackling the Climate Crisis at Home and Abroad*''; the President's May 20, 2021, Executive Order 14030, ''*Climate Related Financial Risk*''; and the President's July 9, 2021, Executive Order 14036, ''*Promoting Competition in the American Economy.*''

Applications are first reviewed for eligibility, justification, and timeliness of implementation consistent with the requirements of this NOFO and the intent of the FCT. Applications are then reviewed for how well the proposed project(s) meets the criteria in E.1. and ranked by field and Regional office staff. The top projects (as outlined in BIL) are then evaluated by a National Control Board (NCB). The NCB has representatives from each Region and Headquarters management. The NCB recommends project and funding levels to senior leadership.

3. Integrity and Performance Check

Prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, the FAA is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313). An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered. The FAA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.206.

F. Federal Award Administration Information

1. Federal Award Notices

BIL awards are announced through a Congressional notification process and a DOT Secretary's Notice of Intent to Fund. The FAA Regional Office (RO) or Airports District Office (ADO) (RO/ADO) representative will contact the airport with further information and instructions. Once all pre-grant actions are complete, the FAA RO/ADO will offer the airport sponsor a grant for the announced project. This offer may be provided through postal mail or by electronic means. Once this offer is signed by the airport sponsor, it becomes a grant agreement. Awards made under this program are subject to conditions and assurances in the grant agreement.

2. Administrative and National Policy Requirements

i. Grant Requirements

All grant recipients are subject to the grant requirements of the AIP, found in 49 U.S.C. chapter 471. Grant recipients are subject to requirements in the FAA's *AIP Grant Agreement* for financial assistance awards; the annual certifications and assurances required of applicants; and any additional applicable statutory or regulatory requirements, including nondiscrimination requirements and 2 CFR part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.* Grant requirements include, but are not limited to, approved projects on an airport layout plan; compliance with Federal civil rights laws; Buy American requirements under 49 U.S.C. 50101; Build America, Buy America requirements in sections 70912(6) and 70914 in Public Law 117–58; the *Department of Transportation's Disadvantaged Business Enterprise (DBE) Program* regulations for airports (49 CFR part 23 and 49 CFR part 26); the Infrastructure Investment and Jobs Act; and prevailing wage rate requirements under the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5, and reenacted at 40 U.S.C. 3141–3144, 3146, and 3147).

Domestic Preference Requirements: As expressed in Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers (86 FR 7475), executive branch should maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. Funds made available under this notice are subject to the domestic preference requirements in the Buy American requirements under 49 U.S.C. 50101. The FAA expects all applicants to comply with that requirement without needing a waiver. However, to obtain a waiver, a recipient must be prepared to demonstrate how they will maximize the use of domestic goods, products, and materials in constructing their project.

Civil Rights and Title VI: As a condition of a grant award, grant recipients should demonstrate that the recipient has a plan for compliance with civil rights obligations and nondiscrimination laws, including Title VI of the Civil Rights Act of 1964 and implementing regulations (49 CFR 21), the Americans with Disabilities Act of 1990 (ADA), and section 504 of the Rehabilitation Act, all other civil rights requirements, and accompanying regulations. This should include a current Title VI plan, completed Community Participation Plan, and a plan to address any legacy infrastructure or facilities that are not compliant with ADA standards. DOT's and the applicable Operating Administrations' Office of Civil Rights may work with awarded grant recipients to ensure full compliance with Federal civil rights requirements.

Critical Infrastructure Security, Cyber Security and Resilience: It is the policy of the United States to strengthen the security and resilience of its critical infrastructure against both physical and cyber threats, consistent with Presidential Policy Directive 21—Critical Infrastructure Security and Resilience and the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems. Each applicant selected for Federal funding under this notice must demonstrate, prior to the signing of the grant agreement, effort to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the project. Projects that have not appropriately considered and addressed physical and cyber security and resilience in their planning, design, and project oversight, as determined by the Department and the Department of Homeland Security, will be required to do so before receiving funds for construction.

Federal Contract Compliance: As a condition of grant award and consistent with E.O. 11246, Equal Employment Opportunity (30 FR 12319, and as amended), all Federally assisted contractors are required to make good faith efforts to meet the goals of 6.9

percent of construction project hours being performed by women, in addition to goals that vary based on geography for construction work hours and for work being performed by people of color.

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is charged with enforcing Executive Order 11246, section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. OFCCP has a Mega Construction Project Program through which it engages with project sponsors as early as the design phase to help promote compliance with non-discrimination and affirmative action obligations. OFCCP will identify projects that receive an award under this notice and are required to participate in OFCCP's Mega Construction Project Program from a wide range of Federally-assisted projects over which OFCCP has jurisdiction and that have a project cost above $35 million. DOT will require project sponsors with costs above $35 million that receive awards under this funding opportunity to partner with OFCCP, if selected by OFCCP, as a condition of their DOT award.

Performance and Program Evaluation: As a condition of grant award, grant recipients may be required to participate in an evaluation undertaken by DOT, the FAA, or another agency or partner. The evaluation may take different forms, such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grant recipients, or a benefit/cost analysis or assessment of return on investment. DOT may require applicants to collect data elements to aid the evaluation. As a part of the evaluation, as a condition of award, grant recipients must agree to: (1) make records available to the evaluation contractor or DOT staff; (2) provide access to program records and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or DOT staff. Requested program records or information will be consistent with record requirements outlined in 2 CFR 200.334–338 and the grant agreement.

ii. Standard Assurances

Each grant recipient must assure that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FAA circulars, and other federal administrative requirements in carrying out any project supported by the FCT Competitive Grant Program grant. The grant recipient must acknowledge that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with the FAA. The grant recipient understands that federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The grant recipient must agree that the most recent Federal requirements will apply to the project unless the FAA issues a written determination otherwise.

The grant recipient must submit the Certifications at the time of grant application and Assurances must be accepted as part of the grant agreement at the time of accepting a grant offer. Grant recipients must also comply with 2 CFR part 200, which ''are applicable to all costs related to Federal awards,'' and which is cited in the grant assurances of the grant agreements. The Airport Sponsor Assurances are available on the FAA website at: *https://www.faa.gov/airports/aip/grant_assurances.*

3. Reporting

Grant recipients are subject to financial reporting per 2 CFR 200.328 and performance reporting per 2 CFR 200.329. Under the FCT Competitive Grant Program, the grant recipient is required to comply with all Federal financial reporting requirements and payment requirements, including the submittal of timely and accurate reports. Financial and performance reporting requirements are available in the FAA October 2020 Financial Reporting Policy, which is available at: *https://www.faa.gov/sites/faa.gov/files/airports/aip/grant_payments/aip-grant-payment-policy.pdf.*

The grant recipient must comply with annual audit reporting requirements. The grant recipient and sub-recipients, if applicable, must comply with 2 CFR part 200 subpart F Audit Reporting Requirements. The grant recipient must comply with any requirements outlined in 2 CFR part 180, *Office of Management and Budget (OMB) Guidelines to Agencies on Government wide Debarment and Suspension.*

G. Federal Awarding Agency Contact(s)

For further information concerning this notice, please contact the FAA BIL Branch via email at: *9-ARP-BILAirports@faa.gov.* In addition, the FAA will post answers to frequently asked questions and requests for clarifications on FAA's website at *https://www.faa.gov/general/bipartisan-infrastructure-law-faqs.* To ensure applicants receive accurate information about eligibility of the program, the applicant is encouraged to contact the FAA directly, rather than through intermediaries or third parties, with questions.

Issued in Washington, DC, on October 27, 2023.

Robin K. Hunt,

Manager, FAA Office of Airports BIL Branch.

[FR Doc. 2023–24085 Filed 10–31–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0209]

Women of Trucking Advisory Board (WOTAB); Notice of Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the WOTAB.

DATES: The meeting will be held on Monday, November 13, 2023, from 10 a.m. to 4:30 p.m. ET. Requests for accommodations for a disability must be received by Monday, November 6. Requests to submit written materials for consideration during the meeting must be received no later than Monday, November 6.

ADDRESSES: The meeting will be held virtually for its entirety. Please register in advance of the meeting at *www.fmcsa.dot.gov/wotab.* Copies of WOTAB task statements and an agenda for the entire meeting will be made available at *www.fmcsa.dot.gov/wotab* at least 1 week in advance of the meeting. Once approved, copies of the meeting minutes will be available at the website following the meeting. You may visit the WOTAB website at *www.fmcsa.dot.gov/wotab* for further information on the committee and its activities.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Designated Federal Officer, WOTAB, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 360–2925, *wotab@dot.gov.* Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

WOTAB was created under the Federal Advisory Committee Act

(FACA) in accordance with section 23007(d)(1) of the Bipartisan Infrastructure Law (BIL) (Pub. L. 117–58), which requires the Federal Motor Carrier Safety Administration (FMCSA) to establish WOTAB. WOTAB will review and report on policies that provide education, training, mentorship, and outreach to women in the trucking industry and identify barriers and industry trends that directly or indirectly discourage women from pursuing and retaining careers in trucking.

WOTAB operates in accordance with FACA under the terms of the WOTAB charter, filed February 11, 2022.

II. Agenda

WOTAB will complete its review of the discussion notes from the deliberations concerning Tasks 22–1 through 23–4 and the draft report prepared by its Report Subcommittee. The Report Subcommittee members were designated during the WOTAB's August 14 meeting for the purpose of compiling information from the discussion notes for the meetings and drafting a report for the full WOTAB to review prior to its submission to the FMCSA Administrator.

III. Public Participation

The meeting will be open to the public via virtual platform. Advance registration via the website is required by Monday, November 6.

DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services due to a disability, such as sign language interpretation or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by Monday, November 6.

Oral comments from the public will be heard during designated comment periods at the discretion of the WOTAB chair and Designated Federal Officer. To accommodate as many speakers as possible, the time for each commenter may be limited. Speakers are requested to submit a written copy of their remarks for inclusion in the meeting records and for circulation to WOTAB members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–24067 Filed 10–31–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0024]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 11 individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before December 1, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2023–0024 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2023–0024) in the keyword box and click ''Search.'' Next, choose the only notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2023–0024), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2023-0024.* Next, choose the only notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2023–0024) in the keyword box and click ''Search.'' Next, choose the only notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management

System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 11 individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Application for Exemptions; National Association of the Deaf,'' (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Melissa Bartlett

Melissa Bartlett, 35, holds a class E driver's license in Louisiana.

Jeromy Brand

Jeromy Brand, 48, holds a class D driver's license in Alabama.

Bryan Elzy

Bryan Elzy, 48, holds a class E driver's license in Louisiana.

Brian Greco

Brian Greco, 36, holds a class A commercial driver's license in New Mexico.

Bradley Hess

Bradley Hess, 41, holds a driver's license in Washington.

Tony Jones

Tony Jones, 37, holds a class C driver's license in Texas.

Alexander Lindsay

Alexander Lindsay, 30, holds a class D driver's license in Ohio.

Francis McBride

Francis McBride, 36, holds a class C driver's license in North Carolina.

Ray Perry

Ray Perry, 43, holds a class C driver's license in Texas.

Lakeshia Rosbia

Lakeshia Rosbia, 25, holds a class D driver's license in Arkansas.

Anthony Scott

Anthony Scott, 26, holds a class D driver's license in Alabama.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–24044 Filed 10–31–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0036]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 12 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on October 22, 2023. The exemptions expire on October 22, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, (FMCSA–2023–0036) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Older-Newer),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On September 13, 2023, FMCSA published a notice announcing receipt of applications from 12 individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (88 FR 62884). The public comment period ended on October 13, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel. The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. A summary of each applicant's seizure history was discussed in the September 13, 2023, **Federal Register** notice (88 FR 62884) and will not be repeated in this notice.

These 12 applicants have been seizure-free over a range of 42 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5T; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 12 exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition in § 391.41(b)(8), subject to the requirements cited above:

Colton Braun (IL)
Adam Brunson (AL)
Alan Glinsmann (KS)
Alex Hunter (SD)
Kyle Jones (IN)
Ryan McKnelly (SD)
Alfonso V. Mendoza (CA)
Jerrid Pace (TN)
Elsa Santos (NJ)
Brandon Schindele (MN)
Travis Stevens (MI)
Brad Wetli (IN)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–24042 Filed 10–31–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0355; FMCSA–2019–0031; FMCSA–2020–0047]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for three individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on November 6, 2023. The exemptions expire on November 6, 2025. Comments must be received on or before December 1, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2008–0355, Docket No. FMCSA–2019–0031, or Docket No. FMCSA–2020–0047 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2008–0355, FMCSA–2019–0031, or FMCSA–2020–0047) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2008–0355, Docket No. FMCSA–2019–0031, or Docket No. FMCSA–2020–0047), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number (FMCSA–2008–0355, FMCSA–2019–0031, or FMCSA–2020–0047) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2008–0355, FMCSA–2019–0031, or FMCSA–2020–0047) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA,

Continued

assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The three individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the three applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The three drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of November 6, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Brian Bommer (OH); David Kietzman (WI); and Jerel Sayers (ID).

The drivers were included in docket number FMCSA–2008–0355, FMCSA–2019–0031, or FMCSA–2020–0047. Their exemptions are applicable as of November 6, 2023 and will expire on November 6, 2025.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based on its evaluation of the three exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–24066 Filed 10–31–23; 8:45 am]

BILLING CODE 4910–EX–P

---

section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF TRANSPORTATION

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 in person at the Hilton Durham, North Carolina.

DATES: The meeting will be held Wednesday, November 15, 2023, from 6:30 to 8 p.m. eastern time. Requests for accommodations because of a disability must be received by Wednesday, November 8. Requests to submit questions must be received no later than Wednesday, November 8. The registration form will close once it hits capacity.

ADDRESSES: The meeting will be held at the Hilton Durham, 3800 Hillsborough Road, Durham, North Carolina 27705. Members of the public should go to *https://www.transportation.gov/civil-rights/acte/meetinginfo* to access 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 and Designated Federal Officer, Departmental Office of Civil Rights, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, (804) 836–2893, *ACTE@dot.gov.* Any ACTE-related request or submissions should be sent via email to the point 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:

Sharing the background and purpose of the ACTE

Obtaining recommendations and feedback for the ACTE through open discussion and breakout sessions

Meeting Participation

Advance registration is required. Please register at *https://www.surveymonkey.com/r/S9Z76HJ* 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 point 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: October 27, 2023.

Irene Marion,

Director, Departmental Office of Civil Rights.

[FR Doc. 2023–24099 Filed 10–31–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. DOT–OST–2011–0022]

Notice of Submission of Proposed Information Collection to OMB Agency Request for Revision of a Previously Approved Collection: Online Complaint Form for Service-Related Issues in Air Transportation

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice and request for comments. Revision of information related to an active OMB control number.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, as amended, this notice announces the Department of Transportation's intention to revise information related to an OMB control number for an online complaint form by which a consumer can electronically submit a service-related complaint against an airline and other air travel-related companies.

DATES: Comments on this notice must be received by January 2, 2024.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W–12/140, Washington, DC 20590–0001; or
- *Hand delivery:* West Building Ground Floor, Room W–12/140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: Daeleen Chesley, Office of the Secretary, Office of Aviation Consumer Protection (C–70), U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202 366–6792 (voice) or at *Daeleen.Chesley@dot.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0568.

Title: Revision of the Office of Aviation Consumer Protection's Online Air Travel Service Complaint/Comment Form.

Abstract: The Department of Transportation's (Department) Office of Aviation Consumer Protection (OACP) has broad authority under 49 U.S.C., subtitle VII, to investigate and enforce consumer protection and civil rights laws and regulations related to air transportation. OACP monitors compliance with and investigates violations of the Department of Transportation's aviation economic, consumer protection, and civil rights requirements.

Among other things, the office is responsible for receiving and investigating service-related consumer complaints filed against airlines and other air travel-related companies. Complaints submitted to OACP are reviewed by the office to determine the extent to which these entities comply with federal aviation consumer protection and civil rights laws and what, if any, action should be taken. OACP also receives general comments and inquiries from air consumers via the online form, but those are very few compared to the number of complaints filed by consumers on an annual basis. (See Tables 1 and 2, below).

This request is to revise the current information collection due to updates that OACP is making to the office's online air consumer complaint form as part of an Information Technology (IT) system modernization project.[1] The updated process continues to allow consumers to input information related to complaints about their flight experience, as well as to submit general inquiries/comments. However, air consumers submitting complaints or comments via the modernized system will be efficiently guided through their entry by a data input system using conditional logic. The modernized system includes additional information fields and, combined with the guided entry, will better ensure an individual air consumer's specific concerns are more comprehensively captured in the system database.

The modernized process will also streamline OACP's ability to review data and analyze complaints. The revised process will also reduce manual analyst processing steps. These improvements will increase the office's ability to effectively investigate individual complaints against airlines and other air travel-related companies. This consumer-driven submission process enhances the information collected and positively impacts OACP's ability to learn about patterns and practices that may develop in violation of aviation consumer protection requirements. The information collection continues to

[1] OACP's legacy database is the Consumer Complaint Application System (CCA). OACP is updating its IT system and the modernized system will be known as the Aviation Complaint, Enforcement, and Reporting System (ACERS).

further the objectives of 49 U.S.C. 41712, 40101, 40127, 41702, and 41705 to protect consumers from unfair or deceptive practices, to protect the civil rights of air travelers, and to ensure safe and adequate service in air transportation.

The type of information requested on OACP's online form that is active and currently covered by the existing OMB Control number includes complainant's name, address, phone number (including area code), email address, and name of the airline or company about which she/he is complaining, as well as the flight date and flight itinerary (where applicable) of a complainant's trip. Air travel consumers use the current form for complaints (to provide narrative information regarding a specific air-travel related problem) or comments (to comment about or ask for air-travel related information from OACP).

The modernized intake process guides an aviation consumer through the following four steps: (1) Contact Information, (2) Flight Information, (3) Complaint Details, and (4) Complaint Review and Submission. Similar information is requested for comments. New/updated consumer-related information includes the country of residence, whether the trip involved a flight through the U.S. or a U.S. territory, certain booking information, and the passenger's arrival/departure airports. As currently drafted, the modernized online multi-step intake process allows consumers (via radio buttons) to include information about problems associated with the following main categories/subject areas:

(1) Flight Schedule Issues;
(2) Bumping or Oversales;
(3) Reservations/Ticketing/Boarding;
(4) Fees or Ticket Fares;
(5) Refunds;
(6) Baggage/Luggage;
(7) Customer Service;
(8) Disability Accommodations (including service animals);
(9) Advertising;
(10) Discrimination (not disability related);
(11) Animals/Pet (not service animals);
(12) Safety;
(13) Security;
(14) Inflight Sexual Misconduct; and
(15) Other Problems (*e.g.,* frequent flyer miles, air ambulance).

Once a consumer chooses a category, the consumer is guided through a series of Yes/No questions that capture relevant information pertaining to the nature of the complaint. An air travel consumer can choose one or more complaint categories depending on the nature of his/her experience and has the option to include narrative information.

Both the currently active online air travel consumer complaint form and the modernized guided intake process include the ability for a consumer to upload documents relevant to the complaint/comment.

Filing a complaint using a web-based form is voluntary and minimizes the burden on respondents when compared with other methods of submitting complaints. In recent years, consumers have submitted most complaints online via their personal computer or on a mobile/electronic device. Approximately ninety-seven percent of the submissions received by OACP during calendar years (CYs) 2021 and 2022 were filed using the web-based form as shown in the table below.[2]

OACP has limited the request to information necessary to meet its aviation consumer protection monitoring and enforcement activities.

TABLE 1—COMPLAINTS RECEIVED BY OACP
[CY21/22]

Calendar year	Total number of complaints filed on-line	Total number of complaints filed with OACP	% of on-line submissions
2021	48,465	49,958	97.01
2022	75,731	77,656	97.52
Average Total	62,098	63,807	97.27

TABLE 2—COMMENTS (NON-COMPLAINTS) RECEIVED BY OACP
[CY21/22]

Calendar year	Total number information requests	Total number compliments	Total number opinions
2021	5,799	14	444
2022	7,575	24	1008
Average Total	6,687	19	726
Total Yearly Average			6,782

1. Air Travel Consumer Complaints Burden Calculations

Respondents: Consumers that Choose to File an Online Complaint with the Office of Aviation Consumer Protection.

Estimated Number of Respondents: 62,098 (based on averaging data from CYs 2021–22).

Estimated Total Burden on Respondents: 15,524.5 hours (931,470 minutes). The estimate was calculated by multiplying the average number of cases filed using the online form in CYs 21–22 (62,098) by the estimated time

[2] As of CY 2020, OACP has received a higher number of online submissions than those submitted in prior CYs. For example, our CY17–19 average was 16,348 complaints submitted per year. In 2020, the total was 100,613 and were mostly related to flight cancellations and refund issues that resulted from the Covid-19 pandemic. In CYs 21 and 22, the number of submissions remain high but are lower than the number of complaints submitted in CY2020. See Table 1, above.

needed to fill out the online form (15 minutes).[3]

2. Comment (Non-Complaint) Burden Calculations

Respondents: Consumers that Choose to File an Online Comment with the Office of Aviation Consumer Protection.

Estimated Number of Respondents: 6,782 (based on averaging data from CYs 2021–22).

Estimated Total Burden on Respondents: 565.17 hours (33,910 minutes). The estimate was calculated by multiplying the average number of cases filed using the online form in CYs 21–22 (6,782) by the estimated time needed to fill out the online form (5 minutes).[4]

The information collection is available for inspection in regulations.gov, as noted in the **ADDRESSES** section of this document.

Comments are Invited on: (a) 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; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record on the docket.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on October 27, 2023.

Kimberly Graber,

Deputy Assistant General Counsel, Office of Aviation Consumer Protection.

[FR Doc. 2023–24128 Filed 10–31–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is revising the entry of a person that has been placed on OFAC's Specially Designated Nationals and Blocked Persons (SDN) List. All property and interests in property subject to U.S. jurisdiction of this person remain blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, 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 Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://ofac.treasury.gov*).

Notice of OFAC Action(s)

On September 25, 2023, OFAC removed the following entry from the SDN List.

Entity

1. JOINT STOCK COMPANY STAR (a.k.a. ''AO ODK STAR''; a.k.a. ''JSC UEC STAR''), ul. Kuibysheva D. 140A, Perm 614990, Russia; Tax ID No. 5904100329 (Russia); Registration Number 1025900895712 (Russia) [RUSSIA–EO14024].

On September 25, 2023, OFAC combined the information in the entry above with a separate existing entry on the SDN List for the same entity by publishing the following revised entry on the SDN List.

Entity

1. JOINT STOCK COMPANY STAR (a.k.a. AO ODK–STAR; a.k.a. JSC UEC STAR), Ul. Kuibysheva D. 140A, Perm 614990, Russia; website *www.ao-star.ru;* Additional Sanctions Information—Subject to Secondary Sanctions; Organization Established Date 1943; Tax ID No. 5904100329 (Russia); Business Registration Number 1025900895712 (Russia) [NPWMD] [IFSR] [RUSSIA–EO14024] (Linked To: IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY).

Designated pursuant to section 1(a)(i) of Executive Order 14024 of April 15, 2021, ''Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation,'' 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021) on September 14, 2023 for operating or having operated in the manufacturing sector of the Russian Federation economy.

Designated pursuant to section 1(a)(iii) of Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters,'' 70 FR 38567, 3 CFR, 2005 Comp., p. 170 (E.O. 13382) on September 19, 2023 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, IRAN AIRCRAFT MANUFACTURING INDUSTRIAL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

Dated: October 27, 2023.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–24051 Filed 10–31–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Meeting of the Treasury Advisory Committee on Racial Equity

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: The Department of the Treasury is hosting its fiscal year 2024 quarter 1 meeting of the Treasury Advisory Committee on Racial Equity (''TACRE'' or ''Committee''). The Committee is composed of 24 members who will provide information, advice, and recommendations to the Department of the Treasury on matters relating to the advancement of racial equity. This notification provides the date, time, and location of the meeting and the process for participating and providing comments.

DATES: December 7, 2023, at 1–5 p.m. eastern time.

FOR FURTHER INFORMATION CONTACT: Snider Page, Designated Federal Official, Department of the Treasury, by emailing *TACRE@Treasury.gov* or by calling (202) 622–0341 (this is not a toll-free number). For persons who are deaf, hard of hearing, have a speech disability or difficulty speaking may dial 7–1–1 to access telecommunications relay services.

Check: *https://home.treasury.gov/about/offices/equity-hub/TACRE* for any updates to the December 7th meeting.

[3] Feedback obtained during development of the modernized guided input process suggests that the form will take no longer than 15 minutes for a consumer to complete.

[4] An air consumer submitting these types of filing generally provide less information, so we estimate 5 minutes is sufficient.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001 *et seq*), the Department has established the Treasury Advisory Committee on Racial Equity. The Department has determined that establishing this Committee was necessary and in the public interest to carry out the provisions of Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Throughout the Federal Government.*

Background

Objectives and Duties

The purpose of the Committee is to provide advice and recommendations to Secretary of the Treasury Janet L. Yellen and Deputy Secretary Wally Adeyemo on efforts to advance racial equity in the economy and address acute disparities for communities of color. The Committee will identify, monitor, and review aspects of the domestic economy that have directly and indirectly resulted in unfavorable conditions for communities of color. The Committee plans to address topics including but not limited to: financial inclusion, access to capital, housing stability, federal supplier diversity, and economic development. The duties of the Committee shall be solely advisory and shall extend only to the submission of advice and recommendations to the Offices of the Secretary and Deputy Secretary, which shall be non-binding to the Department. No determination of fact or policy shall be made by the Committee.

The agenda for the meeting includes opening remarks from the TACRE Chair and Vice-Chair; an overview of the work conducted by the TACRE subcommittees since the September 19, 2023 TACRE meeting, and a possible vote on recommendations to make to the Department; briefings from government officials on financial inclusion and small business strategy, and a review, and possible discussion, of any comments received from the public. Meeting times and topics are subject to change.

First Periodic Meeting: In accordance with section 10(a)(2) of the FACA and implementing regulations at 41 CFR 102–3.150, Snider Page, the Designated Federal Officer of TACRE, has ordered publication of this notice to inform the public that the TACRE will convene its FY 2024 quarter 1 meeting on Thursday, December 7, 2023, from 1 p.m.–5 p.m. eastern time, at the Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220.

Process for Submitting Public Comments: Members of the public wishing to comment on the business of the TACRE are invited to submit written comments by emailing *TACRE@Treasury.gov.* Comments are requested no later than 15 calendar days before the public meeting to be considered by the Committee.

In general, the Department will post all comments received on its website *https://home.treasury.gov/about/offices/equity-hub/TACRE* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department will also make these comments available for public inspection and copying in the Department of the Treasury's Library, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect statements by telephoning (202) 622–2000. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Process for Attending In-Person: Treasury is a secure facility, that requires all visitors to get cleared by security prior to arrival at the building. In addition, all visitors will be required to undergo COVID screening. The COVID screening will be a self-administered test provided by Treasury and visitors will have to wait for a negative result before proceeding to the meeting. Anyone testing positive will need to immediately leave the building. Please register for the Public Meeting by visiting: *https://events.treasury.gov/s/event-template/a2m3d00000026dYAAQ.* The registration process will require submission of personally identifiable information, such as, full name, email address, date of birth, social security number, citizenship, residence, and if you have recently traveled outside of the United States.

Due to the limited size of the meeting room, public attendance will be limited to the first 20 people that complete the registration process. Members of the public will need to bring a government issued identification that matches the information provided during the registration process and present that to Security, for entry into the building. Please plan on arriving 30–45 minutes prior to the meeting to allow time for security. If you require reasonable accommodation, please contact the Departmental Offices Reasonable Accommodations Coordinator at *ReasonableAccommodationRequests@treasury.gov.* If requesting a sign language interpreter, please make sure your request to the Reasonable Accommodations Coordinator is made at least five (5) days prior to the event if possible.

Dated: October 27, 2023.

Snider Page,

Acting Director, Office of Diversity, Equity, Inclusion, and Accessibility and Designated Federal Officer.

[FR Doc. 2023–24109 Filed 10–AK–23; 8:45 am]

BILLING CODE 4810—P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0325]

Agency Information Collection Activity Under OMB Review: Certificate of Delivery of Advance Payment and Enrollment

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link *www.reginfo.gov/public/do/PRAMain,* select ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–0325.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *Maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0325'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 3034, 3241, 3531, 3680(d), 3684,10 U.S.C.16136(b), 38 CFR 21.4138a, 21.4203(a), 21.5135,

21.5200(d), 21.5292(e)(2), 21.7151(b), and 21.7640(d).

Title: Certificate of Delivery of Advance Payment and Enrollment, VA Form 22–1999v.

OMB Control Number: 2900–0325.

Type of Review: Revision of a currently approved collection.

Abstract: The VA uses information from the current collection at the beginning of the school term to ensure that advance payments have been delivered, and to determine whether the student has increased, reduced, or terminated training. School Certifying Officials (SCOs) completes this form and returns it to VA when delivery of the advance payment check is made to students upon registration for their period of enrollment. If this student fails to register within 30 days after the commencement date of the enrollment period, the advance payment check must be returned to the Department of the Treasury. Advance payments are not available under the Post-9/11 GI Bill (Chapter 33) benefit program.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 58636 on Monday, August 28, 2023, page(s) 58636–58637.

Affected Public: State, local and Tribal governments.

Estimated Annual Burden: 23 hours.

Estimated Average Burden Time per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 63.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–24056 Filed 10–31–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Wednesday,
No. 210 November 1, 2023

Part II

Securities and Exchange Commission

17 CFR Parts 240 and 249
Short Position and Short Activity Reporting by Institutional Investment Managers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–98738; File No. S7–08–22]

RIN 3235–AM34

Short Position and Short Activity Reporting by Institutional Investment Managers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting a new rule and new Form SHO pursuant to the Securities Exchange Act of 1934 (''Exchange Act'') and the Dodd-Frank Wall Street Reform and Consumer Protection Act (''DFA''). The new rule and related form are designed to provide greater transparency through the publication of short sale-related data to investors and other market participants. Under the new rule, institutional investment managers that meet or exceed certain specified reporting thresholds are required to report, on a monthly basis using the related form, specified short position data and short activity data for equity securities. In addition, the Commission is adopting an amendment to the national market system (''NMS'') plan governing the consolidated audit trail (''CAT'') created pursuant to the Exchange Act to require the reporting of reliance on the bona fide market making exception in the Commission's short sale rules. The Commission is publishing the text of the amendments to the NMS plan governing the CAT (''CAT NMS Plan'') in a separate notice.

DATES:

Effective date: January 2, 2024.

Compliance date: The applicable compliance date is discussed in Part VI of this release.

FOR FURTHER INFORMATION CONTACT: Timothy M. Riley, Branch Chief; Patrice M. Pitts, Special Counsel; James R. Curley, Special Counsel; Jessica Kloss, Attorney Advisor; Brendan McLeod, Attorney Advisor; Roland Lindmayer, Attorney Advisor; Josephine J. Tao, Assistant Director, Office of Trading Practices; and Carol McGee, Associate Director, Office of Derivatives Policy and Trading Practices, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8010, at (202) 551–5777.

SUPPLEMENTARY INFORMATION: The Commission is adopting new 17 CFR 240.13f–2 (''Rule 13f–2'') and related form 17 CFR 249.332 (''Form SHO'') under the Exchange Act to require certain institutional investment managers to report, on a monthly basis on new Form SHO, certain short position data and short activity data for certain equity securities as prescribed in Rule 13f–2.

The Commission is also adopting, in a separate notice published elsewhere in this issue of the **Federal Register**, an amendment to the CAT NMS Plan (''CAT Amendment''), pursuant to 17 CFR 242.608(a)(2) (''Rule 608(a)(2)'') and (b)(2) (''Rule 608(b)(2)''), that enables the Commission to adopt a rule to amend any effective NMS plan. For the text of the amendment to the CAT NMS Plan, please see the Notice of the Text of the Amendment to the National Market System Plan Governing the Consolidated Audit Trail for Purposes of Short Sale-Related Data Collection.[1]

Table of Contents

I. Overview
A. Background
B. The Proposals
C. Overview of Proposed Rule 13f–2, Proposed Form SHO, Proposed Rule 205 and Proposed CAT Amendments
1. Overview of Comments Received
2. Final Rule 13f–2, Form SHO and CAT Amendment
II. Discussion of Final Rule 13f–2 and Form SHO
A. Final Rule 13f–2
1. Scope of Persons Covered by Final Rule 13f–2
2. Scope of Reported Securities
3. Reporting Thresholds
4. Form SHO
B. Data Aggregation and Publication of Information by the Commission
1. Proposal
2. Comments
3. Final Rule
III. Proposed Amendment to Regulation SHO To Aid Short Sale Data Collection
A. Proposed Rule 205
B. Comments
IV. Amendments to CAT
A. Proposal To Require ''Buy to Cover'' Order Marking
B. Proposal To Require Reporting of Reliance on Bona Fide Market Maker Exception
V. Other Comments
VI. Compliance Date
VII. Paperwork Reduction Act Analysis
A. Background
B. Burdens for Managers Under Rule 13f–2 and Form SHO
1. Applicable Respondents
2. Burdens and Cost
C. Burdens and Costs Associated With the Amendment to CAT
1. Summary of Collections of Information
2. Use of Information
3. Respondents
4. Total Initial and Annual Reporting and Record Keeping Burdens
D. Collection of Information Is Mandatory
E. Retention Period of Recordkeeping Requirement
F. Confidentiality
VIII. Economic Analysis
A. Introduction
B. Baseline
1. Institutional Investment Managers
2. Short Selling
3. Current Short Selling Regulations
4. Existing Short Selling Data
5. Competition
C. Economic Effects
1. Investor Protection and Market Manipulation
2. Effects on Stock Price Efficiency
3. Effect on Market Liquidity
4. Effect on Corporate Decision Making
5. Effect on the Securities Lending Market
6. Compliance Cost
7. Effect of Certain Electronic Filing and Dissemination Requirements
8. Potential Increased Use of Derivatives
D. Efficiency, Competition and Capital Formation
1. Efficiency
2. Competition
3. Capital Formation
E. Reasonable Alternatives
1. Alternative Approaches
2. Data Modifications
3. Threshold Modifications
4. Other Alternatives
IX. Regulatory Flexibility Act Certification
X. Other Matters
Statutory Authority

I. Overview

A. Background

Short selling involves a sale of a security that the seller does not own, or a sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller.[2] In order to deliver the security to the purchaser, the short seller will generally borrow the security, usually from a broker-dealer or an institutional investor, and later close out the position by purchasing equivalent securities on the open market and returning the security to the lender.

Short selling is generally used to profit from an expected downward price movement, to provide liquidity in response to unanticipated demand,[3] or

[1] *Notice of the Text of the Amendment to the National Market System Plan Governing the Consolidated Audit Trail for Purposes of Short Sale-Related Data Collection,* Exchange Act Release No. 34–98739 (Oct. 13, 2023).

[2] *See* 17 CFR 242.200(a).

[3] Market liquidity is generally provided through short selling by market professionals, such as market makers, who offset temporary imbalances in the buying and selling interest for securities. Short sales effected in the market add to the selling interest of stock available to purchasers and reduce the risk that the price paid by investors is artificially high because of a temporary contraction of selling interest. Short sellers covering their sales also may add to the buying interest of stock available to sellers. *See Amendments to Regulation SHO,* Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232, 11235 (Mar. 10, 2010) (''Rule 201 Adopting Release'').

to hedge the risk of a long position in the same security or a related security.[4] Short selling provides the market with important benefits, such as providing market liquidity and pricing efficiency.[5] While short selling can serve useful market purposes, such as facilitating price discovery, there are concerns that it could be used to drive down the price of a security, to accelerate a declining market in a security, or to manipulate stock prices.[6]

The Commission has plenary authority under section 10(a) of the Exchange Act to regulate short sales of securities as necessary or appropriate in the public interest or for the protection of investors.[7] Regulation SHO, which became effective on January 3, 2005,[8] imposes four general requirements with respect to short sales of equity securities. Under 17 CFR 242.200 (''Rule 200 of Regulation SHO''), broker-dealers must properly mark sale orders as ''long,'' ''short,'' or ''short exempt.''[9] Under 17 CFR 242.203 (''Rule 203 of Regulation SHO''), a broker-dealer must locate a source of shares that the broker-dealer reasonably believes can be delivered in time for settlement (commonly referred to as the ''locate requirement'') before effecting a short sale.[10] Under 17 CFR 242.204 (''Rule 204''), if the broker or dealer that is a member of a registered clearing agency fails to deliver the security to the registered clearing agency in time for settlement, the broker or dealer must take action to close out the failure to deliver if that failure results from a long or short sale.[11] Separately, under 17 CFR 242.201 (''Rule 201''), trading centers[12] must have policies and procedures in place to restrict short selling when a covered security has triggered a short sale price test circuit breaker.[13] In addition, the Commission adopted an antifraud provision, 17 CFR 240.10b–21 (''Rule 10b-21''), to address failures to deliver in securities that have been associated with ''naked'' short selling.[14]

Section 929X of the DFA added section 13(f)(2) of the Exchange Act, entitled ''Reports by institutional investment managers,'' requiring the Commission to prescribe rules to make certain short sale data publicly available no less frequently than monthly.[15] Specifically, section 13(f)(2) provides: ''[t]he Commission shall prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP [Committee on Uniform Securities Identification Procedures] number, aggregate amount of the number of short sales of each security, and any additional information determined by the Commission following the end of the reporting period. At a minimum, such public disclosure shall occur every month.''[16] In addition, the Commission has received multiple petitions to adopt reporting requirements for short sellers similar to those required for holders of long positions.[17]

[4] *See, Short Sales,* Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (Aug. 6, 2004) (''Regulation SHO Adopting Release'').

[5] *See, e.g.,* Phil Mackintosh, *How Short Selling Makes Markets More Efficient,* NASDAQ (Oct. 1, 2020), *available at https://www.nasdaq.com/articles/how-short-selling-makes-markets-more-efficient-2020-10-01.* Efficient markets require that prices fully reflect all buy and sell interest. Market participants who believe a stock is overvalued may engage in short sales in an attempt to profit from a perceived divergence of prices from true economic values. Such short sellers add to stock pricing efficiency in part because their transactions inform the market of their evaluation of future stock price performance. This evaluation is reflected in the resulting market price of the security. *See* Rule 201 Adopting Release, 75 FR 11235 nn. 29 & 30. Historically, short sellers have, at times, through doing research, uncovered fraudulent behavior. *See also generally* discussion in *infra* Parts VIII.C.2 and VIII.C.4.

[6] *See, e.g.,* Div. Econ. Risk Analysis, Short Sale Position and Transaction Reporting (June 5, 2014), at 6–7 (''DERA 417(a)(2) Study''), *available at https://www.sec.gov/files/short-sale-position-and-transaction-reporting0.pdf* (This is a study of the Staff of the U.S. Securities and Exchange Commission, which represents the views of Commission staff, and is not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of this study and, like all staff statements, it has no legal force or effect, does not alter or amend applicable law, and creates no new or additional obligations for any person.); Rule 201 Adopting Release, 75 FR 11235 (describing a ''bear raid'' where an equity security is sold short in an effort to drive down the price of the security by creating an imbalance of sell-side interest, as an example of unrestricted short selling that could ''exacerbate a declining market in a security by increasing pressure from the sell-side, eliminating bids, and causing a further reduction in the price of a security by creating an appearance that the security's price is falling for fundamental reasons, when the decline, or the speed of the decline, is being driven by other factors''). *See generally* discussion *infra* Part VIII.C.1.

[7] 15 U.S.C. 78j(a).

[8] *See* Regulation SHO Adopting Release.

[9] *See* 17 CFR 242.200(g). A broker or dealer must mark all sell orders of an equity security as ''long,'' ''short,'' or ''short exempt.'' A sell order may only be marked ''long'' if the seller is ''deemed to own'' the security being sold and either (i) the security to be delivered is in the physical possession or control of the broker or dealer; or (ii) it is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction. *See* 17 CFR 242.200(g). A person is deemed to own a security only to the extent that he has a net long position in such security. *See* 17 CFR 242.200(c). Once marked as long, short, or short-exempt, the order mark should not be changed regardless of any subsequent changes in the person's net position. *See In re* OZ Mgmt., Exchange Act Release No. 75445 (July 14, 2015) (settled) (discussing where OZ Management submitted short sale orders to its executing broker, but identified such sales as long sales to its prime broker, causing books and records of the prime broker to be inaccurate), *available at https://www.sec.gov/litigation/admin/2015/34-75445.pdf.*

[10] *See* 17 CFR 242.203(b)(1) and (2). The Regulation SHO locate requirement provides that broker-dealers may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker-dealer has (i) borrowed the security, or entered into a bona-fide arrangement to borrow the security; or (ii) reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) documented compliance with this requirement (''locate requirement'').

[11] *See* 17 CFR 242.204. ''Failures to deliver,'' or ''fails,'' occur when a broker-dealer fails to deliver securities to the party on the other side of the transaction on the settlement date.

[12] Trading center in Regulation SHO means a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent. 17 CFR 242.200.

[13] *See* 17 CFR 242.201.

[14] *See* ''*Naked*'' *Short Selling Antifraud Rule,* Exchange Act Release No. 58774 (Oct. 14, 2008), 73 FR 61666, 61674 (Oct. 17, 2008) (In a ''naked'' short sale, a seller does not borrow or arrange to borrow the necessary securities in time to deliver them to the buyer within the standard settlement period. Although abusive ''naked'' short selling is not defined in the federal securities laws, it refers generally to selling short without having stock available for delivery and intentionally failing to deliver stock within the standard settlement period. In addition, a seller misrepresenting its short sale locate source or ownership of shares may intend to fail to deliver securities in time for settlement and, therefore, engage in abusive ''naked'' short selling.).

[15] Public Law 111–203, sec. 929X, 124 Stat. 1376, 1870 (July 21, 2010).

[16] 15 U.S.C. 78m(f)(2).

[17] *See, e.g.,* Letter from Elizabeth King, Corporate Secretary, NYSE Group, et al. (Oct. 7, 2015, Petition 4–689) (stating that rulemaking under 929X ''provides an opportunity to implement meaningful public disclosure standards for short-sale activity, consistent with that currently required for institutional investment managers under section 13(f) of the Exchange Act for long position reporting''), *available at https://www.sec.gov/rules/petitions/2015/petn4-689.pdf*; Letter from Edward S. Knight, Executive Vice President, General Counsel and Chief Regulatory Officer, NASDAQ (Dec. 7, 2015, Petition 4–691) (requesting that the Commission ''take swift action to promulgate rules to require public disclosure by investors of short positions in parity with the disclosure regime applicable to long positions''), *available at https://www.sec.gov/rules/petitions/2015/petn4-691.pdf* (''NASDAQ Petition''); *see also* Letter from E. Carter Esham, Executive Vice President, Emerging Companies, Biotechnology Innovation Organization (BIO) (Mar. 11, 2016) (''BIO Letter'') (applauding reforms to the short disclosure framework proposed in the NASDAQ Petition and in the NYSE Petition and advocating for the promulgation of rules to ensure parity between public disclosures required of investors taking long and short positions), *available at https://www.sec.gov/comments/4-691/4691-5.pdf*; Letter from Andrew D. Demott, Jr., Chief Operating Officer, Superior Uniform Group (supporting NASDAQ Petition and advocating adoption of disclosure requirements for short sellers), *available at https://www.sec.gov/comments/4-691/4691-10.pdf.* Developments in the market with regard to ''meme'' stocks in early 2021, some of which were widely reported as involving large short sellers, also highlighted a need for more

Continued

B. The Proposals

In February 2022, in an effort to increase transparency regarding short position and short activity data to both market participants and regulators, and to address the requirements of section 13(f)(2), the Commission proposed new rule 13f–2 (''Proposed Rule 13f–2'') and related form (''Proposed Form SHO'') under the Exchange Act.[18] Proposed Rule 13f–2 would require certain institutional investment managers (''Managers'') with gross short positions that meet certain quantitative reporting thresholds to report, on a monthly basis on new Proposed Form SHO, certain short position data and short activity data for certain equity securities. Proposed Form SHO included two parts: Information Table 1–reports of information including, but not limited to, data elements explicitly referenced in section 13(f)(2), gross end-of-month short positions in equity securities that meet the reporting thresholds, and whether such positions are fully hedged, partially hedged, or not hedged; and Information Table 2–reports of information including, but not limited to, certain daily activity data (including options assignments and exercises) that affect a Manager's gross short positions during the calendar month reporting period. Managers would file Proposed Form SHO with the Commission via the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'') within 14 calendar days after the end of the calendar month. The Commission would then expect to publish on EDGAR aggregated information derived from the data reported on Proposed Form SHO within one month after the end of the reporting calendar month.

In the Proposing Release, the Commission stated that the required short sale disclosures that would be collected under Proposed Form SHO and the aggregated data published pursuant to Proposed Rule 13f–2 would increase transparency and provide several important benefits to market participants and regulators. Such aggregated information would help inform market participants regarding the overall short sale activity by reporting Managers. More information about the short sale activity and gross short positions of reporting Managers may promote greater risk management among market participants and may facilitate capital formation to the extent that greater transparency bolsters confidence in the markets. As discussed in the Proposing Release, the Commission's regular access to Proposed Form SHO data would bolster the Commission's oversight of short selling, as Proposed Rule 13f–2 and Proposed Form SHO would improve the utility of information available to the Commission and other regulators.[19]

Additionally, to supplement the short sale data made available to the Commission in Proposed Form SHO filings, the Commission proposed a new rule at 17 CFR 242.205 prescribing a ''buy to cover'' order marking requirement under Regulation SHO (''Proposed Rule 205'') for certain purchase orders effected by a broker-dealer for its own account or for the account of another person at the broker-dealer, if, at the time of order entry, the purchaser had a gross short position in such security in the account for which the purchase is being made. The Commission also proposed amendments to the NMS plan governing the CAT (''Proposed CAT Amendments'') to require the reporting of ''buy to cover'' order marking information and of reliance on the bona fide market making exception in Rule 203(b)(2)(iii) of Regulation SHO (''BFMM locate exception''). Proposed Rule 205 and the Proposed CAT Amendments were designed to fill an information gap for the Commission and other regulators by providing insights into the lifecycle of a short sale that are not available under existing data sources.[20]

C. Overview of Proposed Rule 13f–2, Proposed Form SHO, Proposed Rule 205 and Proposed CAT Amendments

1. Overview of Comments Received

The Commission received robust comment on Proposed Rule 13f–2, Proposed Form SHO, Proposed Rule 205, and the Proposed CAT Amendments (collectively, the ''Proposals''). Comments were submitted by individual investors as well as other market participants, such as trade associations, institutional investment managers, investment advisers, broker-dealers, non-profit organizations, and academicians. These comments, which are discussed in context below, included a variety of different viewpoints on various aspects of the Proposals.[21] Many commenters were supportive of the Proposals as a step toward increasing transparency into short sale activity.[22] Many commenters stated that short selling is a particularly opaque area of the market and that increasing transparency regarding short selling would be beneficial to market participants.[23]

consistent and consolidated short sale information. *See, e.g.,* Robert Smith et al., ''*Short Squeeze*'' *Spreads as Day Traders Hunt Next GameStop,* Fin. Times (Jan. 27, 2021), *available at https://www.ft.com/content/acc1dbfe-80a4-4b63-90dd-05f27f21ceb2*; *Are* ''*Meme Stocks*'' *Harmless Fun, or A Threat to the Financial Old Guard?*, Economist (July 6, 2021) (retrieved from Factiva database). *See also* Sharon Nunn & Adam Kulam, *Short-Selling Restrictions During Covid–19,* Yale Sch. of Mgmt., Program on Fin. Stability (Jan. 12, 2021), *available at https://som.yale.edu/story/2021/short-selling-restrictions-during-covid-19* (discussing global short selling regulatory responses to the Covid–19 pandemic).

[18] *Short Position and Short Activity Reporting by Institutional Investment Managers,* Exchange Act Release No. 34–94313 (Feb. 25, 2022), 87 FR 14950 (Mar. 16, 2022) (''Proposing Release'').

[19] Proposing Release, at 14951.

[20] Because data obtained through CAT are not made public, the ''buy to cover'' and ''bona fide market making'' data reported pursuant to the Proposed CAT Amendments would not be made publicly available as a result of such reporting.

[21] The comment letters on the Proposing Release (File No. S7–08–22) are available at *https://www.sec.gov/comments/s7-08-22/s70822.htm.* Over 98% of the over 3,000 comments received were from individual investors, most of whom (over 1,900) submitted a variation of a template letter from ''We The Investors,'' an advocacy group for retail investors. The remaining comments were from trade associations, financial services firms—including institutional investment managers and investment management firms, broker-dealers—and their advisors, non-profit organizations, academicians, and entities other than individual investors. *See* Comment Letter from We the Investors, *available at https://www.sec.gov/comments/s7-08-22/s70822-typea.pdf* (''WTI Letter'').

[22] *See, e.g.,* Comment from Samuel Hudock (Mar. 2, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20118373-271244.htm;* Comment from Michelle R. Bracke (Mar. 4, 2022) *available at https://www.sec.gov/comments/s7-08-22/s70822-20118531-271417.htm;* Comment from Joshua Barbee (Mar. 4, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20118530-271416.htm;* Comment from Robert Ross (Mar. 14, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20119365-272251.htm;* Comment from David Arkules (Feb. 28, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20118071-270876.htm;* Comment from Gina Preziosi (Mar. 7, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20118726-271589.htm;* Comment from Jessica Cooke (Mar. 9, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20118963-271791.htm;* Comment from Mauricio Gonzalez (Oct. 12, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-310835.htm;* Comment from Liam Sutton (Oct. 19, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-311965.htm;* Comment from Nicholas Graham (Oct. 19, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-312051.htm;* Comment from Steffen Maier (Oct. 19, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-312049.htm;* Comment from Zachary D'Elia (Oct. 19, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-312047.htm;* Comment from Stephen Leachman (Oct. 19, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-312046.htm;* Comment from Sergio Herrera (Oct. 19, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-312042.htm;* Comment from David P. Miller Jr. (Oct. 19, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-312038.htm.*

[23] *See, e.g.,* Comment from William Bloxham (Oct. 21, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-313372.htm;* Comment from Ricardo Gomez (Oct. 29, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-316604.htm;* Comment from Victor Arriaza (Oct. 29,

Some of these commenters stated that the increased information regarding short sales would allow investors to be better informed and make better investment decisions.[24] A number of these commenters urged the Commission to strengthen the proposed reporting requirements further by, for example, lowering or eliminating the thresholds triggering reporting obligations under Proposed Rule 13f–2.[25]

As discussed in further detail below, some commenters recommended changes to the Proposals in response to their concerns about: the scope of Proposed Rule 13f–2; the underlying approach and levels of the proposed thresholds that would trigger a reporting obligation under Proposed Rule 13f–2; the feasibility of operationalizing Proposed Rule 205 in a manner that would result in the gathering of meaningful short sale-related data; and the necessity for the Proposed CAT Amendments.

Some commenters stated that the Commission did not sufficiently articulate the benefits of, or regulatory justification for, the Proposals and did not accurately estimate or adequately justify the costs and impacts of the new reporting requirements.[26] Some of these commenters expressed concern that the Proposing Release's Economic Analysis did not adequately estimate the costs and burdens of the Proposals.[27]

2. Final Rule 13f–2, Form SHO and CAT Amendment

For the reasons discussed more fully in Parts II–IV below, and to balance implementation and compliance costs and burdens with the Commission's goal of enhancing transparency regarding short selling, the Commission is adopting Rule 13f–2 and related Form SHO with certain modifications in response to comments.[28] The new reporting regime of Rule 13f–2 provides disclosures that supplement the short sale-related information that currently is publicly available or accessible for a fee from existing short sale reporting regimes provided by some registered national securities exchanges (''exchanges'') and registered national securities associations (''RNSAs'').[29]

Final Rule 13f–2 will require Managers (defined in section 13(f)(6)(A) of the Exchange Act) to report to the Commission, on a monthly basis on related Form SHO, certain short position data and short activity data for certain equity securities. In particular:

- On the Cover Page of Form SHO, Managers will be required to report certain basic information including its name, mailing address, business telephone number and business email, as well as the name, title, business telephone number and business email of the Manager's contact employee for the Form SHO report; and the date the report is filed. The Manager will also provide its non-lapsed Legal Entity Identifier (''LEI'') if it has one. If other Managers are required to be listed in the ''Other Manager(s) Reporting for this Manager'' section of the Cover Page, the Manager will also be required to include the name and non-lapsed LEI of each such ''Other Manager'' listed, if the LEI of such ''Other Manager(s)'' is available to the Manager filing the Form SHO report.
- With regard to each individual equity security reported on by Managers

2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-316625.htm;* Comment from Kyle Byrd (Oct. 29, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-316701.htm;* Comment from Tarek Elseweifi (Oct. 29, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-316706.htm;* Comment from Clay Wyant (Oct. 29, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-316708.htm;* Comment from Yin Hung Lam (Oct. 29, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-316601.htm;* Comment from Evan Anderson (Oct. 29, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-316580.htm;* Comment from Connor Judson (Oct. 29, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-316599.htm;* Comment from Nicky (Oct. 29, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-316638.htm.*

[24] *See, e.g.,* Comment from Eric Mills (April 27, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20126810-287520.htm* (''[T]he proposals will serve the mission of the SEC by increasing transparency regarding short selling activity. On-going efforts by the SEC to increase market transparency and relieve information asymmetries promote efficiency, order, fairness, capital formation, and public trust. The result is an enhancement of investor ability to assess the market and make more informed decisions.''); Comment from Stanley Little (Mar. 8, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20118870-271692.htm* (''The proposed rule is a[n] important missing link for investors. The ordinary person wishing to make money in the stock market should have all available information at their disposal to make informed decisions . . . The transparency rule is such a tool needed to make well informed decisions.''); Comment from Brendon Withers (Feb, 27, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20118078-270936.htm* (supported ''immediate implementation [of the proposals] to improve the US Stock Market and provide a more fair and free system in which market participants can have accurate information and make informed decisions based on CURRENT AND ACCURATE data.'').

[25] *See, e.g.,* Letter from Stephen W. Hall, Legal Director and Securities Specialist, Better Markets, et al. (Apr. 26, 2022), at 12, *available at https://www.sec.gov/comments/s7-08-22/s70822-20126822-287528.pdf* (''[T]the SEC should eliminate the proposed thresholds so as to reduce or eliminate the risk that unknown, hidden short positions could pose to investors and the markets.'') (''Better Markets Letter''); Comment from Matthew Sinex (Oct. 31, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-317106.htm;* Comment from Noah Tewahade (Oct. 30, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-317046.htm;* Comment from Luke Dansie (Oct. 31, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-317081.htm;* Comment from Mike Flowers (Oct. 30, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-317245.htm;* Comment Letter from Katherine Lander (Oct. 30, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-317266.htm;* Comment from Marco Alvarenga (Oct. 31, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-316992.htm;* Comment Letter from Erikka Jehle (Oct. 31, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-316930.htm.*

[26] *E.g.,* Comment Letter from Robert Toomey, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, et al. (Apr. 26, 2022), at 3, *available at https://www.sec.gov/comments/s7-08-22/s70822-20126803-287514.pdf* (''SIFMA Letter'') (''SIFMA is concerned that such an expansive reporting regime would impose burdens and costs on reporting parties that would materially outweigh the benefit of the information they might yield, and that the SEC has not provided justification for why such information is necessary and/or cannot already be obtained through other means available to the SEC''); *see also,* Comment Letter from Thomas M. Merritt, Deputy General Counsel, Virtu Financial (Apr. 26, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20126856-287588.pdf* (''Virtu Letter''); Comment Letter from Thomas Deinet, Executive Director, Standards Board for Alternative Investments (Apr. 26, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20126850-287575.pdf* (''SBAI Letter''); Comment Letter from Matthew B. Siano, Managing Director and General Counsel, Two Sigma (Apr. 26, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20126808-287518.pdf* (''Two Sigma Letter''); Comment Letter from Richard F. Kerr, Partner, K&L Gates LLP (Apr. 26, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20126848-287571.pdf* (''K&L Gates Letter'').

[27] *See, e.g.,* SIFMA Letter, at 6 n. 15 (''SIFMA is concerned that the SEC's economic analysis of the Proposed Rules does not adequately consider that the sum total of the proposed requirements may result in a burden that far exceeds the SEC's estimates with respect to each individual component . . .''); Comment Letter from Jennifer Han, Executive Vice President, Chief Counsel and Head of Regulatory Affairs, Managed Funds Association (Apr. 26, 2022), at 7, 19, *available at https://www.sec.gov/comments/s7-08-22/s70822-20126815-287523.pdf* (''MFA Letter'') (''[T]he SEC's economic analysis and, specifically, the Proposal's estimated costs are materially understated.''); Comment Letter from Mark A. Steffensen, Senior Executive Vice President and General Counsel, HSBC North American Holdings Inc. and HSBC Bank USA, N.A. (Jan. 24, 2023), at 15 n. 53, *available at https://www.sec.gov/comments/s7-08-22/s70822-20155771-324031.pdf* (''HSBC Letter'') (''We [ ] do not believe that the Commission's economic analysis adequately considers the costs of Proposed Rule 13f–2 to market makers.'').

[28] Rule 13f–2 and Form SHO, as adopted, are responsive to the policy recommendations to increase transparency around short selling activities and improve short sale data of participants in the Government-Business Forums on Small Business Capital Formation held by the Commission in recent years. *See, e.g.,* Report on the Report on the 41st Annual Small Business Forum, at 22, *available at* 2022 OASB Annual Forum Report (sec.gov); Report on the Report on the 40th Annual Small Business Forum, at 25, *available at https://www.sec.gov/files/2021_OASB_Annual_Forum_Report_FINAL_508.pdf.*

[29] *See infra* Part II.A.4. *See also* Proposing Release, at 14964–65.

in the Information Tables of Form SHO, Managers will report: the issuer's name and LEI if it has one, and the equity security's title of class, CUSIP, and Financial Instrument Global Identifier (''FIGI'') (if any has been assigned).[30]

• With regard to Information Table 1 of Form SHO, the Manager will also report the number of shares of the reported equity security that represent the Managers' gross short position at the close of the last settlement date of the calendar month reporting period, as well as the corresponding U.S. dollar value of this reported gross short position.

• With regard to Information Table 2 of Form SHO, for each reported equity security, for each individual settlement date during the calendar month reporting period, a Manager will report ''net'' activity in the reported equity security. The net activity reported by a Manager will be expressed by a single identified number of shares of the reported equity security, and will reflect offsetting purchase and sale activity by Managers. A positive number of shares identified will indicate net purchase activity in the equity security on the specified settlement date, while a negative number of shares identified will indicate net sale activity in the equity security on the specified settlement date.

Managers will report such information regarding each equity security if the following thresholds are met:

• With respect to any equity security that is of a class of securities that is registered pursuant to Exchange Act section 12 [31] or for which the issuer of that class of securities is required to file reports pursuant to Exchange Act section 15(d) [32] (a ''reporting company issuer'') in which the Manager meets or exceeds either: (1) a monthly average of daily gross short positions at the close of regular trading hours in the equity security with a U.S. dollar value of $10 million or more, or (2) a monthly average of daily gross short positions at the close of regular trading hours as a percentage of shares outstanding in the equity security of 2.5 percent or more (''Threshold A'').

• With respect to any equity security that is of a class of securities of an issuer that is not a reporting company issuer as described above (a ''non-reporting company issuer'') in which the Manager meets or exceeds a gross short position in the equity security with a U.S. dollar value of $500,000 or more at the close of regular trading hours on any settlement date during the calendar month. (''Threshold B'').

The Commission will then publish aggregate information as follows:

• With regard to Information Table 1 of Form SHO, the Commission will publish, for each class of equity securities, as an aggregated number of shares across all reporting Managers, the number of shares of the reported equity security that represent the Managers' gross short position at the close of the last settlement date of the calendar month, as well as the corresponding aggregated U.S. dollar value of this reported gross short position.

• With regard to Information Table 2 of Form SHO, for each reported equity security, for each individual settlement date during the calendar month, the Commission will publish the net activity in the reported equity security, as aggregated across all reporting Managers.

The Commission is also adopting, substantially as proposed, the amendment to the CAT NMS Plan to require broker-dealers with a reporting obligation to CAT, to report whether an original receipt or origination of an order to sell an equity security is a short sale for which a market maker is claiming the BFMM locate exception. However, for the reasons discussed below, the Commission is not adopting Proposed Rule 205 or the CAT ''buy to cover'' reporting requirements.

Changes Made to the Proposals: In response to comments, and as discussed in more detail below, the Commission is modifying the proposal generally by:

• Streamlining Form SHO reports by not adopting as proposed the requirement to report hedging classifications on Information Table 1, and by requiring a lower level of granularity of reporting on Information Table 2; [33]

• Adjusting the calculation of the dollar value prong of the reporting threshold for equity securities of reporting company issuers (*i.e.,* Threshold A) to be based on a monthly average of daily gross short positions rather than the proposed daily calculation;

• Requiring in Rule 13f–2 and in the instructions to Form SHO that, for purposes of determining whether a Manager meets or exceeds a reporting threshold, a Manager shall determine its gross short position ''at the close of regular trading hours'' in the equity security, rather than at the ''end of day'' as was provided for in the instructions to Proposed Form SHO;

• Not adopting Proposed Rule 205 and, consequently, not adopting the Proposed CAT Amendment requiring a ''buy to cover'' order mark in order receipts and order origination reports submitted to the CAT; and

• Making modifications to the text of Rule 13f–2 and the instructions to Form SHO to provide context and enhance comprehensibility, such as—adding a reference in the definition of ''gross short position'' to ''short sales'' as defined in Rule 200(a) of Regulation SHO and making minor adjustments to phrasing in the definition; [34] adding language to the rule text to more precisely describe the equity securities for which information is reported in final Form SHO; [35] deleting the superfluous word ''collectively'' from the rule text to enhance overall readability; replacing the term ''active LEI'' on Proposed Form SHO with ''non-lapsed LEI'' [36] on final Form SHO; updating the contact information to be provided on the final Form SHO cover page,[37] and making corresponding modifications to conform the text of Rule 13f–2 and the instructions to Form SHO.

• Making non-substantive, technical changes to correct inadvertent

[30] *See infra* nn. 36 & 218.

[31] 15 U.S.C. 78*l*.

[32] 15 U.S.C. 78*o*(d).

[33] Because the proposed rule and form called for publication of only ''net'' activity based on the information reported in Information Table 2, this change in information reported on Form SHO as adopted does not affect the information published by the Commission from information derived from the Form SHO reports.

[34] Specifically, we made a non-substantive revision to change the word ''including'' to ''such as'' and removed the amphibological comma.

[35] To affirm that the Rule 13f–2 requirements apply to each class of an equity security about which information is being reported on Form SHO, and to more accurately indicate that classes of securities, not issuers, are registered pursuant to section 12 of the Exchange Act, Rules 13(a)(1) and Rule 13(a)(2) have been revised to refer to ''each equity security *that is of a class of securities*'' rather than ''each equity security of an issuer . . . .'' This distinction by class of security is also consistent with CUSIP procedures, under which, we understand, different classes of stock have distinct identifying codes. Rule 13f–2 requires that Managers provide CUSIP numbers for equity securities for which information is reported on Form SHO.

[36] For greater precision in the terminology used in Form SHO as adopted, an LEI that is currently in effect is referred to as a ''non-lapsed LEI,'' rather than an ''active LEI'' (the terminology used in Proposed Form SHO), of a Manager. A non-lapsed LEI is an LEI for which the Manager is current on its periodic renewal fees needed to maintain the LEI. Further, to avoid any suggestion that a Manager filing a Form SHO report has an obligation to monitor the status of an issuer's LEI, Instructions 8.c and 9.c of Form SHO—''Column 3. Issuer LEI. If the issuer has an LEI, enter the issuer's active LEI''—have been revised to remove the term ''active.''

[37] The required Form SHO Cover Page contact information for the reporting Manager and its ''Contact Employee'' has been updated to reflect the greater reliance on the communication technology of email rather than facsimile.

grammatical errors in the text of the adopted amendment to the CAT NMS Plan that requires a broker-dealer with a reporting obligation to CAT to indicate whether an order is a short sale effected by a market maker in connection with bona fide market making activities for which the BFMM locate exception is claimed.[38]

II. Discussion of Final Rule 13f–2 and Form SHO

A. Final Rule 13f–2

1. Scope of Persons Covered by Final Rule 13f–2

a. Proposal

Exchange Act section 13(f) pertains to ''Reports by Institutional Investment Managers.'' [39] Proposed Rule 13f–2 would have required Managers to collect and file with the Commission via EDGAR certain short sale-related data on proposed Form SHO, within fourteen (14) calendar days after the end of each calendar month, with regard to each equity security over which the Manager and all accounts over which the Manager (or any other person under the Manager's control) has investment discretion [40] that meet or exceed a quantitative reporting threshold (''Reporting Threshold'').

As defined in section 13(f)(6)(A) of the Exchange Act and for purposes of Proposed Rule 13f–2, ''institutional investment manager'' includes any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person.[41] As such, the term ''institutional investment manager'' typically can include brokers and dealers, investment advisers, banks, insurance companies, pension funds and corporations.[42]

Proposed Rule 13f–2(b)(3) states that ''investment discretion'' has the same meaning as in 17 CFR 240.13f–1(b) (''Rule 13f–1(b) under the Exchange Act''),[43] and Rule 13f–1(b) states that ''investment discretion'' has the same meaning as in section 3(a)(35) of the Exchange Act. Rule 13f–1(b)'s definition is comprehensive in that it covers all accounts over which the Manager, or any person under the Manager's control, has investment discretion. This same definition of investment discretion was used by the Commission in adopting 17 CFR 240.10a–3T (''interim final temporary Rule 10a–3T'') in 2008, which required certain Managers to file weekly nonpublic reports with the Commission on Form SH regarding short sales and positions.[44] In addition, the Rule 13f–1(b) definition of investment discretion is used for Form 13F ''long'' position reporting by certain Managers.[45]

b. Comments and Final Rule

One commenter encouraged the Commission to expand the scope of market participants subject to reporting under Proposed Rule 13f–2 ''beyond just Managers.'' [46] This commenter believed the Commission's determination ''to omit a large group of market participants from Proposed Rule 13f–2's scope will negatively affect the completeness and analytical sufficiency of the aggregated and disclosed short sale data, impeding the Commission's ability to accurately reconstruct significant or unusual market events.'' [47] This commenter believed that omitting a large group of market participants would ''not provide the Commission with full visibility into the short sale market that it could otherwise achieve pursuant to Proposed Rule 13f–2'' and believed that an ''artificially narrow scope will not further the Commission's stated goals of providing greater transparency and filling the information gaps for market participants and regulators.'' [48] This commenter, however, did not identify what market participants were being omitted under the proposal and that should otherwise be included.

As a potential alternative to Proposed Rule 13f–2, however, this commenter suggested, in part, that the current FINRA short interest reporting regime could be enhanced, and subsequently codified, to address potential limitations in the currently available short sale-related data. However, because FINRA's short interest reporting is applicable only to broker-dealers that are FINRA member firms, Managers represent a more diverse group of market participants than is required under FINRA reporting (as was suggested as a potential alternative by the commenter). As stated above, Managers typically can include various market participants, including brokers and dealers, as well as investment advisers, banks, insurance companies, pension funds and corporations. Accordingly, the Commission is adopting as proposed Rule 13f–2(b)(1) to define institutional investment managers as having the same meaning as in Exchange Act section 13(f)(6)(A). Short sale-related data reported by Managers on Form SHO will provide additional context to, and otherwise supplement, currently available data by, for example, distinguishing directional short selling of Managers from short sale activity effected by market makers and liquidity providers. This approach should reduce the reporting of non-directional, ''transient'' short sales activity and provide market participants with more focused information on substantial short positions held by Managers.

Another commenter suggested that the Commission consider an exemption for certain types of Managers that do not regularly utilize short positions or that only utilize short positions for passive investing purposes.[49] By capturing short sale-related data from Managers who hold substantial gross short positions—regardless of the purpose for which they utilize short positions, the reporting regime of Rule 13f–2 will enhance transparency and provide useful information to market participants regarding overall short sale activity. Furthermore, having the reporting obligation under Rule 13f–2 triggered by a reporting threshold that is calculated based on a monthly average of daily gross short positions in certain equity securities, rather than the proposed

[38] Specifically, the preposition ''for'' was added before ''a short sale'' to clarify that reporting is required for a short sale in which the bona fide market maker exception is claimed, the article ''the'' was added before ''exception,'' and the preposition ''in'' was added before ''Rule 203(b)(2)(iii)'' to clarify that the BFMM locate exception is found in Rule 203(b)(2)(iii).

[39] 15 U.S.C. 78m(f).

[40] *See* Proposed Rule 13f–2(b)(3).

[41] *See* Proposed Rule 13f–2(b)(1).

[42] *See also* Instructions to Form 13F.

[43] *See* 17 CFR 240.13f–1(b).

[44] *See infra* discussion in Part II.A.3.a.

[45] *See* Form 13F (*sec.gov*), *available at https://www.sec.gov/pdf/form13f.pdf.*

[46] *See* Comment Letter from the Alternative Investment Management Association Ltd (Apr. 26, 2022), at 10–11, *available at https://www.sec.gov/comments/s7-08-22/s70822-20126829-287533.pdf* (''AIMA Letter''); *see also* SBAI Letter, at 3 (stating that the proposed reporting only includes Managers, which would not provide a complete perspective of shorting activity). In raising concerns about reporting and monitoring burdens imposed by the reporting regime of Proposed Rule 13f–2, other commenters, however, did not question the application of the proposed rule to institutional investment managers.

[47] AIMA Letter, at 11.

[48] *Id.*

[49] *See* Comment Letter from Valerie Dahiya, Partner, Perkins Coie LLP (Apr. 26, 2022), at 3, *available at https://www.sec.gov/comments/s7-08-22/s70822-20126839-287549.pdf* (''Perkins Coie Letter'') (stating that ''for institutional investment managers that only selectively utilize short positions, or who only do so passively, these additional compliance costs in relation to the institutional investment manager's usage of short positions could in turn impose untended risks to the manager's underlying investors if the institutional investment manager must divert additional time and resources for compliance and oversight'').

daily calculation,[50] is designed in part to alleviate concerns for Managers who only occasionally meet or exceed the prescribed reporting thresholds.

In addition, the Commission did not receive any comments regarding the definition of ''investment discretion'' as proposed. The Commission is adopting Rule 13f–2(b)(3) as proposed to define the term ''investment discretion'' as having the same meaning as in Rule 13f–1(b) (which, among other things, incorporates the definition in section 3(a)(35) of the Exchange Act). In addition, Managers that will file reports on adopted Form SHO likely have experience reporting on Form 13F, for which this same definition is used.[51]

2. Scope of Reported Securities

a. Proposal

Under the proposed rule, a Manager would have had to file a Form SHO report with regard to:

- Any equity security of an issuer that is registered pursuant to section 12 of the Exchange Act [52] or for which the issuer is required to file reports pursuant to section 15(d) of the Exchange Act [53] in which the Manager meets or exceeds either (1) a gross short position in the equity security with a U.S. dollar value of $10 million or more at the close of regular trading hours on any settlement date during the calendar month; or (2) a monthly average gross short position as a percentage of shares outstanding in the equity security of 2.5 percent or more (Threshold A); and
- Any equity security of an issuer that is not a reporting company issuer as described above in which the Manager meets or exceeds a gross short position in the equity security with a U.S. dollar value of $500,000 or more at the close of regular trading hours on any settlement date during the calendar month (Threshold B).

As proposed, the reporting thresholds in Rule 13f–2(a)(1) and (2) (each a ''Proposed Reporting Threshold'') applied to equity securities, as the term ''equity security'' is defined in section 3(a)(11) of the Exchange Act [54] and 17 CFR 240.3a11–1 (''Rule 3a11–1'').[55] This scope, which included both exchange-listed and over-the-counter securities, is consistent with the securities to which Rules 200, 203, and 204 of Regulation SHO apply.[56] The proposed scope would have included exchange-traded fund (''ETF'') securities, but would not have required Managers, in calculating a Proposed Reporting Threshold or Form SHO data, to consider short positions the ETF held in individual underlying equity securities.[57] And because the Proposed Reporting Thresholds were based on a Manager's gross short position in the underlying equity security itself, the proposed rule would not have required the Manager to account for derivative exposure as part of the threshold calculation for the underlying equity security, but would have required Managers to report certain changes in their gross equity short positions derived from acquiring or selling the equity in connection with derivative activity, such as exercising an option.[58]

b. Comments and Final Rule

The Commission received several comments on Proposed Rule 13f–2's and Proposed Form SHO's proposed scope of securities, with commenters expressing a variety of views. Most commenters took an expansive view, exemplified by one such commenter's statement that ''all different securities and ETFs should be required to report all short sale data. The more information that is available to every investor and the Commission the better.'' [59] As discussed below, other commenters, by contrast, recommended narrowing the universe of ''in scope'' securities by, for example, aligning with similar Commission reporting and public dissemination regimes, limiting the scope to securities of U.S. reporting companies, or excluding ETFs, options and warrants and other convertibles, and derivatives. Some commenters focused on the impact on implementation and compliance costs related to Proposed Rule 13f–2 reporting requirements and recommended that derivatives, options, warrants and other convertibles, and ETFs be excluded from the scope of equity securities subject to Proposed Rule 13f–2 reporting requirements.[60]

Comments on the Scope of Covered Securities

Most commenters supported the applicability of Proposed Rule 13f–2 to short positions in ETFs, some expressing specific concerns about ''improper'' use of ETFs to leverage short positions.[61] However, one commenter advocating for the exclusion of ETFs from the universe of ''in-scope'' securities stated that, in most circumstances, Managers short ETFs largely for hedging purposes and not for the same reasons that Managers short stocks of reporting company issuers; this commenter stated that such information ''will provide the public, and the SEC, very little in terms of useful information.'' [62]

The Commission disagrees with the commenter that reporting about gross short positions in ETFs will not provide useful information to the public and the Commission. Establishing short positions in an ETF can provide short exposure to a diverse set of equity securities or create a directional short strategy such as leveraged shorting. Because of their multipurpose nature, ETFs are a substantial piece of the short-

[50] *See infra* Part II.A.3 for more discussion of the reporting thresholds in Proposed Rule 13f–2 and Rule 13f–2 as adopted.

[51] *See infra* Part VIII.B.1. Registered investment advisers, particularly those managing hedge funds, are the primary Managers likely to be affected by Rule 13f–2.

[52] 15 U.S.C. 78*l*.

[53] 15 U.S.C. 78*o*(d).

[54] Section 3(a)(11) of the Exchange Act defines ''equity security'' as any stock or similar security or any security future on any such security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security. 15 U.S.C. 78c(a)(11).

[55] *See* Proposing Release, at 14956 n.59.

[56] *See* Regulation SHO Adopting Release, at 48012.

[57] Proposing Release, at 14958.

[58] As stated in the Proposing Release, the Commission believed this proposed approach balances Managers' reporting costs with the utility such data provides to regulators. *See* Proposing Release, at 14962.

[59] Comment from Samuel Meadows (Mar. 26, 2022), at 1, *available at https://www.sec.gov/comments/s7-08-22/s70822-273456.htm* (''Samuel Meadows Comment'').

[60] *See, e.g.,* MFA Letter, at 11–12 (recommending that, to simplify compliance, provide clarity, and reduce costs, Commission should limit the reporting requirements to stocks of U.S. reporting company issuers, and exclude derivatives and ETFs); SIFMA Letter, at 20 (recommending reduction of compliance costs by creating a list of equity securities that would be subject to Proposed Rule 13f–2 reporting requirements that would exclude ''extraneous securities, such as options, warrants, convertibles, and ETFs''); Comment Letter from Frank Vivirito, Compliance Officer, XR Securities LLC (Apr. 25, 2022), at 2 (''XR Securities Letter'') (stating ''I feel strongly that highly liquid, higher priced, active and efficient ETFs (and perhaps even some single name equities) with limited or no settlement issues'' should be excluded from Proposed Rule 13f–2 reporting requirements).

[61] *See, e.g.,* Comment Letter from Nick Dougherty (Mar. 27, 2022), at 2, *available at https://www.sec.gov/comments/s7-08-22/s70822-20121466-273451.pdf* (''Nick Dougherty Letter''); Anonymously Submitted Comment (Mar. 21, 2022), at 1, *available at https://www.sec.gov/comments/s7-08-22/s70822-20120739-272894.pdf. See generally,* Anonymously Submitted Comment (Mar. 21, 2022), at 2, *available at https://www.sec.gov/comments/s7-08-22/s70822-20122297-278355.htm* (recommending that ''[a]ll securities, including ETFs, OTC stocks, swaps etc. should have their positions data recorded and submitted to the SEC daily''); Samuel Meadows Comment, at 1 (''I strongly believe that all different securities and ETFs should be required to report all short sale data.'').

[62] MFA Letter, at 12.

side market.[63] ETFs are subject to the requirements of Regulation SHO, and there is a benefit to applying the Rule 13f–2 reporting requirements to the same universe of securities subject to the Commission's short sale rules. Further, short sale-related data regarding ETFs will provide important transparency to a significant segment of market activity to both the marketplace and regulators alike.[64]

Some commenters recommended that fixed-income securities be added to the proposed scope of securities.[65] These commenters believed that all investment vehicles, including fixed income securities, should be included within the scope of securities subject to potential reporting. These commenters generally believed that short positions in fixed income securities would provide additional transparency to the marketplace. One of these commenters believed that fixed income securities should be included under the rule because ''bonds play a large role in market activities, along with the repo market'' and that ''corporate bond borrowing data provides an unparalleled insight into short positioning at a security and issuer level.'' [66]

Fixed income securities are not subject to the Commission's short sale rules. Market participants, including Managers, are currently accustomed to complying with the short sale rules with regard to equity securities that meet the definition of short sales in Rule 200(a) of Regulation SHO.[67] Further, the self-regulatory organizations (''SROs'') currently collect and provide data on short sales of equity securities as defined by Rule 200(a) of Regulation SHO. Consistent with the discussion in the Proposing Release, the aggregated short sale-related data that will be published by the Commission under Rule 13f–2 will provide additional context to market participants regarding equity securities that are subject to the requirements of Regulation SHO.[68] For these reasons, the Commission is not including fixed income securities.

Some commenters also recommended excluding options, warrants, and other convertibles from the rule.[69] Other commenters recommended that derivatives be included within the scope of Proposed Rule 13f–2 [70]–including those not within the definition of equity security in section 3(a)(11) of the Exchange Act and Rule 3a11–1 thereunder.[71]

Certain derivatives, options, warrants, and convertibles are themselves equity securities for purposes of section 3(a)(11) of the Exchange Act and Rule 3a11–1 thereunder, and therefore for purposes of final Rule 13f–1.[72] Derivatives and other securities that are not equity securities within the definitions of section 3(a)(11) of the Exchange Act and Rule 3a11–1 thereunder, are not within the scope of the rule. Managers are currently accustomed to complying with requirements for equity securities under Rule 200(a) of Regulation SHO. The Commission is not including derivatives and other securities that are not equity securities under the definitions of section 3(a)(11) of the Exchange Act and Rule 3a11–1 thereunder. Many commenters who requested that derivatives be included expressed concern that derivatives could be used to create substantial economic short positions, while avoiding Proposed Rule 13f–2's reporting requirements.[73] The Commission recognizes, as it did in the Proposing Release, that there is a risk that Rule 13f–2 could be a catalyst for growth in markets of economic equivalents of underlying equity securities as short sellers look for new avenues to take the economic equivalent of short positions while avoiding these proposed reporting requirements.[74] Managers do not have to account for economic exposure to an underlying equity security created through the use of equity derivatives when calculating the reporting thresholds for reporting short sales of that underlying equity security. However, once a Manager meets or exceeds a reporting threshold for an underlying equity security, the Manager will then be required to report certain short activity for each settlement date during the reporting calendar month, and that disclosure will take into account activity in options, tendered conversions, secondary offering transactions,[75] and other equity derivatives or activity that might affect the reported short positions on Form SHO, as discussed further below.[76] Managers must also report gross short positions of each equity security resulting from short sales as defined in Rule 200(a) of Regulation SHO to the extent the Manager's positions meet the relevant thresholds.[77] Finally, large

[63] ETFs are a popular trading tool that can be used in various ways, including, for example, to hedge a long position, or to establish a directional short position. *See Exchange-Traded Funds,* Investment Company Act Release No. 33646 (Sept. 25, 2019), 84 FR 57162 (Oct. 24, 2019) (''[ETFs] have become a popular trading tool, making up a significant portion of secondary market equities trading.''). *See also* Giovanny Moriano & Brian Baker, *Best inverse and short ETFs—here's what to know before buying them,* Bankrate (Feb. 16, 2023), *available at https://www.bankrate.com/investing/best-inverse-etfs/* (describing traders' use of short ETFs to hedge against falling prices in other positions, to make directional bets on securities or indexes, or to magnify returns through leveraged short ETFs); *The Renaissance of ETFs,* Oliver Wyman (2023), *available at https://www.oliverwyman.com/our-expertise/insights/2023/may/exchange-traded-funds-are-fueling-market-opportunities.html* (stating ''As of the end of December 2022, total ETF assets under management (AUM) have reached $6.7 trillion across the US and Europe, growing at approximately 15% compound annual growth rate (CAGR) since 2010. . . . We expect a significant part of this growth to come from active ETFs.''). Active ETFs can include inverse and short ETFs that seek to use short strategies or leverage.

[64] *See Experiences of US Exchange-Traded Funds During the COVID–19 Crisis,* Inv. Co. Inst. (Oct. 2020), *available* at *https://www.sec.gov/comments/credit-market-interconnectedness/cll10-2.pdf* (''Early in 2020, . . . ETF trading volume accounted for between 20 and 30 percent of total stock market trading on a daily basis . . . .''); *see also* Richard B. Evans et al., *ETF Short Interest and Failures-to-Deliver: Naked Short-Selling or Operational Shorting?,* U. Pa. Wharton Sch. (Jan. 2018), *available at https://jacobslevycenter.wharton.upenn.edu/wp-content/uploads/2018/08/ETF-Short-Interest-and-Failures-to-Deliver.pdf* (stating that ETFs constitute roughly 10% of U.S. equity market capitalization but over 20% of short interest, and that short interest for the ETF market has increased steadily over several years).

[65] *See, e.g.,* Nick Dougherty Letter (Mar. 27, 2022), at 3 (stating that ''fixed income securities should be included under Proposed rule 13f–2''); Anonymously submitted Comment (Mar. 21, 2022), at 1, *available at https://www.sec.gov/comments/s7-08-22/s70822-20120739-272894.pdf.*

[66] Anonymously submitted Comment (Mar. 21, 2022), at 1, *available at https://www.sec.gov/comments/s7-08-22/s70822-20120739-272894.pdf.*

[67] *See* Proposing Release, at 14956 n.59.

[68] *See id.* at 14956.

[69] SIFMA Letter, at 20.

[70] *See, e.g.,* Better Markets Letter, at 9 (stating that ''[i]n order for the final rule to actually serve its purpose, it must require that institutional investment managers include their short interest that arises from derivatives positions''); WTI Letter, at 4 (stating that not including derivatives contracts such as options and security-based swaps is a ''huge hole that must be remedied'' and ''will inevitably result in firms exploiting the loophole . . .''); Samuel Meadows Comment, at 1 (stating that ''[a]ny and all Short positions resulting from derivatives should be included in whether they meet a Reporting Threshold'').

[71] *See supra* nn. 54 & 55 and accompanying text; *see generally* Part II.A.2.a.

[72] *Id.*

[73] *See, e.g.,* Comment Letter from Oliver Davies, Apr. 20, 2022, *available at https://www.sec.gov/comments/s7-08-22/s70822-20124155-280554.htm* (expressing concern that ''funds are using complex derivative positions like options and swaps to hide their true short positions''); Anonymously submitted Comment, Mar. 14, 2022, *available at https://www.sec.gov/comments/s7-08-22/s70822-20119368-272254.htm* (positing that excluding derivative positions can create opportunities to avoid triggering the reporting thresholds through other economically equivalent instruments).

[74] *See infra* Part VIII.C.8; *see also* Proposing Release, at 15001.

[75] *See infra* n. 285.

[76] *See infra* Part II.A.4.

[77] Option exercises or assignments can result in a short sale. *See, e.g.,* Rule 201 Adopting Release, at 11263 n. 433 (explaining that short sales that result from option exercises or assignments are short sales but are not covered by the Rule 201 of

Continued

positions in options are currently reportable under a separate requirement.[78] In addition, there is a separate reporting regime for security-based swaps,[79] which may also lessen the likelihood of Managers attempting to avoid the requirements of Rule 13f–2 by using these instruments.

Comments on Creating a List

Some commenters recommended narrowing the universe of ''in-scope'' securities to lessen the burden on Managers and to help to ensure compliance with Proposed Rule 13f–2. Certain commenters recommended that the Commission create and publish a list of securities subject to Form SHO reporting, much like the Commission's Official List of Section 13(f) Securities (''13F List'') required by statute to be made available to the public pursuant to section 13(f)(4) of the Exchange Act [80] for use in the preparation of quarterly reports filed with the Commission for purposes of long position reporting under Rule 13f–1. One such commenter suggested that providing such a list would ''promote greater efficiency in validating reported short positions and consistency in reporting of those positions among managers.'' [81] Another commenter recommended aligning Proposed Rule 13f–2 with the scope of other similar reporting and public dissemination regimes (*e.g.,* Rule 13f–1, and prior Rule 10a–3T [82]) that are focused on a narrower set of securities, namely certain section 13(f) securities that are included on the 13F List.[83]

Narrowing the scope of securities to the 13F List would effectively exclude certain equity securities that are subject to the requirements of Regulation SHO, which the Commission continues to believe would be inconsistent with the Commission's objective to publish short sale-related data under Rule 13f–2 that will provide additional context to market participants regarding securities that are subject to the Commission's current short sale rules.[84] As stated above, market participants, including Managers, are currently accustomed to complying with the short sale rules with regard to equity securities generally, so narrowing the scope to the 13F List that periodically changes, or to a list created for purposes of Rule 13f–2 that is similar in concept to the 13F List, could result in reduced Rule 13f–2 reporting and, consequently, less transparency of short sale-related data. Narrowing the scope to securities that are included on the 13F List could also result in additional administrative costs and burdens to Managers to the extent that Managers have to perform additional monitoring to ensure that their Form SHO reports cover, and the calculations required to determine whether a reporting obligation under Rule 13f–2 has been triggered because a Reporting Threshold has been met, apply to, only the narrower scope of securities (a subset of the equity securities currently subject to the Commission's short sale rules). Such an outcome is inconsistent with the Commission's objective of enhancing transparency, while balancing the interests of gathering and disclosing data that provides additional context to market participants regarding securities that are subject to the requirements of Regulation SHO against the potential costs to reporting Managers.

Additionally, with respect to long position reporting, section 13(f)(1) expressly provides that the Commission shall make available to the public a list of all equity securities that are subject to such reporting.[85] However, section 13(f)(2) does not require publication of such a list. Further, existing short sale-related reporting to exchanges and RNSAs does not rely on a published list of securities. For these reasons, it is not necessary to compile and periodically provide a list of securities covered by Rule 13f–2.

Comments To Limit Scope to Equity Securities of U.S. Reporting Company Issuers

Some commenters recommended tailoring the scope of securities subject to Rule 13f–2 reporting to the equity securities of U.S. reporting company issuers.[86] Many of these commenters raised concerns about the costs to Managers of developing new systems to capture trading of equity securities of non-reporting company issuers. Certain commenters focused on how a requirement to report short sales of equity securities of non-reporting company issuers would represent an expansion of reporting requirements beyond what is currently required under existing reporting regimes under Exchange Act sections 13(d), 13(f)(1), 13(g), and 16.[87] Other commenters believed that requiring Managers to report short position information in equity securities of non-reporting company issuers would be extremely costly and provide little public benefit.[88] Another such commenter stated that because securities of non-reporting company issuers can be held

Reg. SHO's price test because there is no national best bid).

[78] FINRA Rule 2360 requires FINRA member firms to report large options positions to the Large Options Positions Report (''LOPR''), which FINRA uses to surveil for potentially manipulative behavior, including attempts to corner the market in the underlying equity, leverage an option position to affect the price, or move the underlying equity to change the value of a large option position.

[79] *See* Regulation SBSR, 17 CFR 242.900 through 242.909.

[80] 15 U.S.C. 78m(f)(4).

[81] Comment Letter from Sarah A. Bessin, Associate General Counsel & Nhan Nguyen, Assistant General Counsel, Investment Company Institute (Apr. 26, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20126820-287527.pdf* (''ICI Letter'') at 9 n.28; *see also* MFA Letter, at 13 (positing that having an ''official list'' of securities subject to Form SHO reporting would reduce the burden on Managers to make judgments about whether a particular security is in-scope for Form SHO reporting and would reduce inconsistencies among reporting Managers in making such judgments in the absence of such a list); *see also* SIFMA Letter, at 20 (suggesting that the ''Form SHO List'' include securities that are included on the 13F List while excluding securities that should not be covered by Form SHO, as well as the total shares outstanding for each security).

[82] Rule 10a–3T and Form SH focused on certain section 13(f) securities and excluded options that are reportable on Form 13F.

[83] HSBC Letter, at 13–14 (recommending that Commission align the reporting requirements of Proposed Rule 13f–2 to a narrower set of securities—*e.g.,* the securities prescribed in Rule 13f–1—rather than with securities that are ''in-scope'' with Regulation SHO).

[84] *See* Proposing Release, at 14956.

[85] Section 13(f)(1) of the Exchange Act (15 U.S.C. 78m(f)(1)) requires any institutional investment manager exercising investment discretion over accounts holding at least $100 million in fair market value of certain equity securities to file reports on Form 13F with the Commission at the times set forth in 17 CFR 240.13f–1 (''Rule 13f–1''). The statute directs the Commission to make available to the public, for a reasonable fee, a list of all equity securities described in section 13(d)(1) of the Exchange Act and to disseminate to the public the information contained in the reports.

[86] *See, e.g.,* MFA Letter, at 11–12; Letter from Leigh R. Fraser, Partner, Ropes & Gray LLP (Apr. 26, 2022), at 9, *available at https://www.sec.gov/comments/s7-08-22/s70822-20126853-287579.pdf* (''Ropes & Gray Letter''). *Cf.* SIFMA Letter, at 5 (recommending, rather than separate reporting thresholds for reporting company issuers and non-reporting company issuers, a single threshold apply to U.S. equity securities included in a ''Form SHO List'' akin to the 13F List that ''would include securities that are included on the 13F List, while also excluding certain extraneous securities, such as options, warrants, convertibles, and ETFs that should not be covered by Proposed Form SHO reporting'').

[87] *See, e.g.,* Ropes & Gray Letter, at 9 (stating that a requirement to report short sale-related data regarding equity securities of U.S. private companies would represent a ''significant expansion'' of reporting requirements imposed in investors beyond what currently is required under existing reporting regimes under Exchange Act sections 13(d), 13(f)(1), 13(g), 13(h), and 16).

[88] *See, e.g.,* MFA Letter, at 11–12 (stating that because non-reporting company issuer securities are not publicly traded, information about transactions in such securities would not likely have an effect on price efficiency or market liquidity, but could have negative consequences for Managers—*e.g.,* increasing the risk of exposing Managers, their short positions, and trading strategies, which could facilitate retaliatory and manipulative trading strategies).

by only a small number of U.S. investors, cannot be traded on U.S. securities exchanges, and can often be subject to contractual restrictions on transfer, short sales in such securities are rare due to the limitations on the number of shares available to borrow.[89] Another commenter stated that trading (including short selling) in securities of non-reporting company issuers is limited, which potentially makes Managers that file Form SHO reports with respect to such securities more susceptible to retaliatory and manipulative trading strategies.[90] As stated above, the Commission is adopting Rule 13f–2 and Form SHO to help enhance transparency regarding short selling in equity securities—including both exchange-listed and over-the-counter securities, and ETFs—that are already subject to Regulation SHO. Consistent with the discussion in the Proposing Release, through the publication of short sale-related data to investors and other market participants, the information published under Rule 13f–2 will provide additional context to market participants regarding equity securities that are subject to the requirements of Regulation SHO.[91] To that end, the Commission continues to believe that transparency regarding short selling in over-the-counter (''OTC'') equity securities, many of which are non-reporting company issuers,[92] is important to investors generally, including many retail investors. The Commission has previously stated that securities ''that trade in the OTC market are primarily owned by retail investors.'' [93] Consistent with this view, it is important from a transparency perspective to include, as proposed, non-reporting issuers for purposes of reporting under Rule 13f–2. While the Commission is cognizant that information on non-reporting company issuers will be more difficult to obtain and more costly to report than information on reporting company issuers, the Commission disagrees there would be little benefit to the public from such information, particularly given the extent of trading in OTC market securities by retail investors.[94] Furthermore, OTC securities typically have lower prices, lower trading volume, and are by definition not traded on exchanges, making them potentially more prone to fraud.[95] In addition, as discussed further below, publication of aggregated data approximately one month following the reporting calendar month will alleviate concerns regarding potential retaliation against reporting Managers.

Other commenters raised questions as to whether the Commission's jurisdiction extended to equity securities not traded in the U.S. One such commenter, highlighting the disparity between Proposed Rule 13f–2 reporting and reporting of long positions in the same securities, questioned why it would be in the public interest to require more expansive disclosure with respect to short positions than long positions, and stated that the ''proposed scope of the rule would provide U.S. investors with information that is of limited value, particularly with respect to non-U.S. securities.'' [96]

Exchange Act section 13(f)(2)'s cross-border reach is based on the territorial approach that the Commission has applied when crafting rules to implement other provisions of the Exchange Act.[97] Consistent with that territorial approach (which is based on Supreme Court precedent, including *Morrison* v. *National Australia Bank, Ltd.* and its progeny) the Commission examines the relevant statutory provision to determine the domestic conduct that is covered by the provision.[98] The Commission understands section 13(f)(2), by its terms, to apply to any institutional investment manager already subject to U.S. reporting requirements. This indicates that the relevant domestic conduct under section 13(f)(2) is being an institutional investment manager operating in the U.S. securities markets such that the investment manager is subject to filing reports with the Commission. Thus, when that relevant domestic conduct is present here in the United States, section 13(f)(2)'s regulatory reporting obligation will generally apply.

The Commission is adopting Rule 13f–2 and Form SHO to help enhance transparency regarding short selling in equity securities—including both exchange-listed and over-the-counter securities, and ETFs. The Commission continues to believe that, through the publication of short sale-related data to investors and other market participants, the information reported by Managers will provide important additional context to market participants regarding short sale activity in these equity securities by Managers. The Commission disagrees that the reported information would be of ''limited value'' as was suggested by a commenter. Transparency regarding short selling by Managers of securities of U.S. and non-U.S. issuers is important regardless of where those sales occur.

Final Rule

For the reasons discussed above, the Commission is adopting the scope of securities as originally proposed. Specifically, the final rule will cover equity securities as defined in section 3(a)(11) of the Exchange Act and Rule 3a11–1 thereunder. This scope of securities includes both exchange-listed and OTC equity securities, including, inter alia, ETFs, certain derivatives, and options, warrants and other convertibles, which is consistent with the equity securities to which Rules 200, 203, and 204 of Regulation SHO apply.[99]

[89] Ropes & Gray Letter, at 8–9.

[90] MFA Letter, at 11–12.

[91] *See* Proposing Release, at 14956.

[92] *See, e.g., Publication or Submission of Quotations Without Specified Information,* Exchange Act Release No. 89891 (Sept. 16, 2020) (''Adopting Release for Amendments to Rule 15c2–11''), 85 FR 68124, 68125 (Oct. 27, 2020) (''However, in other cases, there is no or limited current public information available about certain issuers of quoted OTC securities to allow investors or other market participants to make informed investment decisions.'').

[93] *See, e.g., Publication or Submission of Quotations Without Specified Information,* Exchange Act Release No. 89891 (Sept. 16, 2020), 85 FR 68124, 68125 (Oct. 27, 2020) (citing to Andrew Ang, et al., *Asset Pricing in the Dark: The Cross-Section of OTC Stocks,* 26 Rev. Fin. Studs. 2985–3028 (2013) (''Securities that trade in the OTC market are primarily owned by retail investors[,]''); *see also Unraveling the Mystery of Over-the-Counter Trading,* FINRA Inv'r Insights (Jan. 4, 2016), *available at https://www.finra.org/investors/insights/unraveling-mystery-over-counter-trading* (''OTC equities are largely owned by retail investors, according to a 2013 study from Columbia University, who may be attracted to the low price of many OTC equities, including so-called ''penny stocks'' that trade at under $5 a share. That activity is typically very speculative.'').

[94] *See id. See also infra* Part VIII.C.6 for a discussion of costs related to tracking non-reporting companies, and *infra* Part II.A.3 for discussion of possible benefit.

[95] *See, e.g., Adopting Release for Amendments to Rule 15c2–11,* 85 FR 68124, at 68185.

[96] HSBC Letter, at 13–14 (recommending that the reporting requirements of Proposed Rule 13f–2 be limited to equity securities of reporting company issuers that are traded on a Commission-registered trading platform).

[97] *See, e.g., Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* Exchange Act Release No. 74244 (Feb. 11, 2015), 80 FR 14563, 14649 (Mar. 19, 2015) (''2015 Regulation SBSR Adopting Release'') (discussing the territorial approach to the cross-border application of Title VII requirements for regulatory reporting and public dissemination of security-based swap transactions).

[98] 561 U.S. 247. *See, e.g., Abitron Austria GmbH* v. *Hetronix Int'l, Inc,* 600 U.S. **, **, 2023 WL 4239255, at *4 (June 29, 2023) (stating that ''[the Supreme Court has] repeatedly and explicitly held that courts must ''identif[y] 'the statute's ''focus'' ' and as[k] whether the conduct relevant to that focus occurred in United States territory'').

[99] *See* Regulation SHO Adopting Release, at 48012.

3. Reporting Thresholds

a. Proposal

To balance the interests of gathering and disclosing data and the potential costs to reporting Managers, the Commission proposed separate thresholds for short positions in reporting company issuers, or Threshold A, and non-reporting company issuers, or Threshold B.[100] Threshold A, in Proposed Rule 13f–2(a)(1), involved a two-pronged approach that would have required reporting by Managers that have, with regard to each equity security of a reporting company issuer, either (i) a gross short position with a U.S. dollar value of $10 million or more at the close of regular trading hours on any settlement date during the calendar month, or (ii) a 2.5 percent or higher monthly average gross short position as a percentage of shares outstanding.[101] Threshold B, in Proposed Rule 13f–2(a)(2), involved a single-pronged approach that would have required reporting by Managers that have, with regard to each equity security of a non-reporting company issuer, a U.S. dollar value of $500,000 or more at the close of regular trading hours on any settlement date during the calendar month.[102] The Proposed Reporting Thresholds were based on comment letters and analysis of Form SH data collected under Rule 10a–3T, an interim temporary rule adopted by the Commission in October 2008, which required certain institutional investment managers to file weekly nonpublic reports with the Commission on Form SH regarding their short sales and short positions in certain section 13(f) securities, other than options.[103] Rule 10a–3T required reporting of short positions that were either greater than 0.25 percent of shares outstanding or $10 million in fair market value.[104] This temporary rule was adopted in the wake of the 2008 financial crisis in response to concerns about high levels of volatility associated with short selling.[105] Proposed Threshold B was developed based on an analysis of OTC Markets data.[106] The Proposed Reporting Thresholds were structured to make it more difficult for Managers with substantial gross short positions to avoid disclosure by trading below a Proposed Reporting Threshold, particularly with lower market capitalization securities.

The approach to Threshold A, as described in the Proposing Release, was designed to ensure that a substantial short position in either a small capitalization security or a large capitalization security could potentially trigger a reporting obligation under Threshold A.[107] For example, it would be difficult for a Manager to trigger only a dollar threshold in a given security if the market capitalization of the reporting company issuer is small; likewise, it would be difficult for a Manager to trigger only a percentage threshold in a given security if the market capitalization of the reporting company issuer is large. The Commission believed that this would help to ensure transparency into short sale-related activity that would be beneficial to both market participants and regulators. As stated above, the Proposed Reporting Thresholds were structured to make it more difficult for Managers with substantial gross short positions to avoid disclosure by trading below a Reporting Threshold, particularly with lower market capitalization securities. The proposed U.S. dollar value-based prong was designed to capture Managers with a substantial short position, even if the position was relatively small compared to the market capitalization of the issuer.[108] The prong based on percentage of shares outstanding was designed to capture Managers with gross short positions that are large relative to the size of the issuer and, therefore, could have a significant impact on the issuer.[109]

Regarding Threshold B, as discussed in the Proposing Release, a $500,000 or more threshold for non-reporting company issuer securities is similar to the median dollar value of a position of 2.5 percent of the market capitalization of OTC stocks for which the Commission was able to obtain information on total shares outstanding.[110] The Commission believed that this approach with regard to non-reporting company issuers would help to ensure added transparency into short sale-related activity that would be beneficial to both market participants and regulators, because, as discussed in the Proposing Release, it would capture Managers with substantial short positions in an equity security of a non-reporting company issuer, even if such positions are relatively small compared to the market capitalization of the issuer.[111] Rather than a two-pronged reporting threshold for equity securities of non-reporting company issuers, however, the Commission proposed a single-pronged, dollar value-based, reporting threshold for non-reporting company issuer securities given its understanding that the number of total shares outstanding for non-reporting company issuers may not be readily and consistently accessible to Managers.[112]

As discussed in the Proposing Release, to determine whether the proposed dollar value prong of Threshold A (Proposed Rule 13f–2(a)(1)(i)) or Threshold B (Proposed

[100] As discussed above, an issuer of a class of securities that is registered pursuant to Exchange Act section 12 or for which the issuer is required to file reports pursuant to Exchange Act section 15(d) is referred to herein as a reporting company issuer; issuers not meeting those criteria are referred to herein as non-reporting company issuers.

[101] Proposed Rule 13f–2(a)(1). *See* Proposing Release, at 14962 (describing in detail the design of Threshold A).

[102] Proposed Rule 13f–2(a)(2). *See* Proposing Release, at 14962 (describing in detail the design of Threshold B).

[103] *Disclosure of Short Sales and Short Positions by Institutional Investment Managers,* Exchange Act Release No. 58785 (Oct. 15, 2008), 73 FR 61678 (Oct. 17, 2008). The rule extended the reporting requirements established by the Commission's Emergency Orders dated Sept. 18, 2008, Sept. 21, 2008, and Oct. 2, 2008, with some modifications. *See Emergency Order Pursuant to Section 12(k)(2) of the Securities and Exchange Act of 1934 Taking Temporary Action to Respond to Market Developments,* Exchange Act Release No. 58591 (Sept. 18, 2008), 73 FR 55175 (Sept. 24, 2008); *Amendment to Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action to Respond to Market Developments,* Exchange Act Release No. 58591A (Sept. 21, 2008), 73 FR 55557 (Sept. 25, 2008) (amending the Sept. 18, 2008 Emergency Order ("Order") to clarify certain technical issues and when the information filed by the institutional investment managers on a nonpublic basis would be made public by the Commission on a delayed basis); *Amendment to Order and Order Extending Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action to Respond to Market Developments,* Exchange Act Release No. 58724 (Oct. 2, 2008), 73 FR 58987 (Oct. 8, 2008) (extending effectiveness of the Order through Oct. 17, 2008, and stating that the Forms SH filed under the Order would remain nonpublic to the extent permitted by law).

[104] *See* Proposing Release, at 14963–65 (discussing the analysis of Form SH data).

[105] Rule 10a–3T remained in effect through July 2009, at which time the Commission stated that it and its staff would be working with several SROs to make certain short sale volume and transaction data publicly available through SRO websites. *See* Proposing Release, at 14954 (providing background on Rule 10a–3T and related Form SH).

[106] *See* Proposing Release, at 14964 n.82 ("This analysis was performed using data from OTC Markets Group Inc. available through Wharton Research Data Services, *https://wrds-www.wharton.upenn.edu/pages/about/data-vendors/otc-markets-group/.* The data were filtered to only include equities that had a closing price and short interest on September 30, 2020. Approximately 13% of the data did not have total shares outstanding available, representing approximately 14% of the dollar value of short interest. We use these data without shares outstanding as a proxy for non-reporting issuers. The Commission used September 2020 because that is the most recent date in which a dataset containing total shares outstanding for a broad set of OTC equities was available.").

[107] *Id.* at 14962.

[108] *Id.*

[109] *Id.*

[110] *Id.* at 14962–63.

[111] Proposing Release, at 14962–63.

[112] *Id.* at 14962.

Rule 13f–2(a)(2)) is met, a Manager would be required to determine its end of day gross short position on each settlement date during the calendar month and multiply that figure by the closing price at the close of regular trading hours on the relevant settlement date.[113] In circumstances where such closing price was not available in calculating Threshold B, a Manager would be required to use the price at which it last purchased or sold any share of that security, which would be readily available to the Manager.[114]

As discussed in the Proposing Release, to determine whether the second prong of Threshold A (Proposed Rule 13f–2(a)(1)(ii))—2.5 percent or higher monthly average gross short position as a percentage of shares outstanding in the equity security—is met, the Manager would be required to (a) identify its gross short position in the equity security at the close of each settlement date during the calendar month of the reporting period, and divide that figure by the number of shares outstanding in such security at the close of that settlement date, then (b) add together the daily percentages during the calendar month as determined in (a) and divide the resulting total by the number of settlement dates during the calendar month reporting period. The number of shares outstanding of the security for which information was being reported would have been determined by reference to an issuer's most recent annual or quarterly report, and any subsequent update thereto, filed with the Commission.[115]

b. Comments and Final Rule

As discussed below, the Commission received numerous comments regarding various aspects related to the Proposed Reporting Thresholds. Generally, these comments varied, with some commenters recommending, for example, that the Commission raise the thresholds (which would trigger less gross short position reporting) and others recommending the Commission lower or eliminate the thresholds (which would trigger additional gross short position reporting).[116] Some commenters expressed general support for the Proposed Reporting Thresholds, or expressed support for certain aspects of those thresholds.[117]

Comments To Raise Threshold A

Some commenters recommended increasing the proposed Reporting Threshold A by, for example, doubling the percent of shares outstanding threshold from 2.5 percent to 5 percent so as to be consistent with the existing reporting requirements of 17 CFR 240.13d–1 (''Exchange Act Rule 13d–1'') [118] and the proposed reporting requirements of 17 CFR 240.10B–1 (''Exchange Act Rule 10B–1'') [119] related to large positions in security-based swaps.[120] Other commenters also recommended doubling that same percentage of shares outstanding threshold from 2.5 percent to 5 percent, because the commenters believed that the proposed 2.5 percent threshold was not sufficiently sizable to have a market impact.[121] Additionally, one commenter believed that the lack of any reported instances of ''short-side'' manipulation did not justify a lower percentage threshold compared to Rule 13d–1 and proposed Rule 10B–1.[122]

Other commenters proposed that the U.S. dollar value-based threshold of Threshold A be raised.[123] One commenter suggested that it be increased from the proposed $10 million to $100 million because a $100 million threshold would capture more substantial short positions and be consistent with the adjustment to the proposed percentage of shares outstanding threshold as compared to former Form SH (*i.e.,* a tenfold increase from 0.25 percent under Form SH to 2.5 percent under Proposed Form SHO).[124]

For reasons set forth below and discussed more fully in Part VIII, increasing the proposed Threshold A percentage-based threshold from 2.5 percent or more of total shares outstanding to 5 percent (*e.g.,* to be consistent with the existing 5 percent reporting threshold of Exchange Act Rule 13d–1 and the proposed reporting requirements of Exchange Act Rule 10B–1), as suggested by some commenters,[125] is not warranted or appropriate. In this regard, because the rules are designed for different purposes and utilize different reporting thresholds to meet their respective

[113] *Id.* at 14957.

[114] *Id.*

[115] *Id.*

[116] *See, e.g.,* ICI Letter, at 9–10 (supporting a higher threshold, stating that ''a higher threshold would still provide the Commission with information on such large positions, while reducing the burdens on managers of reporting smaller positions that likely would have a lesser market impact''); K&L Gates Letter, at 4–5 (supporting a higher threshold, and stating that ''[u]nless the Reporting Thresholds are modified, we anticipate that the Commission will be inundated with reports providing significant detail about positions that, in many cases, are not sufficiently sizable to impact the larger markets or raise the type of concerns that the Proposal was intended to address''); *but see* WTI Letter (stating that ''it is important to set the threshold as low as possible to mitigate any effects and impacts from firms attempting to game the threshold'').

[117] *See, e.g.,* SIFMA Letter, at 20 (stating that ''while certain SIFMA members believe that the threshold should be higher, other SIFMA members did not object to the proposed threshold of 2.5 percent of the issuer's TSO or $10 million fair market value''); Schulte Roth & Zabel LLP Letter (Apr. 26, 2022), at 3, *available at https://www.sec.gov/comments/s7-08-22/s70822-20126845-287561.pdf* (''Schulte Roth & Zabel Letter'') (stating that ''[w]e believe that the 2.5 percent threshold identifies those situations where a short position could lead to market manipulation'').

[118] Rule 13d–1 (requiring long-side equity securities holders to file a Schedule 13D or Schedule 13G if the security holder owns over 5% of an issuer's equity securities).

[119] *See Prohibition Against Fraud, Manipulation, or Deception in Connection With Security-Based Swaps; Prohibition Against Undue Influence Over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions,* Exchange Act Release No. 93784 (Dec. 15, 2021), 87 FR 6652, 6678 (Feb. 4, 2022) (''Rule 10B–1 Proposal''). *See also Reopening of Comment Period for Position Reporting of Large Security-Based Swap Positions,* Exchange Act Release No. 97762 (June 20, 2023), 88 FR 41338 (June 26, 2023) (proposing to require any person holding security-based swap positions to file a proposed Schedule 10B if they hold in excess of $300 million in equity security-based swap positions or if the notional value of those security-based swap positions is 5% of the outstanding number of shares of a class of equity securities, whichever is less).

[120] *See, e.g.,* Ropes & Gray Letter, at 6 (recommending increasing the threshold to 5% in order to ''mitigate costs to investors and provide consistency with other reporting regimes''); K&L Gates Letter, at 5 (stating that 2.5% does not ''represent a significant portion of an issuer's outstanding equity securities,'' and recommending increasing the threshold to more than 5% of an issuer's voting equity securities in order to be consistent with the existing reporting requirements of Rule 13d–1); Perkins Coie Letter, at 6 (recommending alignment with requirements of Rule 13d–1(a) that require filing of Schedule 13D or 13G upon crossing a 5% threshold of ownership of any class of an equity security); ICI Letter, at 10 (stating that Commission identified 5% as a threshold over which a position could have a meaningful market impact in ''recent'' Rule 10B–1 proposal).

[121] K&L Gates Letter, at 5; *see also* ICI Letter, at 9–10 (''However, we believe that a higher threshold would still provide the Commission with information on such large positions, while reducing the burdens on managers of reporting smaller positions that likely would have a lesser market impact.'').

[122] One commenter believed that the proposed Rule 13f–2 reporting regime was overly expansive and ''asymmetric'' to existing or other proposed reporting regimes in multiples ways, such as the proposed percentage reporting threshold of 2.5% being lower than the 5% threshold in Rules 13d–1 and 10B–1. *See* SIFMA Letter, at 3–4 (stating that there is ''no empirical evidence'' that short selling requires an ''asymmetric'' reporting regime and that ''[t]his conclusion is consistent with the SEC's own reported enforcement actions, *i.e.,* any reported instances of 'short-side' manipulation (*e.g.,* 'short and distort' campaigns) are dwarfed by the instances of 'long-side' manipulation (*e.g.,* 'pump and dumps'). There thus is simply no basis for such asymmetric regulation.'').

[123] *See, e.g.,* Virtu Letter, at 2 (positing that dollar value thresholds ''are significantly lower than is necessary''); Perkins Coie Letter, at 2 (finding the $10 million (USD) gross short position threshold of Threshold A too low); XR Securities Letter, at 2 (citing circumstance illustrating that $10M prong of Threshold A may be too low).

[124] Schulte Roth & Zabel Letter, at 3.

[125] *See supra* nn. 121 & 122.

objectives, the Commission does not believe, as one commenter states, that comparing Rule 13f–2 with long-side Rule 13d–1, as well as comparing perceived instances of ''short-side'' and ''long-side'' manipulation, is an accurate assessment by which to determine Rule 13f–2's Reporting Thresholds. Reporting under Exchange Act section 13(d) is intended to provide information to the public and the affected issuer about rapid accumulations of its equity securities in the hands of persons who have the potential to change or influence control of the issuer.[126] Reporting under Rule 13f–2, in contrast, is intended to capture Managers with gross short positions that are large relative to the size of the issuer and could therefore have a significant impact on the issuer, especially for issuers with a small market capitalization where the dollar-based threshold is less likely to be breached.[127] An increase in the percentage-based prong of Threshold A, from 2.5 percent to 5 percent, would reduce transparency into short positions in smaller stocks. Specifically, increasing the percentage from 2.5 percent to 5 percent would reduce transparency into stocks with less than a $400 million market capitalization. This reduction could be meaningful given that, short and distort campaigns and other market manipulations are more likely to occur in stocks with lower market capitalizations and less public information.[128] As a result, the appropriate threshold for Rule 13d–1 is not necessarily the appropriate threshold for Rule 13f–2. Instead, the Commission continues to believe that a broader coverage of short position reporting (*i.e.,* using a 2.5 percent reporting threshold) is more appropriate for Rule 13f–2, especially given that the reported data are aggregated and anonymized before public dissemination with a delay. Here, the Commission is designing a reporting threshold that is appropriate for the purposes of section 13(f)(2). Based on analysis of Form SH, a 2.5 percent or higher monthly average gross short position is an appropriate threshold.[129] For example, one exchange estimates that median short interest for small-cap issuers is only about 3 percent,[130] indicating that a single Manager breaching the 2.5 percent threshold would be significant for many issuers. Thus, a percentage-based Threshold A is appropriate to adopt as proposed.

Nor does the Commission believe that raising the dollar-based threshold of Threshold A from $10 million to $100 million to be consistent with the tenfold increase in percentage threshold is warranted or appropriate. Based on its analysis of Form SH data as discussed in the Proposing Release,[131] as well as the need to balance costs with the rule's ultimate goal of transparency, $10 million strikes an appropriate balance of limiting costs of reporting to Managers, while increasing transparency into short positions, especially for equity securities of issuers with mid or large market capitalizations that may not be captured under the percentage threshold. While issuers with small market capitalizations may have only one or a few large short sellers, issuers with mid or large market capitalizations may have tens or even hundreds of large short sellers, which diffuses the percentage of short interest for each short seller. The Commission considered this when setting a dollar-based threshold of Threshold A such that large short sellers are captured for all equity issuers.

Comments To Lower or Eliminate Reporting Thresholds

Other commenters recommended that the Proposed Reporting Thresholds be reduced or eliminated. Some of these commenters were concerned that the Proposed Reporting Thresholds could be too lenient and under-inclusive,[132] and some of those commenters supported removing the thresholds entirely because of the possibility of Managers intentionally maintaining short positions just below the thresholds to avoid reporting.[133] One commenter stated that the final rule should ''eliminate the proposed thresholds so as to reduce or eliminate the risk that unknown, hidden short positions could pose to investors and the markets.'' [134] However, eliminating thresholds to capture all short sale data may result in the inclusion of ''transient'' short sales,[135] such as short sales due to market making or customer facilitation activity rather than directional short sales. By providing a properly calibrated threshold this type of ''noise'' should be reduced and allow market participants to instead focus on substantial short sales that are more likely to be directional. The reduction of ''noisy'' short position information also sets Rule 13f–2 apart from existing short sale data regimes, such as those provided by FINRA and the exchanges, which do not have thresholds. On the other hand, the threshold cannot be set so high that substantial short sales by Managers are out of scope. The Reporting Thresholds, as adopted, will help ensure added transparency into short sale-related activity that would be beneficial to both market participants and regulators, and will result in reporting by Managers with a substantial gross short position in both reporting and non-reporting company issuers.

Recommendations to Base Reporting Thresholds on a Single Metric

Some commenters, often in conjunction with recommendations to increase the Proposed Reporting Thresholds, suggested applying a single threshold metric. One commenter proposed the Commission adopt a single U.S. dollar value-based threshold for all issuers in order to limit the impact of

[126] *See, e.g., Filing and Disclosure Requirements Relating to Beneficial Ownership,* Release No. 34–14693 (Apr. 21, 1978), 43 FR 18501, 18484 (Apr. 28, 1978) (stating that the ''legislative history [of Exchange Act section 13(d)] reveals that it was intended to provide information to the public and the affected issuer about rapid accumulations of its equity securities in the hands of persons who would then have the potential to change or influence control of the issuer'').

[127] *See* Proposing Release, at 14961–64.

[128] *See infra* Part VIII.C.1 (discussing market manipulations) and Part VIII.E.3 (discussing how thresholds are triggered at various dollar amounts).

[129] *See infra* Part VIII.E for discussion of different threshold options.

[130] *See Short Interest in Decline,* Nasdaq (Mar. 3, 2022), *available at https://www.nasdaq.com/articles/short-interest-in-decline.*

[131] As discussed in the Proposing Release, the Proposed Reporting Thresholds were based on comment letters and analysis of Form SH data collected under Rule 10a–3T. Proposing Release, at 14963–64. Rule 10a–3T required reporting of short positions that were either greater than 0.25% of shares outstanding or $10 million in fair market value. Comment letters to Rule 10a–3T itself generally concurred with the dollar reporting obligation but expressed concerns that the percentage obligation was too low. Suggestions for a percentage reporting obligation ranged from 1% to 5% of shares outstanding. *See, e.g.,* Seward Kissel LLP, *available at https://www.sec.gov/comments/s7-31-08/s73108-43.pdf*; Investment Adviser Association, *available at https://www.sec.gov/comments/s7-31-08/s73108-38.pdf*; and Securities Industry and Financial Markets Association, *available at https://www.sec.gov/comments/s7-31-08/s73108-52.pdf.*

[132] *See, e.g.,* Comment from Peter Stauduhar (Mar. 6, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20118728-271591.htm* (stating that ''[t]he thresholds are a critical part of the success of this rule, and I urge the Commission to worry less about the burden the reporting will have on short sellers'').

[133] *See, e.g.,* Comment from Travis Donovan (Mar. 14, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-272287.htm*; Comment from Steve B. (Mar. 14, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20119335-272221.htm* (''SteveB.Comment''); Anonymously Submitted Letter (Apr. 2, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20122297-278355.htm* (''I believe that all short sales should be recorded and reported. The minimum threshold should be a single short sale.'').

[134] Better Markets Letter, at 12.

[135] *See* Virtu Letter, at 2–3.

any potential ambiguity around identifying the number of shares outstanding for non-reporting company issuers.[136] Another commenter, however, recommended that the Commission adopt a single threshold based on percentage of shares outstanding, stating that it would ''mitigate unnecessary operational and cost burdens on Managers,'' as the commenter believed that a U.S. dollar value-based threshold would require more difficult system buildouts.[137]

The Reporting Thresholds are designed to require the filing of Form SHO by Managers with substantial gross short positions. The two-pronged approach of Threshold A measures the size of a Manager's short position relative to both dollar amount and number of shares. The dollar value-based prong (Rule 13f–2(a)(1)(i)) captures Managers with substantial short positions, even if such positions are relatively small compared to the market cap of the issuer. The percentage of total shares outstanding-based prong (Rule 13f–2(a)(1)(ii)) captures Managers with gross short positions that are large relative to the size of the issuer and, therefore, could have a significant impact on the issuer. With respect to securities of non-reporting company issuers, however, the Commission understands that the number of total shares outstanding may not be readily and consistently accessible.[138] For this reason, a single-pronged, dollar value-based Reporting Threshold is an efficient way for Managers to determine whether they trigger Threshold B (Rule 13f–2(a)(2)) that avoids the additional cost and complexity of locating the number of total shares outstanding for the securities of a non-reporting company issuer that may be difficult or impossible to locate.[139]

Comments Recommending the Use of the Same Threshold for Reporting Company and Non-Reporting Company Issuers

Another commenter recommended not having differing thresholds for reporting company issuers and non-reporting company issuers.[140] This commenter believed having two different reporting thresholds ''would be unnecessarily complicated and burdensome.'' [141] Furthermore, the commenter stated as an alternative the creation of a ''Form SHO List'' akin to the 13F List that would include total shares outstanding of each security to assist in threshold calculations.[142] As a result of the potential difficulties in accessing the total shares outstanding for non-reporting company issuers discussed above, using a percent of total shares outstanding-based approach would not be appropriate for non-reporting company issuers. Requiring total shares outstanding for both thresholds would be operationally difficult, potentially inaccurate and therefore costly for Managers to determine for some non-reporting companies. Requiring a dollar-based metric for both thresholds could be both under-inclusive and over-inclusive, as the markets for reporting and non-reporting companies differ. For example, a high dollar threshold (*e.g.,* $10 million) for both thresholds would under-include many non-reporting companies while a low dollar threshold (*e.g.,* $500,000) would over-include reporting companies. For these reasons, the Commission is adopting Threshold B as proposed.

For similar reasons, and as discussed in the ''Scope of Reported Securities'' section above, the Commission will not be publishing a ''Form SHO List'' with total shares outstanding to assist in Manager calculations, as one commenter suggested. The thresholds as adopted are designed to reduce operational burdens while capturing substantial short positions in both reporting and non-reporting company issuers. Adopting a much lower dollar threshold for non-reporting company issuers than that for reporting company issuers results in Managers not being required to determine percentages of total shares outstanding and, due to sparse data in non-reporting company issuer markets, Managers would avoid the difficulty of having to do so. A ''Form SHO List'' with total shares outstanding would not be necessary for Managers reporting positions in reporting company issuers because, unlike Rule 13f–1 securities, Rule 13f–2 covers equity securities as discussed above,[143] rendering additional guidance on what securities qualify unnecessary. Additionally, as discussed above in the Scope of Reported Securities section, section 13(f)(1) expressly provides that the Commission shall make available to the public a list of all equity securities that are subject to such reporting,[144] while section 13(f)(2) does not require publication of such a list.

Comments Regarding Other Concerns Related to Thresholds

Implementation and Compliance Costs

Some commenters stated that the Proposing Release did not adequately account for the burdens associated with monitoring for whether a Reporting Threshold is met, *i.e.,* whether a Manager has a Form SHO reporting obligation.[145] Specifically, these commenters stated that the Proposing Release did not address the costs of those Managers who would need to develop and implement reporting systems to monitor for whether a Reporting Threshold is met or exceeded, that may or may not ultimately result in a reportable gross short position.[146] The

[136] *See* MFA Letter, at 4 (stating that ''[a] dollar-based approach would be more simple and less costly for managers to employ'').

[137] *See, e.g.,* ICI Letter, at 8–9 (stating ''we recommend that the Commission adopt a single reporting threshold level that is an average short position in an equity security based on a percentage of shares outstanding rather than on a dollar value''); *see also* K&L Gates Letter, at 5 (recommending a threshold triggered only by ''a position representing more than 5 percent of an issuer's voting equity'').

[138] Proposing Release, at 14962.

[139] *Id.*

[140] *See* SIFMA Letter, at 19–20 (stating that ''the proposed distinction between the thresholds that would apply to Reporting Company securities and Non-Reporting Company securities would be unnecessarily complicated and burdensome'').

[141] *Id.*

[142] SIFMA suggested that the ''Form SHO List'' include securities that are included on the 13F List, while excluding securities that should not be covered by Form SHO. *Id.* at 20. SIFMA further suggested that the ''Form SHO List'' include, for each security, the total shares outstanding.

[143] *See supra* Part II.A.2.

[144] Section 13(f)(1) of the Exchange Act (15 U.S.C. 78m(f)(1)) requires any institutional investment manager exercising investment discretion over accounts holding at least $100 million in fair market value of certain equity securities to file reports on Form 13F with the Commission at the times set forth in Rule 13f–1. The statute directs the Commission to make available to the public, for a reasonable fee, a list of all equity securities described in section 13(d)(1) of the Exchange Act and to disseminate to the public the information contained in the reports.

[145] *See, e.g.,* Virtu Letter, at 2 (''the dollar value thresholds referenced in the Proposal are significantly lower than is necessary''); MFA Letter, at 4 (recommending a single, dollar-based threshold only); SIFMA Letter, at 5 (recommending elimination of different thresholds for reporting and non-reporting companies in favor of one uniform threshold for U.S. equity securities); ICI Letter, at 9 (recommending a single, percentage-based threshold for both reporting and non-reporting company issuers); Ropes & Gray Letter, at 2 (recommending that all thresholds ''be determined using average positions over a month rather than daily positions.'').

[146] *See, e.g.,* MFA Letter, at 10–11; *see also* ICI Letter, at 5 (stating that Proposed Rule 13f–2 would require a Manager to continuously monitor and record any activity that could potentially be subject to future reporting on Form SHO). While the costs would likely be higher if Managers choose to monitor daily, Rule 13f–2 does not require daily monitoring, either for reporting or non-reporting company issuers. Managers may choose to do this threshold calculation on a rolling basis, or to do the calculation after the month has ended. While some Managers may choose to incur the higher costs of daily tracking and calculation for purposes of compliance with Rule 13f–2, the final rule's Reporting Threshold for reporting company issuers is not based on a Manager's gross short position on

Continued

comments are addressed in the Economic Analysis, in Part VIII below.

''Gross'' Short Position versus ''Net'' Short Position

Some commenters requested that the Reporting Thresholds be calculated based on ''net'' short position rather than ''gross'' short position as proposed. Multiple commenters expressed concern that using a gross short position calculation would not accurately reflect risk in the markets.[147] However, other commenters supported the use of the proposed gross short position data either instead of or in conjunction with net short position data.[148] One commenter proposed requiring net short position reporting by Managers that are solely reporting on Form SHO with regard to one issuer while requiring gross short position reporting for Managers with short positions in more than one issuer.[149] One commenter proposed that, if a gross short position calculation is used, market makers should not be subject to adopted Rule 13f–2's reporting requirements.[150] However, another commenter supported applying the rule's requirements to market makers.[151] One commenter stated that, even though market makers do not typically carry overnight positions and would likely not trigger the Proposed Reporting Thresholds, market makers would still incur the costs of end-of-day calculations to determine whether they meet or exceed the Proposed Reporting Thresholds.[152]

As discussed in the Proposing Release, under the proposal, a Manager would report its ''gross'' short position in an equity security without offsetting such gross short position with ''long'' shares of the equity security or economically equivalent long positions obtained through derivatives of the equity security.[153] For example, if a Manager has investment discretion over multiple accounts, some of which have long positions in an equity security and some have short positions in the same equity security, only the total gross short position in the ''short accounts'' is reported, without being offset by the long positions in the ''long accounts.'' Requiring a Manager to report its daily gross short position in a security will provide a more complete view of short positions held by Managers in a security, particularly once the data is aggregated for publication.[154] Permitting Managers to ''net'' positions would dilute the usefulness of the data in providing market participants with a sense of substantial short positions. For example, requiring net short position reporting by Managers that are solely reporting on Form SHO with regard to one issuer, or for other types of Managers infrequently using short positions, as one commenter suggested, would provide minimal cost savings and create misleading data that could be difficult to aggregate and confusing to market participants. Further, the data collected and provided by FINRA[155] and the exchanges is not netted.[156] By providing aggregate gross positions reported by Manager in a security, the final rule will supplement such existing short sale information with additional context on substantial gross short sale positions.

In addition, the Commission is making additional modifications, discussed further below, that should alleviate burdens on market makers that may otherwise need to undertake the obligation of calculating reporting thresholds despite generally holding positions below such thresholds. Specifically, the Commission is modifying the threshold calculations to a monthly average of daily gross short positions rather than a single daily position, as discussed under the subheading ''When the Reporting Obligation is Triggered'' below. Further, as discussed in Part III below, the Commission is not adopting the proposed requirement to report ''buy to cover'' activity, which a commenter[157] stated would be more difficult if gross positions are required to be reported. The Commission, in adopting Rule 13f–2, will require a Manager to report its ''gross'' monthly short position as

a single trading date, reducing the need for daily tracking. *See infra* Part VIII.C.6.b.

[147] *See, e.g.,* Virtu Letter, at 3 (stating that ''the requirement to report such positions on a gross rather than net basis would likely distort the actual degree of short positions as it will capture circumstances where a firm is net long but may have short positions among its accounts.''); Perkins Coie Letter, at 3–4, 6. (recommending that ''[r]ather than set a low threshold and over capture short position information, the SEC should revise the requirement to $10 million net short position as opposed to gross.''); Schulte Roth & Zabel Letter, at 2 (stating that ''net short position data would more accurately reflect actual positions taken by institutional investment managers and provide useful transparency to the Commission and to the marketplace.''); ICI Letter, at 10 (recommending that ''the Commission streamline and simplify how managers account reflect hedging positions by adopting a net short position threshold and eliminating the required indication of whether a position is hedged or not in Form SHO.''); Comment Letter from Anonymous Fund Manager at 1–2, *available at https://www.sec.gov/comments/s7-08-22/s70822-20126773-287490.pdf* (''Anonymous Fund Manager Letter'') (recommending that the Commission ''modify the proposed threshold requirements to reference short positions on a net 'delta-adjusted' basis as opposed to a gross basis or, in the alternative, exclude from the reporting obligations under the Proposed Rules '*bona fide* hedging activity' as such term would be defined in the final rules.'').

[148] *See, e.g.,* Comment from Josh Allen (Mar. 14, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-272295.htm*; Comment from An Investor (Apr. 4., 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20122297-278355.htm* (supported including both net and gross short positions in reporting).

[149] Perkins Coie Letter, at 4 (stating that ''the SEC should consider amending its proposal to require net position reporting by certain types of managers that do not regularly utilize short positions. For instance, the SEC could require net short position reporting by filers that are solely reporting on Form SHO with regards to one issuer. For any filer reporting more than one issuer, the SEC could require gross short position reporting.'').

[150] HSBC Letter, at 16 (stating that ''[b]ecause Proposed Rule 13f–2 requires disclosure of gross positions, market makers could be required to report large positions, even if a market makers' [sic] net position is close to zero (*i.e.,* because such short positions are typically hedged via options or swaps). Subjecting market makers to Proposed Rule 13f–2 may, therefore, result in market participants receiving unhelpful and misleading information about the short sale market.'').

[151] *See* Samuel Meadows Comment, at 2 (stating that ''Market Makers should NOT be except [sic] from reporting for any reason. Market Makers should report short sales the same as everyone else should they pass the Reporting Threshold.'').

[152] *See* SIFMA Letter, at 11–12 (stating that ''[h]owever, as the Proposing Release notes, requiring Institutional Investment Managers to consider intraday short sale activity, which would not be captured in the 'gross short position' as reflected on their trade date stock records, in determining whether the threshold has been exceeded, would be incredibly onerous—particularly, for example, for market makers that generally may not carry large overnight short positions.'').

[153] Proposing Release, at 14956.

[154] In addition, commenters stated they would be uncertain how to ''offset'' positions when discussing the hedging indicator. *See infra* Part II.A.4.d.iii.(B). Netting would raise similar concerns.

[155] *See, e.g., Short Interest—What It Is, What It Is Not,* FINRA Inv'r Insights (Jan. 25, 2023), *available at https://www.finra.org/investors/insights/short-interest* (''The short interest data is just a snapshot that reflects short positions held by brokerage firms at a specific moment in time on two discrete days each month. The Short Sale Volume Daily File reflects the aggregate volume of trades within certain parameters executed as short sales on individual trade dates.'').

[156] *See, e.g., Frequently Asked Questions (FAQ) about Short Interest Reporting,* FINRA, *available at https://www.finra.org/filing-reporting/regulatory-filing-systems/short-interest/faq* (''Q1: Rule 4560 applies to short interest positions resulting from: (1) a ''short sale,'' as defined by Regulation SHO Rule 200(a); or (2) where the transaction that caused the short position was marked ''long,'' consistent with Regulation SHO Rule 200(g), due to the firm's or the customer's net long position at the time of the transaction. For example, a sale may be marked as ''long'' because the overall net position in the security within an aggregation unit is long at the time of the sale. If the execution results in a short position in a specific account (or subaccount) held within the aggregation unit, this position is reportable pursuant to Rule 4560.''; Q11: ''Where, as part of a strategy, an account holds both a short and long position in the same security simultaneously, the short position is reportable as short interest pursuant to Rule 4560 and must be reported in full, *i.e.,* not netted against the long position.'').

[157] SIFMA Letter, at 24.

proposed under Proposed Rule 13f–2(b)(4).

When the Reporting Obligation Is Triggered

To ease reporting burdens and reduce costs, some commenters proposed decreasing the frequency of certain aspects of the U.S. dollar value-based aspects of the Reporting Thresholds by instead using monthly average positions, instead of the proposed ''close of regular trading hours on any settlement date'' frequency.[158] Alternatively, one commenter suggested that the proposed monthly reporting requirement should only be triggered if a Manager holds a short position in excess of the Proposed Reporting Thresholds as of the last settlement day of the month.[159] Commenters stated that by using average monthly positions rather than the proposed rule's use of any settlement date within the reporting period, the reporting burden required of Managers would be substantially lessened, since Managers may transiently cross the reporting thresholds through activities such as market making, hedging, and customer facilitation activity.[160] Requiring reporting for Managers who temporarily cross these thresholds on an intraday basis through such activity, one commenter stated, would not adhere to the legislative intent of DFA section 929X.[161] Commenters stated that transiently crossing these thresholds would not produce reported data that would be valuable to the Commission; for example, short-term market disruptions may trigger reporting under the proposed frequency for Managers that do not hold substantial short positions.[162] For reasons discussed below, the Commission is modifying Proposed Rule 13f–2(a)(1)(i) (the U.S. dollar value-based prong of Threshold A) to trigger reporting requirements when a Manager has a monthly average of daily gross short positions (''monthly average'') with a U.S. dollar value of $10 million or more at the end of the calendar month, rather than, as proposed, a $10 million or more gross short position at the close of regular trading hours on any settlement date during the calendar month.[163]

Threshold A, as adopted, will require reporting by Managers that have, for each equity security of a reporting company issuer, either (1) a monthly average gross short position at the close of regular trading hours in the equity security with a U.S. dollar value of $10 million or more,[164] or (2) a monthly average gross short position at the close of regular trading hours as a percentage of shares outstanding in the equity security of 2.5 percent or more.[165] Using a ''monthly average'' dollar value for reporting company issuers will result in Form SHO reporting by Managers that consistently carry large gross short positions during the reporting month. This approach should reduce the reporting of non-directional, ''transient'' short sales activity [166] and provide market participants with more focused information on substantial short positions held by Managers. The modification should also reduce the burdens of certain Managers, specifically those Managers, including market makers, that periodically meet or exceed the $10 million or more threshold on a given settlement date during a calendar month, but that do not typically carry a large gross short position throughout the month that will meet or exceed the monthly average reporting threshold, by eliminating the need to calculate (and potentially trigger) the threshold on a daily basis. This will help the Commission to distinguish directional short selling of Managers from short sale activity effected by market makers and liquidity providers.[167]

In addition, similar to the discussion in the Proposing Release regarding the use of a monthly average gross short position of 2.5 percent or more of total shares outstanding,[168] the Commission continues to believe that using a monthly average gross short position at the close of regular trading hours of $10 million or more, rather than an end of each settlement date calculation as was originally proposed, will reduce the risk that a Manager may time its short sales to avoid triggering the adopted reporting threshold.[169]

[158] *See, e.g.,* Virtu Letter, at 3 (stating that ''[w]e also object to the reporting requirement being triggered by the existence of a short position on any settlement date within a reporting period.''); Ropes & Gray Letter, at 2 (stating that ''[a]ll filing thresholds should be determined using average positions over a month rather than daily positions.'').

[159] SIFMA Letter, at 15 (advocating ''that the proposed monthly reporting under Information Table 1 of Proposed Form SHO should be triggered only if the Institutional Investment Manager holds a gross short position in an equity security, as of the last day of such month, in excess of the threshold(s) for reporting.'').

[160] *See* Virtu Letter, at 2.

[161] *See* SIFMA Letter, at 4.

[162] *See* Ropes & Gray Letter, at 6–7.

[163] This change to ''monthly average'' is responsive, in part, to commenters' concerns about certain aspects of the U.S. dollar value-based Reporting Thresholds. For reasons discussed below, however, the Commission is adopting Threshold B as proposed (Proposed Rule 13f–2(a)(2)), which employs an ''at the close of regular trading hours on any settlement date during the calendar month'' approach. The Form SHO ''Instructions For Calculating Reporting Threshold,'' discussed below, explain in detail the method for determining whether the modified threshold is met.

[164] To determine whether this Reporting Threshold has been met, a Manager shall determine its gross short position at the close of regular trading hours in the equity security (as defined in Rule 13f–2) on each settlement date during the calendar month and multiply that figure by the closing price at the close of regular trading hours on the settlement date (''end of day dollar value''). The Manager shall then add all end of day dollar values during the calendar month and divide that sum by the number of settlement dates in the month to arrive at a ''monthly average'' for each equity security the Manager traded during that calendar month reporting period.

[165] The methods of calculation of the Reporting Thresholds are prescribed in ''Instructions for Calculating Reporting Threshold'' in Form SHO. Rule 13f–2 and the instructions in Form SHO, require that for purposes of determining whether a Manager meets or exceeds a Reporting Threshold, a Manager shall determine its gross short position ''at the close of regular trading hours'' in the equity security, rather than at the ''end of day'' as was provided for in the instructions to Proposed Form SHO. Accordingly, the Commission is making a modification to the instructions for calculating Threshold A and replacing ''end of day gross short position'' with ''gross short position at the close of regular trading hours.'' Addressing any potential ambiguity in terminology should facilitate more consistency in reporting by Managers and more comparability of the data reported on Form SHO. With this change, the calculation instructions for Threshold A provide that to determine whether the percentage threshold of Threshold A has been met, a Manager shall (a) determine its gross short position at the close of regular trading hours in the equity security (as defined in Rule 13f–2) on each settlement date during the calendar month, and divide that figure by the number of shares outstanding in such security at the close of regular trading hours on the settlement date, and (b) add up the daily percentages during the calendar month as determined in (a) and divide that sum by the number of settlement dates in the month to arrive at a ''monthly average'' for each equity security the Manager traded during that calendar month reporting period. The number of shares outstanding of the security for which information is being reported shall be determined by reference to an issuer's most recent annual or quarterly report, and any subsequent update thereto, filed with the Commission.

[166] *See supra* n. 135 and accompanying text.

[167] *See* Proposing Release, at 14953.

[168] Proposing Release, at 14962 (''In addition, the Commission believes that requiring the reporting of short positions with a 2.5% or higher monthly average gross short position would capture Managers with gross short positions that are large relative to the size of the issuer, and could therefore have a significant impact on the issuer. Using a monthly average gross short position, rather than an end of month gross short position, is also designed to prevent the scenario where a Manager engages in trading activity on the last day of the month in order to avoid reporting.'').

[169] In addition, the Commission is making a modification to specify in Rule 13f–2 and in the instructions in Form SHO that, for purposes of determining whether a Manager meets or exceeds Threshold A, a Manager shall determine its gross short position ''at the close of regular trading hours'' in the equity security, rather than at the ''end of day'' as was provided for in the instructions to Proposed Form SHO. Reducing any potential ambiguity in terminology should facilitate more consistency in reporting by Managers and more comparability of the data reported on Form SHO.

Threshold B, as proposed, and as adopted, will require reporting by Managers that have, for each equity security of a non-reporting company issuer, a gross short position in the equity security with a U.S. dollar value of $500,000 or more at the close of regular trading hours on any settlement date during the calendar month.[170] A single, dollar-based prong approach (using the $500,000 or more on any settlement date metric) for securities of non-reporting company issuers (Rule 13f–2(a)(2)) will capture Managers with large gross short positions, even if such positions are relatively small compared to the market capitalization of the issuer. As discussed above, the markets for non-reporting company issuers are more opaque and could benefit more from transparency. Additionally, due to their lower liquidity, equity securities of non-reporting companies can be more sensitive to strategic trading than those of reporting companies.[171] As a result, for those securities, a single dollar threshold that can be triggered on any day of a month is more appropriate than the two-prong threshold calculated as monthly averages for equity securities issued by reporting companies.

Basing Reporting Thresholds on Form SH Data

Some commenters maintained that the Commission should not have based the Proposed Reporting Thresholds on Form SH data, as the Form SH data was collected during ''a period of abnormal market conditions that does not reflect recent changes in the markets,'' and urged the Commission to more robustly support its rationale for selecting the Reporting Thresholds.[172] These commenters essentially suggested that the use of Form SH data was unrealistic, and suggested that the Commission consider whether the Reporting Thresholds are appropriate based on more recent data and analysis.[173] In the Proposing Release, the Commission stated that to perform the underlying Reporting Thresholds analysis, Form SH data on daily short positions for November 2008 through February 2009 were filtered and matched to Center for Research in Security Prices, LLC for daily closing prices and Compustat for daily shares outstanding. The Commission recognized that the results of an analysis of Form SH data may not fully reflect the status quo but that the analysis used appropriate data because it involved the same type of entities (Managers) and the same activity (short positions).[174] As discussed in the Proposing Release, the Commission believed that it struck a reasonable balance in proposing the Reporting Thresholds with regard to the fundamental economic tradeoff of the value of the data versus the cost of collecting the data.[175]

The Commission disagrees with one commenter that stated that Form SH data was ''stale and limited.'' [176] The Commission continues to believe that Form SH data is highly relevant for determining the Reporting Thresholds. Form SH is the only existing data source of individual Manager-level short sale positions.[177] Form SH data was collected from October 17, 2008, until August 1, 2009, and the Commission analyzed daily data submitted from November 2008 until February 2009 as representative of short positions held by Managers. By the time Form SH was in effect, the global financial crisis was winding down, and is considered by some to have calmed by approximately June 2009.[178] Thus, data was analyzed for several months during which the economy was returning to normalcy. Although the commenter suggested such data does not address ''recent changes in the financial markets,'' the commenter did not elaborate on what ''recent changes'' would have impacted an analysis of the Form SH data or the time period in which the data was analyzed. Markets undergo periods of volatility and stability and are constantly evolving over time. The data from Form SH involves the same type of entities (Managers) and the same activity (short positions) as Form SHO. The time period for which the Form SH data was studied is sufficiently informative to provide a reasonable assessment of appropriate reporting thresholds for purposes of Form SHO.[179]

4. Form SHO

a. Reporting via EDGAR

i. Proposal

To enhance transparency of short sale-related data reported and published pursuant to Proposed Rule 13f–2, Proposed Rule 13f–2(a)(3) provided that Managers would file Form SHO (and any amendments thereto) with the Commission on EDGAR.[180] The Commission believed that most Managers should be familiar with filing forms on EDGAR—for example, Form 13F [181]—and relying on EDGAR to access registration statements, periodic reports, and other filings with the Commission that are made publicly available.[182] The Commission believed

[170] The methods of calculation of the Reporting Thresholds are prescribed in ''Instructions for Calculating Reporting Threshold'' in Form SHO. To determine the dollar value-based Reporting Threshold described in Threshold B has been met, a Manager shall determine its gross short position at the close of regular trading hours in the equity security (as defined in Rule 13f–2) on each settlement date during the calendar month and multiply that figure by the closing price at the close of regular trading hours on the settlement date. If such closing price is not available, a Manager shall use the price at which it last purchased or sold any share of that security.

[171] *See infra* Part VIII.E.3 (discussing difficulty in obtaining information on non-reporting company issuers, and that data is often stale and inaccurate).

[172] Comment Letter from Barbara Bliss, Associate Professor of Finance, et al. (Apr. 25, 2022), at 3, *available at https://www.sec.gov/comments/s7-08-22/s70822-20126591-287247.pdf* (''Law and Finance Professors Letter'') (''we believe the Commission could and should more robustly support its rationale for these thresholds before adopting any final rule.''); *see also* AIMA Letter, at 11–12 (commenter was critical of Reporting Thresholds based on ''stale and limited'' data). For a discussion of Form SH applicability to the current period, see *infra* Part VIII.C.6.a.

[173] *See, e.g.,* AIMA Letter, at 12 (stating that the Commission should ''review and analyze current short interest market data for reporting issuers to ensure that any final threshold based on a gross position's dollar value accounts for the latest and most complete data''); Law and Finance Professors Letter, at 3 (stating that the Commission should ''consider more carefully whether the stated disclosure thresholds are appropriate, based on more recent data and analysis, and whether there should be a mechanism that would permit these thresholds to change over time''); Two Sigma Letter, at 7 (stating that Form SH burden estimates are an ''unrealistic benchmark'').

[174] Proposing Release, at 14963 n.80.

[175] Proposing Release, at 14963–64, 15007.

[176] *See* AIMA Letter, at 11–12.

[177] While there are various limitations to be considered when using Form SH data, Form SH data are the most relevant and applicable source of data available for the purposes of estimating the costs of the design and analysis of Rule 13f–2. There are no other data sources, public or regulatory, which specifically track Managers' short position activities in the U.S. *See infra* Part VIII.C.6.a.

[178] The National Bureau of Economic Research considers the global financial crisis as having officially started Dec. 2007 and ended June 2009. *See, e.g.,* Nat'l Bureau of Econ. Research, Business Cycle Dating, *available at https://www.nber.org/research/business-cycle-dating*.

[179] *See* discussion of Form SH in Part VIII.C.6.a.

[180] *See* Proposed Rule 13f–2(a)(3) (providing that ''Form SHO and any amendments thereto must be filed with the Commission via the Commission's Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR''), in accordance with Regulation S–T. Certain information regarding each such equity security reported by institutional investment managers on Form SHO and filed with the Commission via EDGAR will be published by the Commission on an aggregated basis.'').

[181] EDGAR filing is mandatory for all public Form 13F submissions. *See Rulemaking for EDGAR System,* Exchange Act Release No. 34–40934 (Jan. 12, 1999), 64 FR 2843 (Jan. 19, 1999); *see also Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV–NR; Amendments to Form 13F,* Exchange Act Release No. 34–95148 (June 23, 2022), 87 FR 38943 (June 30, 2022).

[182] *See, e.g., About EDGAR, available at https://www.sec.gov/edgar/about; see also Important*

that requiring Proposed Form SHO to be reported via EDGAR would enhance the accessibility, usability, and quality of the Proposed Form SHO disclosures for the Commission, and would allow the Commission to download disclosures from Form SHO directly, facilitating efficient access, organization, and evaluation of the reported information.[183] The Commission further believed that the improved quality and scope of information available for the Commission's use in examining market behavior and recreating market events would bolster the Commission's oversight of short selling activity and enhance investor protections.[184]

ii. Comments and Final Rule

Several commenters raised concerns about how the confidentiality of the data reported on Form SHO via EDGAR would be preserved.[185] Most of these commenters spoke of a need to establish robust data security protocols for the ''valuable and proprietary'' information that would be reported on Proposed Form SHO via EDGAR. Several such commenters expressed concerns about cyberattacks or other breaches of account information.[186]

While no technology system or infrastructure is impervious to cyberattack, the Commission employs an array of actions to safeguard and protect the confidentiality and security of all information reported to EDGAR, which will include data reported on Form SHO.[187] The Commission has stated that it has ''engaged in a multi-year, multi-phase effort to modernize the EDGAR system, including both internal and public-facing components. Security and modernization enhancements were deployed in June 2020, focusing on technology upgrades internal to the system.'' [188] Moreover, as discussed in Part I.A.4.f.ii below, the Commission is adopting an approach to the confidential treatment of information provided on Form SHO reports that all such information will be deemed subject to a confidential treatment request under 17 CFR 200.83 (''Rule 83''). Accordingly, the Commission is adopting Rule 13f–2(a)(3) as proposed.

b. Filing Form SHO Reports

i. Proposal

As described in the Proposing Release, Managers would use Proposed Form SHO for reports to the Commission required by Proposed Rule 13f–2. The Commission proposed that Managers would file a report on Proposed Form SHO with the Commission within 14 calendar days after the end of each calendar month with regard to each equity security in which the Manager meets or exceeds a Reporting Threshold.[189] The Commission proposed that Managers would file the Form SHO with the Commission via the Commission's EDGAR system in an eXtensible Markup Language (''XML'') specific to Form SHO (''custom XML'' or ''Form SHO-specific XML''),[190] a structured machine-readable data language. The Commission also proposed that Managers would either be able to file Form SHO using a fillable web form the Commission would provide on EDGAR to input Form SHO disclosures, or a Manager could use its own software tool to file Form SHO to EDGAR directly in Form SHO-specific XML.[191] Reporting via EDGAR, as described in the Proposing Release, would facilitate efficient access, organization, and evaluation of reported information by the Commission.

The Commission stated in the Proposing Release that requiring Form SHO to be filed in custom XML format, since it is a structured, machine-readable data language, would facilitate more thorough review and analysis of the reported short sale disclosures by the Commission, which would increase the efficiency and effectiveness with which the Commission could identify manipulative short selling strategies.[192] Furthermore, the Commission stated most Managers have experience filing EDGAR forms that use similar EDGAR Form-specific XML-based data languages, such as Form 13F and Form ATS–N.[193]

As proposed, if a Manager uses the web-fillable Proposed Form SHO on EDGAR and encounters a technical error when filling out the form, such Manager would be required to correct the identified technical error before being permitted to file the Proposed Form SHO through EDGAR. If a Manager uses its own software tool to file a Proposed Form SHO filing to EDGAR directly in Proposed Form SHO-specific XML, and a technical error is identified by EDGAR after the filing is sent, such Manager would receive an error message that the filing has been suspended, and would be required to correct the identified technical error and re-file the Proposed Form SHO through EDGAR.[194]

Information about EDGAR, available at https://www.sec.gov/edgar/searchedgar/aboutedgar.htm#:~:text=EDGAR%2C%20the%20Electronic%20Data%20Gathering,and%20Exchange%20Commission%20(SEC) (''The [EDGAR] system processes about 3,000 filings per day, serves up 3,000 terabytes of data to the public annually, and accommodates 40,000 new filers per year on average.'').

[183] Proposing Release, at 14957.

[184] *Id.*

[185] *See, e.g.,* K&L Gates Letter, at 5–6 (any final rule or final Form SHO should ensure ''indefinitely'' the confidentiality of information that could reveal the identity of the reporting Manager).

[186] *See, e.g.,* AIMA Letter, at 14 (stating that the Commission has not explained how it will protect the commercially sensitive data that will be reported on Proposed Form SHO or acknowledged that its systems are susceptible to data breaches); MFA Letter, at 8 (positing that ''the risk of increased cyberattacks or other breaches of confidential account information far outweigh any incremental benefit associated with requiring [Managers] to individually report short position information''); Two Sigma Letter, at 3–5 (cautioning that information on Proposed Form SHO reports ''will be private only so long as the Commission does not have its systems breached, its personnel do not misappropriate the information, the information is not unintentionally released, or policies do not change retroactively''); SIFMA Letter, at 22 n.60 (citing cyber security, theft, and inadvertent data breach concerns as chief among the risks of providing sensitive and confidential information regarding short positions and short activity).

[187] *See* Annual Report on SEC website Modernization Pursuant to Section 3(d) of the 21st Century Integrated Digital Experience Act (Dec. 2022), *available at https://www.sec.gov/files/21st-century-idea-act-report-2022-12.pdf.*

[188] *Id.*

[189] Proposing Release, at 14956.

[190] *Id.* at 14955.

[191] *See id.* at 14955. The filing options described for Proposed Form SHO are consistent with other EDGAR filings that are filed in form-specific XML-based languages. *See, e.g., Regulation of NMS Stock Alternative Trading Systems,* Exchange Act Release No. 83663 (July 18, 2018), 83 FR 38768 (Dec. 9, 2021) (requiring new EDGAR Form ATS–N to be filed in an XML-based language specific to that Form).

[192] *See* Proposing Release, at 14997 (''By requiring a structured machine-readable data language and a centralized filing location (EDGAR) for the disclosures on Proposed Form SHO, the Commission would be able to access and download large volumes of Proposed Form SHO disclosures in an efficient manner.'').

[193] *See, e.g.,* Proposing Release at 14960, 14999 (first citing Form 13F, *available at https://www.sec.gov/pdf/form13f.pdf*) (then citing *Regulation of NMS Stock Alternative Trading Systems,* Exchange Act Release No. 83663 (July 18, 2018), 83 FR 38768 (Aug. 7, 2018)) (requiring new EDGAR Form ATS–N to be filed in an XML-based language specific to that Form); *see also Money Market Fund Reforms,* Investment Company Act Release No. 34441 (Dec. 15, 2021), 87 FR 7248 (Feb. 8, 2022) (Form N–CR); *Securities Offering Reform for Closed-End Investment Companies,* Exchange Act Release No. 88606 (Apr. 8, 2020), 85 FR 33290 (June 1, 2020) (Form 24F–2).

[194] The Commission stated in the proposing release that the XML schema (*i.e.,* the set of technical rules associated with Proposed Form SHO-specific XML) for Proposed Form SHO would incorporate validations of each data field on Proposed Form SHO to help ensure consistent formatting and completeness. For example, letters instead of numbers in a field requiring only numbers, would be flagged by EDGAR as a ''technical'' error that would require correction by the reporting Manager in order to complete its Proposed Form SHO filing. Field validations act as an automated form completeness check when a Manager files Proposed Form SHO through EDGAR; they do not verify the accuracy of the information

Continued

As an alternative, the Commission also discussed whether Proposed Form SHO should be required to be filed in Inline eXtensible Business Reporting Language (''Inline XBRL'').[195] The Commission stated that, compared to the proposal, the Inline XBRL alternative, which is both machine-readable and human-readable, would provide more sophisticated validation, presentation, and reference features for filers and data users.[196] However, the Commission stated that given the fixed and constrained nature of the disclosures to be reported on Proposed Form SHO, the benefits of the Inline XBRL alternative would be muted, and therefore Managers would not be able to take advantage of customization and presentation features.[197] Furthermore, the Commission stated in the Proposing Release that the alternative Inline XBRL approach would create greater initial implementation costs, such as licensing XBRL filing preparation software, because many Managers may not have prior experience structuring data in Inline XBRL.[198]

ii. Comments and Final Rule

The Commission received some comments about the use of Form SHO-specific XML in filing Form SHO. In response to Q39 in the Proposing Release,[199] which asked whether the use of Form SHO-specific XML would make the reported data more useful to users, one commenter stated that data prepared in consistent, structured format would be ''significantly more functional and useful.'' [200] Regarding the costs and benefits of an Inline XBRL requirement as compared to Proposed Form SHO-specific XML, this commenter supported using XBRL in a comma-separated value (''CSV'') format, which is a text file that uses delimiters such as commas to separate data fields.[201] The commenter stated that this would be the most appropriate standard ''for capturing high volume, granular data in a compact format,'' and urged the Commission to adopt XBRL rather than custom XML.[202] The commenter stated that XBRL–CSV has several advantages over the Commission's proposed use of a custom XML format, such as reducing preparation costs and processing costs, as well as improving validation.[203] In addition, the commenter disagreed with the Commission's view in the Proposing Release that the benefits of the additional features of XBRL would be muted if used for Form SHO due to the fixed and constrained nature of the disclosures to be reported. The commenter stated that several other agencies, such as the FDIC and FERC, have recently adopted XBRL format over custom XML format. However, the commenter acknowledges that initial implementation costs will be higher and familiarization with the format will take longer for reporting entities. Alternatively, another commenter supported the use of Form SHO-specific XML, stating that ''XML is a widely used language and therefore implementation and maintenance would keep costs low and efficiency high,'' and thought it would allow for efficient review of the reported data.[204]

The Commission is adopting the custom XML data reporting requirement as proposed. As explained in the Proposing Release, the filing options for Form SHO are consistent with other EDGAR filings that are filed in Form-specific XML-based languages.[205] The Commission also continues to believe that because many Managers have been using custom XML-based languages through other releases, they are more familiar with this language than other languages, such as XBRL, so the use of XML will promote efficiency in filing and review of Form SHO reports. Familiarity with custom XML formats will reduce implementation and ongoing compliance costs when compared to introducing XBRL-based formats that may be unfamiliar to Managers. Managers' greater familiarity with custom XML formats should also reduce the possibility of data input errors when compared to XBRL formats. The above noted commenter likewise stated that XBRL formats would entail higher initial implementation costs and that familiarization with the XBRL formats would take longer for reporting entities. The costs of using XBRL formats in implementation and user retraining, along with the inconsistencies relative to other filings that use Form-specific XML-based languages, do not justify the potential data formatting benefits of XBRL. Further, the commenter stated a preference for using XBRL specifically in CSV format. In addition to the above concerns about XBRL-based languages generally, the Commission believes that custom XML format is more appropriate than an XBRL–CSV format for the purposes of Form SHO because XML format is more human-readable than CSV format, and XML is more flexible when using more complex data.

Finally, the Commission's XML schema is designed to include validations for each data field on Form SHO to help ensure consistent formatting and completeness. The Commission continues to believe that requiring Form SHO to be filed via Form-SHO specific XML, a structured machine-readable data language, will facilitate more thorough review and analysis of the reported short sale disclosures by the Commission, increasing the efficiency and effectiveness of the Commission's understanding of short selling and systemic risk. Additionally, most Managers have experience filing EDGAR forms that use similar EDGAR Form-specific XML-based data languages, such as Form 13F.[206]

c. Timing of Reporting by Managers and Publication by Commission

i. Proposal

Under Proposed Rule 13f–2(a), a Manager would have been required to file the required information on Form SHO with the Commission within 14 calendar days after the end of each calendar month. Proposed Rule 13f–2(a)(3) provides that certain information reported on Proposed Form SHO would be published by the Commission on an aggregated basis. No time frame for publication by the Commission was provided in Proposed Rule 13f–2. In the Proposing Release, however, the Commission estimated that it would publish the aggregated information within one month after the end of the calendar month.

ii. Comments and Final Rule

Comments on the frequency of reporting and publication varied. Some commenters called for more frequent reporting by Managers and, by implication, more frequent publishing by the Commission of information from Form SHO reports. Several of these commenters suggested that technology permits more frequent—*i.e.,* daily, if not

filed in Proposed Form SHO filings. Proposing Release, at 14960 n.72.

[195] *See* Proposing Release, at 15010–11.

[196] *See id.*

[197] *See id.*

[198] *See id.*

[199] Proposing Release, at 15012.

[200] Comment Letter from Campbell Pryde, President and CEO, XBRL US (Apr. 26, 2022), at 1 (''XBRL Letter''), *available at https://www.sec.gov/comments/s7-08-22/s70822-20126860-287597.pdf.*

[201] *See id.* at 2.

[202] *See id.* at 2–5.

[203] *See id.*

[204] Comment from An Investor (Apr. 4, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20122297-278355.htm.*

[205] *See, e.g., Regulation of NMS Stock Alternative Trading Systems,* Exchange Act Release No. 83663 (July 18, 2018), 83 FR 38768 (Dec. 9, 2021) (requiring EDGAR Form ATS–N to be filed in an XML-based language specific to that Form).

[206] *See* Form 13F, *available at https://www.sec.gov/pdf/form13f.pdf.*

monthly—reporting.[207] Several of these comments also expressed concern that the Commission's estimated month-long delay in publishing the aggregated information would produce stale data that would undermine the goal of greater transparency in the markets.[208] The Commission acknowledges that the technology exists for frequent reporting of transactions and faster data processing. The Commission is concerned, however, about the accuracy of the data reported by Managers and the aggregated data published by the Commission pursuant to Rule 13f–2 reporting requirements. The Commission believes that the data reported by Managers on Form SHO is more likely to be complete and accurate if Managers are afforded sufficient time to gather, assemble, and review the reported data.[209] The Commission continues to believe that 14 calendar days after the end of each month provides a reasonable period of time for Managers to meet their Rule 13f–2 reporting requirements. The Commission is also concerned that increasing the frequency of Commission publication of aggregated data may increase the risk of short squeezes or other manipulative activities that could interfere with the price discovery function of equity markets. The timeframes as proposed and as adopted balance such concerns with some commenters' desire for faster transparency.

Commenters taking the opposite view recommended that additional time be given for Manager reporting and Commission publication. One such commenter recommended that the Commission align the proposed timelines for preparing and filing Form SHO reports with existing filing requirements for other Commission reports and forms, to allow for better coordination of the process of including short sale-related data in multiple reporting frameworks.[210] Another such commenter suggested an initial filing period be extended to within 28 calendar days upon crossing the threshold and then 14 calendar days for any subsequent filing.[211] Another commenter suggested that a minimum of 45 days before publication of aggregated data by the Commission was necessary to protect Managers from the risk that their positions and strategies would be used in a ''short squeeze or other market-driven reaction'' or as part of a copycat strategy.[212]

While adopting the proposed timeframes will delay the public dissemination of aggregate short positions by about a month, the Commission believes a longer delay such as 28 days for initial filings or 45 days for all filings is unnecessary. FINRA's current short interest reporting, for example, is published twice a month, resulting in a delay of about two weeks.[213] The final rule here requires slightly more time than FINRA's current reporting regimes because Managers need additional time following determination of whether they meet a Reporting Threshold at the end of each calendar month to prepare and file the data on Form SHO through EDGAR. Additionally, the Commission believes that providing Managers with a reasonable period of time to file complete and accurate short sale-related information in the first instance will reduce the need for Managers to file amendments to Form SHO. However, having an asymmetric filing deadline of 28 days for initial filing and 14 days thereafter, as one commenter suggested, would create negligible cost savings for Managers. Meanwhile, it may have detrimental effects on the timing of data aggregation and publication, which could unnecessarily affect the timing and quality of aggregated published data.

Final Rule

After considering comments, the Commission is adopting Rule 13f–2(a) as proposed, and continues to estimate that it will publish aggregated data derived from Form SHO reports within one calendar month after the end of the reporting calendar month.[214] For example, for data reported by Managers on Form SHO for the month of October, the Commission expects to publish aggregated information derived from such data no later than the last day of November. The Commission continues to believe that 14 calendar days after the end of each calendar month provides Managers with sufficient time for Managers that meet the Reporting Threshold to prepare and file Form SHO data.

d. Contents of Form SHO

Form SHO, as proposed, consists of two parts: Cover Page and Information Tables. As discussed more fully below:

- The *Cover Page* presents certain identifying information about the Manager(s) filing the Form SHO report, the calendar month for which the Manager is reporting, the type of Form SHO report being made, and whether the Manager is filing the Form SHO report as an amendment; [215]
- *Information Table 1* presents a Manager's monthly gross short position in the equity security on which information is being reported, as well as certain identifying information about that security and about the issuer of that security; [216] and
- *Information Table 2* presents daily activity affecting a Manager's gross short position during a calendar month reporting period, as well as certain identifying information about that security and about the issuer of that security.[217]

i. Financial Identifiers

(A) Proposal

The Commission proposed that a Manager provide the active LEI, if any, of each Manager listed on the Cover Page. The Commission also proposed that a Manager report on each of the Proposed Form SHO Information Tables the FIGI and CUSIP number of each security on which information is being reported, and the active LEI, if any, of

[207] *See, e.g.,* Comment from Regina Murrell (Mar. 25, 2023) *available at https://www.sec.gov/comments/s7-08-22/s70822-20121170-273336.htm* (suggesting that technology be used to report short positions daily); Anonymously Submitted Comment (Mar. 14, 2022) (calling for reporting to regulators within twenty-four hours); Anonymously Submitted Comment (Apr. 26, 2022) (calling for daily, if not intraday, Form SHO reporting rather than monthly reporting, as proposed); Anonymously Submitted Comment (Mar. 17, 2022) (stating that technology permits more frequent reporting and release of short sale-related data to the public in shorter timeframes); *see also* Better Markets Letter, at 13 (predicting that the Commission's ''fairly significant delay'' in publishing the aggregated information derived from Form SHO reports will lead to published information that is ''less timely and less informative'').

[208] *See, e.g.,* Comment of Estaban Oliveras (Mar. 14, 2022) *available at https://www.sec.gov/comments/s7-08-22/s70822-20119372-272258.htm* (commenting ''If data is neither accurate nor timely, then what is the point of collecting data?'').

[209] *See* Proposing Release, at 14956.

[210] ICI Letter, at 12 (stating that aligning Form SHO reporting requirements with those of Form N-Port, for example, would give Managers 30 days, rather than the proposed 14 days, after the end of a calendar to file a Form SHO).

[211] *See* Perkins Coie Letter, at 3 (stating a request to extend the initial filing period to within 28 calendar days upon crossing the threshold in order ''to reduce the monitoring and compliance burdens for infrequent short position users'').

[212] MFA Letter, at 18.

[213] *See, e.g.,* FINRA, Short Interest Reporting, *available at https://www.finra.org/filing-reporting/regulatory-filing-systems/short-interest* (presenting ''due dates'' for reporting short interest to FINRA and publication of short interest data by FINRA). FINRA Rule 4560 requires FINRA member firms to report their short positions in exchange-listed and over-the-counter equity securities to FINRA twice each month. FINRA publishes the short interest reports it collects from member firms for all such equity securities.

[214] Publication of the aggregated information may be delayed for an initial period following effectiveness of Rule 13f–2 and Form SHO.

[215] *See infra* Part II.A.4.d.ii.

[216] *See infra* Part II.A.4.d.iii.

[217] *See infra* Part II.A.4.d.iv.

the issuer of those securities. These items are discussed in Special Instructions 8.c, 8.e, and 8.f regarding Columns 3, 5, and 6 of Information Table 1, and in Special Instructions 9.c, 9.e, and 9.f regarding Columns 3, 5, and 6 of Information Table 2.

(B) Comments and Final Rule

The Commission received only a few comments regarding the proposed requirement to report certain financial identifiers, including CUSIP and FIGI (which identify specific securities), and LEI (which identifies specific entities) on Form SHO.[218] Two commenters stated that the Commission should only require that CUSIP be reported on Form SHO, and that the inclusion of additional financial identifiers could cause confusion.[219] Another commenter stated that the LEI and the FIGI of issuers is ''not commonly provided'' in other holding reports and would therefore cause Managers to incur additional costs.[220] Another commenter, citing ''substantial CUSIP licensing costs,'' expressed concern that requiring the reporting of CUSIP could create an ''unnecessary financial burden'' on Managers.[221] However, another commenter stated that the inclusion of multiple financial identifiers in addition to CUSIP, such as FIGI and LEI, could help foster competition that ultimately reduces costs and improves data quality.[222]

In DFA section 929X, Congress specifically directed the Commission to include CUSIP in short sale disclosure rules.[223] CUSIP is a universally recognized identifier that has been used for a wide array of financial instruments since 1964, allowing securities transactions to be easily identified, cleared, and settled, including short sales. Furthermore, market participants and investors are familiar with CUSIPs, which are widely and publicly available and used to identify most U.S. stocks.[224] Many companies display their CUSIPs on their websites, and brokers and dealers often provide investors with search engines to look up stocks by CUSIPs.[225] Accordingly, while the Commission recognizes that there are licensing costs associated with the CUSIP, the Commission is adopting, as proposed, the requirement that Managers report in Column 5 of each of the Form SHO Information Tables the CUSIP for the equity security for which information is reported to help facilitate market participants' understanding of the reported data.

The Commission will also adopt, as proposed, the requirement that Managers report in Column 6 of each of the Form SHO Information Tables the FIGI of the equity security for which information is being reported, if a FIGI has been assigned. Like CUSIP, FIGI provides a methodology for identifying securities, and reporting a FIGI, if assigned, will provide additional identifying information that will provide additional clarity, not confusion, to market participants and the public. Unlike CUSIPs,[226] however, FIGIs are provided for free.[227]

To aid in the identification of the issuers referenced in Form SHO reports, the Commission is also adopting a requirement that Managers report in Column 3 of each Form SHO Information Table, the LEI, if any, of the issuer of the security about which information is reported on Form SHO.[228]

With respect to the proposed requirement that a Manager provide its own LEI, if it had one, and, if available to the Manager making the Proposed Form SHO filing, the active LEI of each Manager listed on the Form SHO Cover Page as an ''Other Manager Reporting for'' the Manager making the Proposed Form SHO filing, the Commission sought comment on whether it should require every Manager filing a Proposed Form SHO to obtain an LEI.[229] One commenter supporting the requirement to report financial identifiers on Form SHO stated that all Managers should be required to obtain and maintain a non-lapsed LEI, as opposed to the proposal, which stated that Managers would be required to report their LEI, if any.[230] Another commenter, however, expressed uncertainty regarding such a requirement, stating that registration or renewal of an LEI is ''not monetarily costless.''[231]

The Commission acknowledges that LEIs do provide a precise and consistent means of identification of legal entities. However, after considering the comments received, and because LEIs would supplement existing identifying information provided for Managers and issuers listed in Form SHO filings, the Commission is not requiring Managers subject to Rule 13f–2 to obtain (and maintain non-lapsed) LEIs to provide on the Cover Page of Form SHO reports and, when appropriate for the ''Other Manager(s) Reporting for this Manager'' section of the Form SHO Cover Page to be completed, to provide a non-lapsed LEI for each Manager listed in the ''Other Manager(s) Reporting for this Manager'' of the Form SHO Cover Page. However, the Commission may consider this issue in the future.

ii. Cover Page

(A) Proposal

As proposed, and pursuant to Special Instructions 2–5 of Proposed Form SHO, a Manager would report on the Cover

[218] FIGI and LEI each serve different functions. FIGIs identify securities, whereas LEIs identify entities. Thus, a single issuer's LEI could be associated with multiple FIGIs. Conversely, multiple FIGIs could be associated with the same issuer's LEI. Furthermore, identifying reporting Managers on Form SHO would require an entity identifier (LEI) rather than a security identifier (FIGI).

[219] *See, e.g.,* Comment Letter from CUSIP Global Services (Apr. 25, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20126577-287237.pdf* (''CUSIP Letter''); Comment Letter from American Bankers Association (Apr. 26, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20126641-287311.pdf* (''ABA Letter'').

[220] Jennifer Han, Executive Vice President, Chief Counsel and Head of Regulatory Affairs, Managed Funds Association (June 15, 2023), at 9, *available at https://www.sec.gov/comments/s7-08-22/s70822-206120-414822.pdf* (''*MFA Letter 2*'').

[221] *See* Letter from Anonymous Fund Manager, at 9.

[222] *See* Comment Letter from Gregory Babyak, Glob. Head Regul. Affs., Bloomberg L.P., at 5 (May 2, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20127745-288932.pdf.*

[223] Public Law 111–203, sec. 929X, 124 Stat. 1376, 1870 (July 21, 2010).

[224] *See, e.g.,* Fast Answers: CUSIP Number, *available at https://www.sec.gov/answers/cusip* (referencing *CUSIP Global Services*).

[225] *See, e.g.,* Chad Langager, *How to Locate the CUSIP Number for a Stock, Investopedia* (Apr. 6, 2022), *available at https://www.investopedia.com/ask/answers/06/cusipforspecificstock.asp.*

[226] *See, e.g., Fees for CUSIP Assignment,* CUSIP Glob. Servs., *available at https://www.cusip.com/pdf/FeesforCUSIPAssignment.pdf* (''For an offering requiring a single CUSIP identifier, the assignment fee is $200.'').

[227] *See, e.g., Unlock the Power of Efficiency with Open Symbology,* OpenFIGI, *available at https://www.openfigi.com/.*

[228] This practice is in keeping with current requirements of other Commission forms. For example, the registrant filing Form N–PORT need not report LEIs for counterparties that do not have one. In addition, as noted above, to avoid any suggestion that a Manager filing a Form SHO report has an obligation to monitor the status of an issuer's LEI, Instructions 8.c and 9.c of Form SHO—''Column 3. Issuer LEI. If the issuer has an LEI, enter the issuer's active LEI—have been revised to remove the term ''active.'' *See supra* n. 36.

[229] *See* Proposing Release, at 14965. Because the Cover Page, as proposed, would also present the name and, if available to the Manager making the Proposed Form SHO filing, the active LEI of each Manager listed on the Form SHO Cover Page as an ''Other Manager Reporting for'' the Manager making the Proposed Form SHO filing, the query covered those Managers as well.

[230] Anonymously Submitted Comment (Apr. 4, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20122297-278355.htm* (''Every manager that has a part of trading any form of security or derivative on any market should be forced to have a Legal Entity Identifier (LEI). That way, specific bad actors can be easily identified.'').

[231] *See* Comment Letter from Aaron Franz, *available at https://www.sec.gov/comments/s7-18-21/s71821-20120685-272855.pdf* (''I'm uncertain that Managers should be required to obtain an LEI. Registration or renewal of an LEI is not monetarily costless. The same information can be submitted by Managers without a tracking number with a cost.'').

Page: (i) certain basic information, including its name, mailing address, business telephone and facsimile numbers, and active LEI, if any, as well as the name, title, business telephone and facsimile numbers of the Manager's contact employee for the Form SHO report, and the date the report is filed; (ii) the period end date—*i.e.,* the last settlement date of the calendar month for which the Manager is reporting; (iii) the type of Form SHO report being filed; [232] and (iv) whether the Form SHO is being filed as an amendment.[233] The Manager filing the report will include the representation that ''all information contained herein is true, correct and complete, and that it is understood that all required items, statements, schedules, lists, and tables, are considered integral parts of this form.'' [234]

(B) Comments and Final Rule

Other than with respect to financial identifiers as discussed above, the Commission did not receive any comments on the contents of the Cover Page. As a result, the Commission is adopting Special Instructions 2–5 of Form SHO as proposed, with minor technical modifications. For greater precision (but no change in the meaning) in the terminology used in Form SHO as adopted, an LEI that is currently in effect is referred to as a ''non-lapsed LEI'' rather than an ''active LEI'' (the terminology used in Proposed Form SHO). Also, the Cover Page contact information for the reporting Manager and its ''Contact Employee'' has been updated to require the use of email rather than facsimile.[235]

iii. Information Table 1: ''Manager's Monthly Gross Short Position''

(A) Proposal

Under Proposed Rule 13f–2, Managers meeting a Reporting Threshold would report certain information, including end of month gross short position information regarding transactions that have settled during the calendar month being reported, and certain hedging information that would help to indicate whether the reported gross short position is directional or non-directional in nature.[236]

Specifically, as proposed, the Manager would report the following information on Information Table 1:

- In Column 1, a Manager would enter the last day of the calendar month being reported by the Manager on which a trade settles. This information would identify the month being reported by the Manager.
- In Column 2, a Manager would enter the name of the issuer to identify the issuer of the equity security for which information is being reported.
- In Column 3, a Manager would enter the issuer's active LEI, if any. The LEI provides standardized information that would enable the Commission and market participants to more precisely identify the issuer of each equity security for which information is being reported.
- In Column 4, consistent with section 13(f)(2), a Manager would enter the title of the class of the equity security for which information is being reported.
- In Column 5, consistent with section 13(f)(2), a Manager would enter the nine (9) digit CUSIP number of the equity security for which information is being reported, if applicable.
- In Column 6, a Manager would enter the twelve (12) character, alphanumeric FIGI of the equity security for which information is being reported, if a FIGI has been assigned. Like CUSIP, FIGI provides a methodology for identifying securities.
- In Column 7, a Manager would enter the number of shares that represent the Manager's gross short position in the equity security for which information is being reported at the close of regular trading hours on the last settlement date of the calendar month of the reporting period. The term ''gross short position'' means the number of shares of the security for which information is being reported that are held short, without inclusion of any offsetting economic positions (including shares of the equity security for which information is being reported or derivatives of such security).
- In Column 8, a Manager would enter the U.S. dollar value of the shares reported in Column 7, rounded to the nearest dollar. A Manager would report the corresponding dollar value of the reported gross short position by multiplying the number of shares of the security for which information is being reported by the closing price at the close of regular trading hours on the last settlement date of the calendar month. In circumstances where such closing price is not available, the Manager would use the price at which it last purchased or sold any share of that security. This additional information regarding the dollar value of the reported short position would provide additional transparency and context to market participants and regulators.
- In Column 9, a Manager would indicate whether the identified gross short position in Column 7 is fully hedged (''F''), partially hedged (''P''), or not hedged (''0'') at the close of the last settlement date of the calendar month of the reporting period.[237]

[232] The Commission proposed that the reporting Manager designate the report type for the Form SHO by checking the appropriate box in the ''Report Type'' section of the Cover Page and include, where applicable, the name and active LEI of each other Manager reporting for this Manager. If all of the information that a Manager is required by proposed Rule 13f–2 to report on related Form SHO is reported by another Manager (or Managers), the Manager shall check the box for Report Type ''FORM SHO NOTICE,'' include on the Cover Page the name and active LEI (if available) of each of the other Managers reporting for this Manager, and omit the Information Tables. If all of the information that a Manager is required by proposed Rule 13f–2 to file on Form SHO is included in the report, the Manager shall check the box for Report Type ''FORM SHO ENTRIES REPORT,'' omit from the Cover Page the name and active LEI of each other Manager reporting for this Manager, and include the Information Tables. If only a part of the information that a Manager is required by proposed Rule 13f–2 to file on Form SHO is included in the report filed by the Manager, the Manager shall check the box for Report Type ''FORM SHO COMBINATION REPORT,'' include on the Cover Page the name and active LEI of each of the other Managers reporting for this Manager, if available, and include the Information Tables. *See* Proposing Release, at 14958.

[233] If the Manager is filing the Form SHO report as an amendment, then the Manager must check the ''Amendment and Restatement'' box on the Cover Page and enter the Amendment and Restatement number. Each amendment must include a complete Cover Page and Information Tables. Amendments must be filed sequentially. *See* Proposing Release, at 14960–61.

[234] *See* Proposing Release, at 14958.

[235] *See supra* n. 37 and accompanying text.

[236] *Id.* at 14959.

[237] As stated in the proposal, a Manager would indicate that a reported gross short position in an equity security is ''fully hedged'' if the Manager also holds an offsetting position that reduces the risk of price fluctuations for its entire position in that equity security, for example, through ''delta'' hedging (in which the Manager's reported gross short position is offset 1-for-1), or similar hedging strategies used by market participants. A Manager would report that it is ''partially hedged'' if the Manager holds an offsetting position that is less than the identified price risk associated with the reported gross short position in that equity security. This additional hedging information would help to indicate whether the reported gross short position is directional or non-directional in nature. More specifically, a short position that is not hedged could be an indicator that the short seller has a negative view of the security, believes that the price of the equity security will decrease, and accepts the market risk related to its short position. A short position that is fully hedged could be an indicator that the short seller has a neutral or positive view of the security and is engaged in hedging activity to protect against potential market risk. A short position that is partially hedged could be an indicator that the short seller has a negative, neutral, or positive view of the security. Whether the hedge itself is full, partial, or non-existent might provide further context to market participants regarding the short seller's view of the equity security. Hedging information also can assist with distinguishing position trading, which typically has corresponding hedging activity, from other strategies such as arbitrage.

(B) Comments and Final Rule

Comments regarding the contents of Information Table 1 raised concerns about the proposal to require hedging information in Column 9. As discussed below, the Commission is adopting Information Table 1, as proposed, except that the Commission will not require Managers to report hedging information as originally proposed in Column 9 of the table.

Comments Regarding Hedging Indicators

Implementation Challenges

The proposal would have required Managers to report on Information Table 1 whether they were ''fully hedged'' or ''partially hedged'' based on whether a Manager held an offsetting position that completely or partially reduced the risk of price fluctuations for its position in that equity security, respectively.[238] Further, the proposal required Managers to report on Information Table 1 that their short position was ''not hedged'' if the Manager did not hold any offsetting positions.[239] A number of commenters raised concerns about the costs to implement this proposed requirement.[240] One such commenter expressed concerns that the requirement to report hedging status would be ''operationally difficult to implement,'' as the reporting would be produced by back-office systems that ''generally do not have any linkage information to allow them to match a hedge to a short position,'' necessitating the development of costly new systems.[241] One industry group commenter expressed a concern about ''complications that can arise from the hedging classification,'' particularly for large portfolios for which it will not always be clear when a position is intended to be a hedge for another position, or clear or obvious whether a position acts as ''one-to-one offset'' of price risk for another position.[242]

Non-Universal Terminology

Some commenters expressed concerns about the meaning of ''fully hedged'' and ''partially hedged'' under the proposed rule. These commenters expressed the view that because there is no universal definition of hedging in the marketplace, or clear guidance on this matter from the Commission, Managers can reasonably come to different conclusions regarding the extent to which similar positions are hedged.[243] Because the meanings of ''fully'' and ''partially'' hedged are subject to interpretation, these commenters believed that the reporting of hedging data would be inconsistent, imprecise, potentially misleading, and subject to misinterpretation. Several such commenters posited that due to what they described as the ambiguity of the hedging definitions, the proposed hedging reporting could result in inaccurate or misleading data—such as misleading market signals of Managers' sentiments—as Managers may interpret the hedging indicators differently.[244] Similarly, a commenter stated that due to the lack of detail surrounding the ''partially hedged'' designation in particular, the data may be misleading as to the level of price risk associated with certain positions.[245] A commenter stated that there is no universal definition of what constitutes a ''hedge'' and that the Commission's guidance in the Proposing Release and the instructions in Proposed Form SHO as to how a Manager determines whether or when a position is fully or partially hedged, or not hedged, are insufficient to create a universal understanding and consistent reporting.[246] That commenter further stated that the Commission provided only one example (the use of delta hedging in a one-to-one offset between short and long positions), even though Managers use a variety of other hedging techniques, such as portfolio hedging, ETFs, baskets of securities, and securities that have historic trading correlations, among others.[247] Under these circumstances, several commenters predicted, Managers would likely default to a ''partially hedged'' designation,[248] resulting in data of limited utility.[249] These commenters stated that due to what they viewed as the ambiguous and non-universal nature of the terms, many Managers may simply default to marking transactions as ''partially hedged'' when it is unclear to what extent the positions are hedged, due to the wide range of positions encompassed by the proposed partially hedged indicator.[250] To mitigate this concern and to improve transparency, some commenters critical of the hedging indicators suggested reducing the qualitative nature of the proposed terms by dividing the ''partially hedged'' term into smaller, well-defined units or even percentage increments.[251] More specifically, these commenters expressed concern that the proposed hedging classifications could prove challenging to apply consistently across Managers and could result in significant

[238] Proposing Release, at 14959.

[239] *Id.*

[240] *See, e.g.,* MFA Letter, at 4 (stating that inclusion of hedging classification on Form SHO would be costly and time consuming for reporting Managers to produce); Virtu Letter, at 3 (advocating that requirement to report short positions as fully, partially, or not hedged would be ''operationally difficult to implement'' and should be eliminated).

[241] Virtu Letter, at 3.

[242] AIMA Letter, at 13.

[243] *See, e.g.,* ICI Letter, at 10; *see also* Comment Letter from Mehmet Kinak, Head of Equity Trading, T. Rowe Price, et al. (Apr. 26, 2022), at 4, *available at https://www.sec.gov/comments/s7-08-22/s70822-20126777-287493.pdf* (''T. Rowe Price Letter'') (stating that hedging data may be ''especially vulnerable to lack of consistency in terms of how various managers apply the classification.''); AIMA Letter, at 13 (predicting that hedging classification will involve ''level of subjectivity that is unlikely to be applied uniformly across Managers'' and that determining such classification will ''prove even more complicated for a large quantitative portfolio'').

[244] *See, e.g.,* AIMA Letter, at 13; MFA Letter, at 16.

[245] *See* ICI Letter, at 10.

[246] *See* MFA Letter, at 16–17.

[247] *See id.*

[248] *See, e.g.,* MFA Letter, at 17. The MFA Letter suggested that ''almost all short positions held by a large manager will be partially hedged—for example, if a manager has discretion over one fund with a short position, and another unrelated fund with a long position, the manager would be required to report the short position as ''partially hedged'' when in fact, the short position is not hedged at all.'' Depending on the facts and circumstances, the commenter is correct that the positions in the two funds managed by the same Manager may have to be aggregated under Rule 200(c) of Regulation SHO for marking purposes.

[249] *See, e.g.,* Ropes & Gray Letter, at 5 (stating that difficulty in defining ''fully,'' ''partially,'' or ''not,'' hedged would likely lead to inconsistent reporting that, in turn would limit the ''meaningfulness'' of the reported information to investors and the Commission); T. Rowe Price Letter, at 4 (raising concern that lack of consistency in how reporting Managers would apply the hedging classification could lead to ''weaknesses'' in the hedging data reported that would make the Commission's publication of aggregated hedging classifications across reporting Managers of little value to, and potentially misinterpreted by, the public); MFA Letter, at 4 (stating ''[b]ecause (i) there is no universal definition of ''hedging'' in the industry, and (ii) the reported gross short position must encompass short positions aggregated across funds, clients and affiliated managers, any hedging-related designation would be meaningless. Inclusion of this data would result in inconsistent reporting and would be costly and time consuming for managers to produce.''); SIFMA Letter at 21 (stating information reported in Column 9 of Proposed Form SHO would be ''inherently inconsistent and precise and, therefore, of very little value to regulators in that it could be highly misleading''); *see also* AIMA Letter, at 13 (stating hedging classification will involve ''level of subjectivity that is unlikely to be applied uniformly across Managers'').

[250] *See, e.g.,* Ropes & Gray Letter (arguing that the possible exaggerated use of the partially hedged indicator is ''unlikely to elicit comparable reporting across managers'').

[251] *See* Comment from Peyton Bailey (Mar. 14, 2022) (''Peyton Bailey Comment''), *available at https://www.sec.gov/comments/s7-08-22/s70822-272291.htm* (proposing to use percentage points or ''majority'' (≤50%) and ''minority'' (≤50%) hedging indicators instead of partially hedged); Nick Dougherty Letter (proposing to use percentage points); WTI Letter (proposing to use percentage points); Comment from Alex Fleming (Oct. 31, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-317348.htm* (proposing to use numerical or percentage scale).

costs for data of limited value.[252] One commenter stated that the act of market participants reporting the proposed hedging classification would create a chilling effect.[253]

Another commenter stated that although a change in hedging status may correspond with a change in manager sentiment, it is also possible that such a change may simply be the result of other unrelated objectives, such as rebalancing a portfolio.[254] Similarly, another commenter agreed that the purpose of defensive tactics that hedging strategies often entail, such as hedging a long position, contrasts with the purpose of unhedged short strategies.[255] That commenter expressed the view that such ''defensive'' hedging should not be included in the reporting as it would provide limited utility to the public. Some commenters took the position that reporting on ''bona fide'' hedging activity would not align with the goals in the Proposing Release and that such activity is unlikely to be abusive or manipulative.[256]

Some commenters that supported requiring hedging indicators generally rejected complaints about the costs and burdens related to the proposed reporting of hedging status as part of Information Table 1, stating that with modern technology, the requirements are ''easily automated and with minimal cost incurrence.'' [257] Support for the collection of hedging information generally came from commenters favoring steps to enhance the transparency of short sale-related data to facilitate a better understanding of short selling dynamics.[258] One commenter stated that the hedging classification, if made public, would illustrate market sentiment, and that it would help to uncover ''short and distort'' campaigns, particularly in sectors that have higher than normal rates of short selling.[259] The commenter further explained that under the status quo, it is unclear whether short positions are used for hedging long positions or whether they are being used to speculate on perceived overvaluation in the market in recent years.[260] Another commenter stated that publishing hedging information regarding the actions of hedge funds and other large market participants would inform the decision making of retail investors.[261] Other commenters posited that the proposed ''not hedged'' indicator would provide the most useful information to the market because unhedged short positions may be the most likely to be riskier or manipulated.[262]

Final Rule

After considering the comments received,[263] the Commission is not adopting the hedging reporting requirement as proposed. Specifically, when filing Form SHO Information Table 1, a Manager will not be required to indicate whether the identified gross short position in Column 9 of Information Table 1 is fully hedged (''F''), partially hedged (''P''), or not hedged (''0'') at the close of the last settlement date of the calendar month of the reporting period; Column 9 will be removed from Information Table 1 of Form SHO as adopted.

While the Commission laid out the rationale behind the hedging reporting requirement in the Proposing Release, comments received, as discussed above, persuaded the Commission that such reported data may not result in as consistent and accurate data as it originally envisioned. In addition to the definitional challenges discussed above, the Commission recognizes the challenges of applying the Rule 13f–2 reporting requirements in the scenario when a Manager has investment discretion over multiple accounts. For example, purchases and sales in different accounts may not be intended to hedge one another, but the proposal would have required that the Manager indicate that it was ''partially-hedged'' nonetheless. Such information would not be an accurate reflection of the Manager's hedging status, and thus would not be useful. As another example, a Manager that has purchased a few shares of a security (for example, 100 shares) for which it holds a substantial short position (for example, 1 million shares) would have had to report that it was ''partially hedged'' without regard for the scale of such purchases in relation to the position for which it would have had to report it was hedging. That said, the Commission continues to believe, as did some commenters favoring the proposed requirement, that if accurate data on hedging could be collected, such information would be useful to regulators.

---

[252] *See* MFA Letter, at 4, 16–17.

[253] *See* Comment Letter from Joshua Russell (Oct. 26, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20147825-314190.pdf.*

[254] *See* T. Rowe Price Letter, at 4.

[255] *See* K&L Gates Letter, at 2.

[256] *See* K&L Gates Letter, at 2–3, T. Rowe Price Letter, at 2–4, Anonymous Fund Manager Letter, at 1.

[257] Letter from Andrew Patrick White, CEO & Founder, FundApps (Mar. 2, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20118368-271239.pdf.*

[258] *See, e.g.,* Comment Letter from Anonymous (March 14, 2022) (positing that managers should report whether, and to what extent, they are hedged, along with an explanation of what that means; such information is valuable in determining a manager's position with regard to the associated risks); *see also* Comment Letter from Biotechnology Innovation Organization (Apr. 25, 2022) at 3, *available at https://www.sec.gov/comments/s7-08-22/s70822-20126539-287214.pdf* (''BIO Letter'') (positing that transparency into hedging data would facilitate understanding of price and behavior dynamics).

[259] BIO Letter, at 7.

[260] *Id.* at 2.

[261] Peyton Bailey Comment.

[262] *See* Comment from Max Knaus (Oct. 30, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-316957.htm;* Comment Letter from Brendan Casey (Oct. 30, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20149998-319181.pdf.*

[263] One commenter stated that the proposed hedging requirement ''fails to appreciate the difficulty—particularly for multi-service broker-dealers that use aggregation units and investment funds with multiple strategies—of calculating and determining such information for reporting purposes.'' SIFMA Letter, at 20. Under Regulation SHO, a person shall be deemed to own a security only to the extent it has a net long position in that security. *See* Rule 200(c). *See also* Rule 200(g)(1) (an order shall be marked long only if the seller is deemed to own the security and the security is in the physical possession or control of the broker or dealer or it is reasonably expected that the security will be in the physical possession or control of the broker or dealer by settlement date). Under Rule 200(f), a broker must aggregate all of its positions in a security to determine its net position, unless it qualifies for independent trading unit aggregation. If the broker or dealer qualifies for independent aggregation units, each independent trading unit shall aggregate all of its positions in a security to determine its net position. *See* Rule 200(f). Qualification requires that the independent aggregation unit meet four conditions. *See* Rule 200(f)(1) through (4). For instance, all traders in an aggregation unit must pursue only the particular trading objective(s) or strategy(s) of that aggregation unit and may not coordinate that strategy with any other aggregation unit. *See* Rule 200(f)(3). In adopting Rule 200(f), the Commission stated that ''conditions are necessary to prevent potential abuses associated with establishing aggregation units within multi-service broker-dealers.'' Regulation SHO Adopting Release, at 48011. Thus, to be eligible for the aggregation unit exception, the broker or dealer's units must operate independently, with defined trading strategies, and one unit's trades or positions cannot be used to offset or hedge another unit's trades or positions. *See, e.g.,* Rule 200(f)(3); *see also* Regulation SHO Adopting Release, at 48011 (each unit must be engaged in separate trading strategies). While information barriers between aggregation units may be useful, as the commenter suggests, such barriers alone are not sufficient for eligibility for Rule 200(f). *See e.g.,* Rule 200(f)(3); *see also* Regulation SHO Adopting Release at 48011 (conditions are intended to limit potential for abuse associated with coordination among units and to maintain the independence of the units). Thus, a broker or dealer that has created multiple units with fungible trading strategies as a means of affecting order marking may not be eligible for aggregation unit treatment under Rule 200(f) of Regulation SHO. *See e.g., In re* Morgan Stanley & Co., LLC, 34–90046 (Sept. 30, 2020) *(settled case), available at https://www.sec.gov/litigation/admin/2020/34–90046.pdf* (long-only and short-only aggregation units were not independent and separate trading strategies, but were instead operated by the same employees, managed by the same manager, and consisted of the same trading strategies).

The Commission considered whether, as suggested by a commenter, the hedging indicator could be simplified so that Managers would be required only to report whether a position is not hedged.[264] While short positions that are unhedged may involve greater risk, this alternative could be too easily circumvented by, for example, simply purchasing a nominal number of shares of the security and stating the position is therefore hedged (or partially hedged under the rule as proposed). The Commission also considered another commenter's suggestion that hedged short positions should be exempted from reporting.[265] This alternative would create a similar circumvention scenario to the one mentioned above (*i.e.,* using a nominal long position to create an exempt hedged position).

Accordingly, the Commission is not adopting the hedging reporting requirement as proposed.

iv. Information Table 2: ''Daily Activity Affecting Manager's Gross Short Position During the Reporting Period''

(A) Proposal

As proposed, Information Table 2 of Form SHO captures daily activity that increases or decreases a Manager's short position for each settlement date during the calendar month reporting period. More specifically, on proposed Form SHO, a Manager would report the number of shares of the equity security that: (i) were sold short; (ii) were purchased to cover, in whole or in part, an existing short position in the security; (iii) were acquired through the exercise or assignment of an option, through a tendered conversion, or through a secondary offering transaction,[266] that reduces or closes a short position on the (underlying) security; (iv) were sold through the exercise or assignment of an option that creates or increases a short position on the (underlying) security; (v) resulted from other activity not previously reported in the Information Table that reduces or closes, or creates or increases a Manager's short position on the security, including, but not limited to, ETF creation or redemption activity. Pursuant to Proposed Rule 13f–2, Managers would assemble, review, and file the required information with the Commission on new Form SHO within fourteen (14) calendar days after the end of the calendar month. As noted above, the Commission would then publish aggregated information derived from the data reported on new Form SHO, aggregated across all reporting Managers, within one month after the end of the reporting calendar month.

Specifically, as proposed, the Manager would report the following information on Information Table 2 for each date during the reporting period on which a trade settled (settlement date) during the calendar month.

• In Column 1, a Manager would enter the date during the reporting period on which a trade settled for the activity reported. This would identify the settlement date activity being reported.

• In Column 2, consistent with section 13(f)(2), a Manager would enter the name of the issuer, to identify the issuer of the security for which information is being reported.

• In Column 3, a Manager would enter the issuer's active LEI, if the issuer had an active LEI. The LEI provides standardized information that would enable the Commission and market participants to more precisely identify the issuer of each equity security for which information is being reported.

• In Column 4, consistent with section 13(f)(2), a Manager would enter the title of the class of the security for which information is being reported.

• In Column 5, consistent with section 13(f)(2), a Manager would enter the nine (9) digit CUSIP number of the equity security for which information is being reported, if applicable.

• In Column 6, a Manager would enter the twelve (12) character, alphanumeric FIGI of the equity security for which information is being reported, if a FIGI has been assigned. Like CUSIP, FIGI provides a methodology for identifying securities.

• In Column 7, for the settlement date set forth in Column 1, a Manager would enter the number of shares of the equity security for which information is being reported that resulted from short sales and settled on that date.

• In Column 8, for the settlement date set forth in Column 1, a Manager would enter the number of shares of the security for which information is being reported that were purchased to cover, in whole or in part, an existing short position in that security and settled on that date. This activity information would allow the Commission and other regulators to more quickly identify a potential ''short squeeze,'' which could be evidenced by short sellers closing out short positions by purchasing shares in the open market. If it appeared that a short squeeze may have occurred through potential manipulative behavior involving short selling, the Commission could perform further analysis regarding the squeeze. Increased risk of detection could deter some market participants seeking to orchestrate a short squeeze.

• In Column 9, for the settlement date set forth in Column 1, a Manager would enter the number of shares of the security for which information is being reported that are acquired in a call option exercise that reduces or closes a short position on that security and settled on that date. The exercise or assignment of an option position can reduce or close a short position in the underlying equity security.

• In Column 10, for the settlement date set forth in Column 1, a Manager would enter the number of shares of the security for which information is being reported that were sold in a put option exercise that created or increased a short position on that security and settled on that date. Options can be used to create economic short exposure such that an exercise or assignment of an option could create or increase a short position in the underlying equity security.

• In Column 11, for the settlement date set forth in Column 1, a Manager would enter the number of shares of the security for which information is being reported that were sold in a call option assignment that created or increased a short position on that security and settled on that date. Options can be used to create economic short exposure such that an exercise or assignment of an option could create or increase a short position in the underlying equity security.

• In Column 12, for the settlement date set forth in Column 1, a Manager would enter the number of shares of the security for which information is being reported that were acquired in a put option assignment that reduced or

[264] *See* Comment from Max Knaus (Oct. 30, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-316957.htm;* Comment Letter from Brendan Casey (Oct. 30, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20149998-319181.pdf.*

[265] Perkins Coie Letter, at 6 (stating that ''[o]r, alternatively, the SEC should consider exempting hedged short positions from reporting on Form SHO'').

[266] The term ''sale'' under the Securities Act includes contract of sale. *See Securities Offering Reform,* Exchange Act Release No. 52056 (July 19, 2005), 70 FR 44722, 44765 (Aug. 3, 2005); *Short Selling in Connection With a Public Offering,* Exchange Act Release No. 56206 (Aug. 6, 2007), 72 FR 45094, 45102 (Aug. 10, 2007). The Commission has previously stated that, in a short sale, the sale of securities occurs at the time the short position is established, rather than when shares are delivered to close out that short position, for purposes of section 5 of the Securities Act of 1933 (''Securities Act''). *See, e.g., Commission Guidance on the Application of Certain Provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and Rules Thereunder to Trading in Security Futures Products,* Exchange Act Release No. 46101 (June 21, 2022), 67 FR 43234, 43236 (June 27, 2002) (see Questions 3 and 5); *Short Selling in Connection With a Public Offering,* 72 FR 45094.

closed a short position on that security and settled on that date. The exercise or assignment of an option position can reduce or close a short position in the underlying equity security.

- In Column 13, for the settlement date set forth in Column 1, a Manager would enter the number of shares of the security for which information is being reported that are acquired as a result of tendered conversions that reduced or closed a short position on that security and settled on that date. Holders of convertible debt often hold short positions to hedge their convertible position. When the shares of the convertible debt are converted, they can reduce or close a short position in the equity security.
- In Column 14, for the settlement date set forth in Column 1, a Manager would enter the number of shares of the security for which information is being reported that were obtained through a secondary offering transaction that reduces or closes a short position on that security and settled on that date. Purchasing securities in a secondary offering [267] can reduce or close a short position in the equity security.
- In Column 15, for the settlement date set forth in Column 1, a Manager would enter the number of shares of the security for which information is being reported that resulted from other activity not previously reported in Information Table 2 that creates or increases a short position on that security and settled on that date. Other activity to be reported includes, but is not limited to, shares resulting from ETF creation or redemption activity.
- In Column 16, for the settlement date set forth in Column 1, a Manager would enter the number of shares of the security for which information is being reported that resulted from other activity not previously reported on Information Table 2 that reduces or closes a short position on that security and settled on that date. Other activity to be reported includes, but is not limited to, shares resulting from ETF creation or redemption activity.

The Commission stated in the Proposing Release that it believes that the information in Columns 9, 12, 13, 14, and 16 of proposed Information Table 2 would be useful in providing the Commission additional context and transparency into how and when short positions in the reported equity security are being closed out or reduced.[268] The Commission also stated that the information in Columns 10, 11, and 15 would be useful in providing the Commission additional context and transparency into how and when short positions in the reported equity security are being created or increased.[269]

Such daily activity information would provide market participants and regulators with additional context and transparency into whether, how, and when reported gross short positions in the reported equity security are being closed out (or alternatively, increased) as a result of the acquisition or sale of shares of the equity security resulting from call options exercises or assignments; put options exercises or assignments; tendered conversions; secondary offering transactions; [270] and other activity. The Commission stated that it believed that such activity data would also assist the Commission in assessing systemic risk and in reconstructing unusual market events, including instances of extreme volatility.

(B) Comments and Final Rule

The Commission solicited and received comment on the categories of short sale activity data that a Manager would be required to report on new Form SHO Information Table 2. Commenters differed on the appropriate level of transparency of the short sale-related data presented. Some commenters called for robust—if not complete—transparency of short sale-related data, while other commenters expressed concerns about the breadth of the activity information to be reported, the related cost burdens to report such information, and data security.

Individual investor commenters, generally, were critical of the opacity of current short position and short activity data disclosure. A group consisting of retail investors stated there was a ''lack of transparency around short positions, the inability to adequately quantify short interest, and the ability for firms to skirt regulation through derivative positions such as options and security-based swaps.'' [271] Some individual investor commenters viewed Proposed Rule 13f–2 and related Form SHO as a first step toward achieving the full transparency in disclosure they perceived as necessary for a fair and efficient market.[272] To these commenters, greater transparency is a means to level the playing field for retail investors.[273]

Other commenters acknowledged the Commission's authority to promulgate rules to capture short sale-related data but took the position that Form SHO reporting should be limited to the bare minimum necessary to satisfy the statutory mandate of DFA section 929X (*i.e.,* Exchange Act section 13(f)(2)).[274] These commenters expressed concerns about requiring the reporting of anything beyond the data elements expressly specified in section 13(f)(2) of

[267] Such offering purchases must be reported whether they occurred outside or within the restricted period of 17 CFR 242.105, Rule 105 of Regulation M, which makes it unlawful for a person who sells short a security that is the subject of an offering to purchase in the offering if the short sale occurred during the restricted period. Rule 105 originally prohibited persons from *covering* short sales with offering purchases but was amended to prohibit any purchases of offering shares if the person sold short during the restricted period (with limited exceptions) ''to end the progression of schemes and structures engineered to camouflage prohibited covering.'' *Short Selling in Connection with a Public Offering,* Exchange Act Release No. 34–54888 (Dec. 6, 2006), 71 FR 75002 at 75005 (Dec. 13, 2006). The amendment was designed to address a proliferation of trading strategies and structures attempting to accomplish the economic equivalent of the activity that the rule seeks to prevent, specifically, attempts to obfuscate the prohibited ''covering'' of the short sale. *See, e.g., Short Selling in Connection with a Public Offering,* Exchange Act Release No. 34–56206 (Aug. 6, 2007), 72 FR 45094 (Aug. 10, 2007).

[268] Proposing Release, at 14960.

[269] *Id.*

[270] *See supra* n. 263.

[271] WTI Letter.

[272] *Id. See also* Anonymously Submitted Comment (Mar. 11, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20119226-272030.htm* (''any and all information'' should be accessible by any investors); Anonymously Submitted Comments (Apr. 26, 2022, May 10, 2022, Oct. 9, 2022, Oct. 26, 2022); Comment from Erin Ashford (Oct 9, 22), *available at https://www.sec.gov/comments/s7-08-22/s70822-309605.htm* (calling for ''robust and complete transparency''); *cf.* Anonymously Submitted Comment (Mar. 17, 2022) (raising concerns about data integrity when the reporting system is based on reporting).

[273] *See, e.g.,* Comment from Richards (Oct. 31, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-317124.htm* (''Market fairness and transparency is an important part of this democracy. It helps to level the playing field.''); Anonymously Submitted Comment (Oct. 19, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20146713-312005.pdf* (''In summary, I, like many others, support the above proposal to increase transparency in the markets, and to somewhat level the playing field for smaller, independent investors and retail alike.''); Comment from Jonathan Patterson (Mar. 14, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-272193.htm* (''Shedding some light into the transactions of short sellers would be very supportive for retail investors and would help to level the playing field.'').

[274] *See* T. Rowe Price Letter, at 2 (urging a measured approach to meeting the 929X reporting obligation so that ''the public reporting of short sale information only satisfies the specific data elements and minimum frequency of dissemination referenced in section 929X and goes no further.''); Comment Letter from Robert Sloan, Managing Partner, S3 Partners, LLC (May 20, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20129426-295541.pdf* (recommending reporting be limited to public disclosure of ''only those data elements required by Section 13(f)(2)'') (''S3 Letter''); *see also* AIMA Letter (positing that Information Table 1 of Form SHO, without the requirement to report hedging information, would alone be sufficient for the Commission to carry out its statutory mandate and achieve its goals).

the Exchange Act.[275] Expressing concerns that the data required in Information Table 2 of Proposed Form SHO is too granular and contains an excessive amount of commercially sensitive information that, if misappropriated, would lead to commercial harm, these commenters recommended that, at a minimum, the scope of information required to be reported on Information Table 2 of Proposed Form SHO be substantially limited, or that Information Table 2 be eliminated altogether.[276] Some of these commenters suggested that the Commission rely instead on existing sources of short-sale related data, such as CAT or short sale-related data provided to FINRA and the exchanges.[277] Other commenters questioned the utility of the reported information proposed to be required.[278]

Several commenters expressly or effectively questioning the need for Information Table 2, also raised the concern that the short activity monitoring necessary to comply with the reporting requirements of Proposed Form SHO would require any Manager that engages in short selling to expend significant time and resources to enhance or revamp its systems to monitor activity continuously, without certainty as to if or when its short selling activity would meet or exceed the reporting thresholds.[279] These commenters concluded that the costs to operationalize Rule 13f–2 had not been adequately weighed against any benefits to regulators or the public.[280]

Final Rule

The Commission continues to believe that publication of aggregated short position data, on a delayed basis, is a reasonable means of minimizing the potential negative impacts of short position and short activity disclosures on short selling and allaying data security concerns raised by commenters while at the same time increasing transparency.[281] This rationale applies to Information Table 2, which is about daily activities. Eliminating Information Table 2 would not further the goal of enhancing the transparency of short sale-related data.[282] And for reasons stated below, the data available from existing sources of short sale-related information have limitations, so they do not extinguish the need for additional transparency in the short sale market.[283]

The data to be reported in the following columns of Information Table 2 in Proposed Form SHO will provide regulators with additional context and transparency into how and when reported gross short positions were closed out or increased, which will help the Commission assess systemic risk.[284] These columns are as follows:

- *Column 7:* Number of Shares Sold Short
- *Column 8:* Number of Shares Purchased to Cover an Existing Short Position
- *Column 9:* Number of Shares Purchased in Exercised Call Option Contracts
- *Column 10:* Number of Shares Sold in Exercised Put Option Contracts
- *Column 11:* Number of Shares Sold Short in Assigned Call Option Contracts
- *Column 12:* Number of Shares Purchased in Assigned Put Option Contracts
- *Column 13:* Number of Shares Resulting from Tendered Conversions
- *Column 14:* Number of Shares Obtained Through Secondary Offering Transaction [285]
- *Column 15:* Other Activity that Creates or Increases Manager's Short Position
- *Column 16:* Other Activity that Reduces or Closes Manager's Short Position

However, the Commission is modifying the design of Information Table 2 of Proposed Form SHO to help reduce the costs and burdens of complying with the reporting requirements of Proposed Rule 13f–2 without sacrificing the level of

[275] *See, e.g.,* SIFMA Letter, at 2 (positing that ''expansive reporting regime contemplated under the Proposed Rules would extend significantly beyond what Congress intended in passing Section 929X . . . .''); Comment Letter from James Toes, President & CEO, et al., Security Traders Association (Apr. 26, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20126796-287509.pdf* (''STA Letter'') (criticizing rulemaking proposal as going far beyond mandate of 929X of Dodd-Frank Act to prescribe rules providing for public disclosure of short sales and recommending more alignment of Proposed Rule 13f–2 reporting requirements with those of Form 13F); T. Rowe Price Letter, at 2.

[276] *See, e.g.,* Two Sigma Letter, at 3–4 (raising concerns about potential data breaches and unintended public dissemination of daily short position data); *see also* AIMA Letter, at 14 (citing negative ramifications for Managers, markets and the Commission if commercially sensitive and valuable data reported in Information Table 2 were to be compromised). *See also* discussion in *supra* Part II.A.4.a.ii.

[277] *See, e.g.,* AIMA Letter, at 2 (calling for elimination of Information Table 2 because it is ''too granular''); MFA Letter, at 4 (calling for elimination of Information Table 2 in favor of ''less burdensome alternative''); *see also* Ropes & Gray Letter, at 2 (stating that much of the information to be reported under Proposed Rule 13f–2 ''is, or soon should be'' available from existing reporting regimes—*e.g.,* CAT, and information reported by broker-dealers to FINRA and the exchanges); SIFMA Letter, at 15–19 (recommending elimination of Information Table 2 altogether or alternatively that reporting of short activity data be limited to reporting only gross short positions at the end of each settlement day when a reporting threshold is breached (excluding detailed purchase and sale activity); *cf.* T. Rowe Price Letter, at 3 (recommending that Commission not use the permissive authority granted in section 13(f)(2) of the Exchange Act to gather additional information that would not be beneficial to the market and would be challenging for Managers to compile). *See also* discussion in *supra* Part II.A.4.a.i.

[278] *See, e.g.,* Ropes & Gray Letter, at 3, 6 (stating that it would be difficult to ''to discern market sentiment or levels of activity from the net number published by the Commission, and the utility of publishing daily net transactions data to market participants will also likely be limited''); *see also* K&L Gates Letter, at 2 (questioning the ''value and impact'' of the information called for under Proposed Rule 13f–2, that would supplement information currently available from other sources).

[279] *See, e.g.,* Two Sigma Letter, at 7 (commenting that the ''commercial risk and operational burdens created by daily reporting of individual short positions'' was not adequately justified in the Proposing Release); MFA Letter, at 9–10 (raising concern that costs and consequences of Proposals would have a chilling effect on institutional investment managers' pursuit of short strategies); Perkins Coie Letter, at 2–3 (stating that the benefits of the reported information would be outweighed by compliance costs for Managers that do not regularly utilize short positions ''[F]or institutional investment managers that only selectively utilize short positions, or who only do so passively, these additional compliance costs in relation to the institutional investment manager's usage of short positions could in turn impose untended risks to the manager's underlying investors if the institutional investment manager must divert additional time and resources for compliance and oversight. This appears to be yet another affirmative reporting requirement that will increase compliance and overhead cost, without a [commensurate] benefit.'').

[280] *See, e.g.,* MFA Letter, at 14 (describing categories of information required in Information Table 2 as ''unclear, requir[ing] complicated judgments on the part of [M]anagers, and . . . likely to yield inconsistencies in reporting and results that are not accurate.''); Ropes & Gray Letter, at 3 (positing that reporting under Proposed Rule 13f–2 would impose ''significant costs'' on Managers, would not result in disclosure of ''actionable information to market participants,'' and is not necessary to allow the Commission to perform ''effective market surveillance''); *see also* S3 Letter, at 2 (predicting that short activity monitoring required by Information Table 2 of Form SHO will be a ''substantial lift'' for Managers' administrative systems); SBAI Letter, at 2 (positing that proposed Form SHO data collection framework not justified from a cost benefit perspective and provides ''very limited'' additional insight in an untimely manner).

[281] Proposing Release, at 14955.

[282] *See* Proposing Release, at 14987–14988, 14991 (discussing how existing sources of short sale-related data are not sufficiently granular, for example, to provide sufficient insights to further understanding of short selling strategies, to distinguish short sale transactions that impact short positions and those that do not, or into the timing with which short positions are established or covered).

[283] *See infra* Part VIII.B.4.

[284] Proposing Release, at 14959.

[285] A secondary offering transaction for purposes of this requirement means an offering, other than an initial public offering, or ''IPO,'' for the same class of security that is the subject of the short sale. Such an offering could be made by the issuer and include newly created and or treasury shares and could also include or be made exclusively by selling shareholders.

transparency of short sale activity data made available to market participants as prescribed in Proposed Rule 13f–2(a)(3).

Under the reporting regime of Proposed Rule 13f–2, Managers would have been required to report each category of short activity information included in Columns 7–16 (above) of Information Table 2 of Proposed Form SHO.[286] The Commission, for each individual column, would then tabulate the information reported to determine and publish the net activity in each reported equity security, as aggregated across all reporting Managers. That net activity would be expressed by a single identified number of shares of the reported equity security and be determined by offsetting the purchase and sale activity reported by Managers in Columns 7–16 of Information Table 2 of Proposed Form SHO.

Under the adopted version of Information Table 2, Columns 7–16 of Information Table 2 of Proposed Form SHO are replaced by a single, new Column 7, in which Managers will report net activity in the security for which information is being reported (represented as a number of shares). More specifically, Special Instruction 9.g of Form SHO, as adopted, requires Managers to report net change in short position reflecting how the gross short position in shares of the security for which information is being reported are being closed out—or alternatively, increased—as a result of the acquisition or sale of share activity determined by offsetting prescribed types of purchase and sale activity. Those prescribed types of purchase and sale activities correspond to the purchase and sale activities identified in Columns 7–16 of Proposed Form SHO. The net activity will be determined by Managers—rather than by the Commission—and reported to the Commission. The Commission will then aggregate the reported daily net change numbers across Managers for public dissemination. Under the adopted version of Information Table 2, the Commission will receive less granular information from reporting Managers than was proposed. The Commission, however, will receive net activity information from reporting Managers for each settlement date during the calendar month which will provide additional context and transparency into whether the reported gross short positions in the reported equity security are being closed out (or alternatively, increased) as a result of the acquisition or sale of shares of the equity security resulting from call options exercises or assignments; put options exercises or assignments; tendered conversions; secondary offering transactions; and other activity. The Commission believes that this is a reasonable approach that considers both those comments that supported additional transparency with regard to short sale-related information that would result from Information Table 2 reporting, and also comments about cost and data security concerns with regard to such reporting. This reported net activity information will assist the Commission in assessing systemic risk and in reconstructing unusual market events, including instances of extreme volatility.[287]

These modifications in the final rule for Information Table 2 of Form SHO result in no change to the net activity information that will be made publicly available by the Commission. Under Proposed Rule 13f–2 and Proposed Form SHO, the Commission would publish net activity information for each reported equity security, aggregated across all categories of activity in Columns 7–16 of Information Table 2 of Proposed Form SHO, and aggregated across all reporting Managers. Under Rule 13f–2 and Form SHO, the Commission will publish this same net activity information for each reported equity security as originally proposed by the Commission.[288] And for this reason, Information Table 2 as adopted will not sacrifice transparency to market participants.

e. Filing Amendments

i. Proposal

To facilitate the Commission's process of aggregating the short sale-related information reported on Form SHO for publication, the Commission proposed that amendments to Form SHO must restate the Form SHO in its entirety. To inform the Commission that the filing is an amendment of a previously filed Form SHO, the Commission proposed that a Manager must check the box on the Form SHO Cover Page to indicate that the filing is an ''Amendment and Restatement.'' On the Cover Page of each Amendment and Restatement filed, the Commission proposed that a Manager must provide a written description of the revision being made, explain the reason for the revision, and indicate whether data from any additional Form SHO reporting period(s) (up to the past 12 calendar months) is/are affected by the amendment. If other reporting periods have been affected, the Commission proposed that a Manager shall complete and file a separate Amendment and Restatement for each previous calendar month so affected and provide a description of the revision being made and explain the reason for the revision.

In cases where a revision is reported in an Amendment and Restatement that changes a data point reported in the Form SHO by twenty-five (25) percent or more, the Commission proposed that the Manager must notify the Commission staff via the Office of Interpretation and Guidance of the Division of Trading and Markets (''TM OIG'') at *TradingAndMarkets@sec.gov* within two (2) business days after filing the Amendment and Restatement.

ii. Comments and Final Rule

The Commission received some comments on the issue of amendments and restatements. One comment stated that the notification requirement for an amendment of 25 percent or more is too large, and that lower percentage revisions can be considered significant.[289] The commenter further recommended that the notification requirement for amendments be reduced to revisions of 15 percent or more and that the number of revisions allowed for individual Managers be limited.[290] Another commenter stated that if a non-material error has been made, a Manager should not have to restate Form SHO in its entirety, and that a simple note or addendum should suffice.[291] This commenter also encouraged the Commission to adopt a materiality threshold for other errors or omissions, *i.e.,* if the error does not ''materially impact the data the Commission intends to publish, then the Manager should not be required to restate Proposed Form SHO in its entirety,'' stating that this would ''eliminate the need for the Commission to collect even more commercially sensitive and valuable data and, in turn, relieve Managers of the time and costs that would be required to calculate, populate, and re-file an entirely new Proposed Form SHO.'' [292]

[286] *See* Special Instructions 9.g of Proposed Form SHO.

[287] See *infra* Part VIII.C.1 for a discussion of how the Rule 13f–2 (and the adopted CAT amendment) will enhance the Commission's ability to protect investors and investigate market manipulation by providing a clearer view into the short selling market and improving the Commission's and other regulators' reconstruction of significant market events.

[288] Proposing Release, at 14961.

[289] Comment Letter from Anonymous (Mar. 21, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20120739-272894.pdf.*

[290] *See id.*

[291] AIMA Letter, at 15.

[292] *Id.*

The Commission is adopting procedures for filing and amending Form SHO consistent with the Proposing Release but modified to no longer require Managers to separately notify the Commission that the reporting discrepancies presented in an Amendment and Restatement have occurred. A Manager that determines or is made aware that it has filed a Form SHO with errors that affect the accuracy of the information reported must file an amended Form SHO within ten (10) calendar days of discovery of the error. The Commission continues to believe that filing an amended Form SHO within 10 calendar days of discovery of the error will provide Managers with a reasonable period of time to prepare the Form SHO amendment, while helping to ensure that accurate information is received by the Commission in a timely manner.

The Commission is adopting the requirement, as proposed, that amendments to a previously filed Form SHO restate the Form SHO in its entirety, as described in Special Instruction 3 to Form SHO. Form SHO Special Instruction 3.a provides that on the Cover Page of each amended and restated Form SHO filing, a Manager must: check the box to indicate that the filing is an ''Amendment and Restatement,'' provide a written description of the revision being made, explain the reason for the revision, and indicate whether data from any additional calendar month reporting period(s) (up to the past 12 calendar months) is/are affected by the amendment. Consistent with the proposed procedures for filing an amended Form SHO, if other reporting periods have been affected, a Manager must complete and file a separate Amendment and Restatement for each previous calendar month so affected, and provide a description of the revision being made and explain the reason for the revision. As proposed and discussed further below, the Commission will provide aggregated data on a rolling twelve-month basis, with prior months' data updated as necessary to reflect data from Amendments and Restatements. The Commission continues to believe that limiting the requirement to file an amended Form SHO to twelve months will reduce the burden and cost on Managers.[293] In response to comments requesting a materiality threshold, requiring a Form SHO to be restated in its entirety should add little if any additional burden, as the Manager will have already compiled such data, and thus no additional data collection will be required other than to correct the data point that is being amended. A materiality threshold could create additional complexity in determining how and when to file an amendment to Form SHO, and as such, the Commission is adopting the straightforward approach that any revision requires the Manager to restate Form SHO in its entirety when filing an amendment.

The Commission is not adopting, however, the requirements that a Manager provide the Commission notice of the revision(s) reported in an Amendment and Restatement and an explanation of the reason(s) for the revision(s), as prescribed in Proposed Form SHO Special Instruction 3.b and 3.c;[294] and each of those Special Instructions in Proposed Form SHO is deleted from Form SHO as adopted. This change will reduce compliance costs for Managers filing Amendments and Restatements by not requiring them to provide a separate notice regarding information that has been reported, and therefore is available, to the Commission via EDGAR, without sacrificing transparency.

Consistent with the proposed procedures for publishing data reported on or derived from Form SHO reports—including any Amendments and Restatements, the Commission plans to update prior months' aggregated Form SHO data on EDGAR to reflect information reported in Amendments and Restatements and will add an asterisk (*i.e.,* *) or other mark for any updated data for which a Manager notified Commission staff that it filed an Amendment and Restatement that changes a data point reported in the Form SHO by 25 percent or more to highlight for market participants that the published aggregated data includes significantly revised data. The Commission will publish the aggregated Form SHO data for the latest reporting period along with aggregated Proposed Form SHO data for the prior twelve months on a rolling basis. The published aggregated Form SHO data will include a disclaimer that the Commission does not ensure the accuracy of the data being published.[295] Maintaining these requirements will help preserve the integrity of the reported short sale data and alert market participants to any potential issues with published data.[296]

f. Confidential Treatment

i. Proposal

The instructions to Proposed Form SHO provided that all information that would reveal the identity of a Manager filing a Proposed Form SHO report with the Commission would be deemed subject to a confidential treatment request under 17 CFR 240.24b–2 (''Rule 24b–2'').[297] As discussed in the Proposing Release, the Commission proposed to publish only aggregated data derived from information provided in Proposed Form SHO reports. Proposed Form SHO, by its terms, ensured that information reported on the form that could reveal the identity of the reporting Manager would be deemed subject to a confidential treatment request. Pursuant to section 13(f) of the Exchange Act, the Commission may prevent or delay public disclosure of all other information reported on Proposed Form SHO in accordance with the Freedom of Information Act (''FOIA''), section 13(f)(4) and (5), Rule 24b–2(b) under the Exchange Act, and any other applicable law.

ii. Comments and Final Rule

The Commission received a single comment regarding confidential treatment. Stating that there are a variety of valid reasons beyond the example provided in the Proposing Release that a Manager might seek confidential treatment of information reported on Proposed Form SHO, the commenter urged the Commission to adopt a more flexible process for seeking confidentiality that would enable Managers and the Commission staff to determine whether confidential treatment is appropriate.[298] The Commission is adopting an approach consistent with the Proposing Release but modified to refer to Rule 83 (17 CFR 200.83), and to provide that all

[293] Proposing Release, at 14960.

[294] Special Instruction 3.b of Proposed Form SHO provided that if a data being reported in an Amendment and Restatement affects the data reported on the Form SHO reports filed in at least three of the immediately preceding Form SHO reporting periods, the Manager, within two (2) business days after filing the Amendment and Restatement, must provide the Commission staff, via TM OIG at *TradingAndMarkets@sec.gov,* with notice of (1) this circumstance; and (2) an explanation of the reason for the revision. Special Instruction 3.c of Proposed Form SHO provided that if a revision reported in an Amendment and Restatement changes a data point reported in the Form SHO that is being amended by 25% or more, the Manager must notify the Commission staff via TM OIG at *TradingAndMarkets@sec.gov* within two business days after filing the Amendment and Restatement.

[295] *See* Proposing Release, at 14961.

[296] *See id.*

[297] *Id.* at 14957.

[298] Schulte Roth & Zabel Letter, at 5 (urging the Commission to permit confidential treatment requests with respect to the data to be included in the aggregated data to be published by the Commission on a case-by-case basis).

information will be deemed subject to a confidential treatment request under Rule 83.

As proposed, the instructions to Form SHO expressly provided that all information that would reveal the identity of a Manager filing a Proposed Form SHO report with the Commission would be deemed subject to a confidential treatment request under Rule 24b–2, as described in the ''Filing of Form SHO'' section of the General Instructions to Form SHO. Because the Commission does not intend those filings to be public, Rule 83 includes appropriate and less burdensome procedures and, accordingly, is revising the General Instructions to provide that data will also be deemed subject to a confidential treatment request under Rule 83.

As with the Proposed Rule, the Commission currently plans to publish only aggregated data derived from information provided in Proposed Form SHO reports. While it is possible a person may be able to determine the identity of a Manager (or reverse engineer a Manager's trading strategies) in a situation where only one person was selling short, especially where the short seller has publicly disclosed that it has a short position in a specific security, the Commission continues to believe that excluding such data from the aggregated data published by the Commission could affect the integrity of the data. The Commission anticipates that the risk of exposing a single short seller will be mitigated by the delay in publication of the aggregated data.

The Commission does not anticipate disclosing information in Form SHO, other than to the extent the data is included in the Commission's aggregated disclosures, and the Commission will deem the information included in Form SHO as being subject to a confidential treatment request under Rule 83. Accordingly, the Commission is further revising the General Instructions to provide that all information included in the Form SHO is deemed subject to a confidential treatment request under Rule 83. Pursuant to section 13(f) of the Exchange Act, the Commission may prevent or delay public disclosure of all other information reported on Form SHO in accordance with FOIA, section 13(f)(4) through (5), Rule 83, and any other applicable law.[299]

[299] The Commission will follow Rule 83 procedures in addressing any requests for information reported on Form SHO deemed subject to a confidential treatment request.

g. Preventing Duplicative Reporting

i. Proposal

The rules to prevent duplicative reporting of information regarding short positions and short activities of an equity security in Proposed Form SHO were partially modeled after those in Form 13F.[300] More specifically, as described in the General Instructions to Proposed Form SHO, if two or more Managers, each of which would be required by Proposed Rule 13f–2 to file Proposed Form SHO for the reporting period, exercise investment discretion with respect to the same security, only one such Manager would be required to report information regarding that security in its Proposed Form SHO report. The Commission proposed that if a Manager were required to file a Proposed Form SHO report with respect to a security and chose to rely on the duplicative reporting provisions of the General Instructions to Proposed Form SHO, then such Manager would be required to identify on the cover page of its Proposed Form SHO report any other Managers filing a Proposed Form SHO report with respect to such security on behalf of the Manager, in the manner described in Special Instruction 5 of Proposed Form SHO. Duplicative reporting could result in unnecessary costs to Managers and could make the aggregated data published by the Commission less accurate.

ii. Comments and Final Rule

The Commission did not receive any comments regarding duplicative reporting, and for the reasons stated in the Proposing Release, is adopting Special Instruction 5 to Form SHO as proposed.

h. Verification of Short Sale Data

i. Proposal

The Commission stated in the Proposing Release that it does not intend to verify the accuracy of the data reported by Managers, but may consider doing so in the future after assessing whether such verification would be useful or necessary to enhance the integrity of the data.[301] The Commission further stated that field validations act as an automated form completeness check when a Manager files Proposed Form SHO through EDGAR, and that the validations do not verify the accuracy of the information filed in the Proposed Form SHO filings.[302]

[300] *See* ''Rules to Prevent Duplicative Reporting'' in the ''General Instructions'' of Form 13F, *available at https://www.sec.gov/pdf/form13f.pdf.*

[301] Proposing Release, at 14955.

[302] Proposing Release, at 14960 n.72.

ii. Comments and Final Rule

The Commission received many comments on the issue of Manager reporting and data verification. The comments supported implementing a Commission verification system for reported data, stating that reporting as proposed would lead to inconsistencies. Commenters expressed concerns regarding the self-reporting of data, citing the potential for errors or intentional manipulation of data.[303] One commenter stated that Managers have incentives to report inaccurately, especially if there is concern over unveiling short selling strategies.[304] Other commenters cited examples of instances of potential issues with data resulting from under-reporting, over-reporting, and misreporting.[305] One commenter stated, without further detail, that orders were being mismarked as short exempt in order to circumvent the short sale circuit breaker of Rule 201 of Regulation SHO.[306] Other commenters suggested that the Commission verify the accuracy of reported data via a random audit, such as auditing reporting at a rate applicable to five percent of reported data per quarter.[307] Several commenters also suggested that short sale transactions be placed on a publicly available,

[303] *See, e.g.,* Comment from Dale Eaglen (Feb. 25, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20117894-270815.htm;* Comment from Michael Behrens (Feb. 25, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-270806.htm (''Michael Behrens Comment'');* Comment from Stephen (Mar. 4, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20118671-271537.pdf;* Comment from Kevin B. (Mar. 14, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20119357-272243.htm; see also* Steve B. Comment (expressing concern that ''[s]hort positions are currently 'self regulated' ''), Comment Letter from Mike Monisky (Mar. 4, 2022) *available at https://www.sec.gov/comments/s7-08-22/s70822-20118657-271529.pdf* (expressing concerns about misreporting of securities transactions to FINRA) (''Mike Monisky Letter''), Comment from Jonathan Dumaine (Mar. 14, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20119364-272250.htm (expressing general concern for potential for abuse whenever self-reporting on forms is involved)* (''Jonathan Dumaine Comment'').

[304] Comment from J. T. (Oct. 2, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-309405.htm.*

[305] *See, e.g.,* Michael Behrens Comment; Mike Monisky Letter; Jonathan Dumaine Comment.

[306] *See* Michael Behrens Comment.

[307] *See, e.g.,* Michael Behrens Comment; Comment from Jana Caperton (Mar. 12, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20119201-272007.htm;* Comment from Jim Lee (May 26, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-295810.htm* (''Jim Lee Comment''); Comment from Gerry T. (Oct. 31, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-317082.htm;* Comment Letter from Wayne C. Smith (Dec. 3, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20152504-320238.pdf.*

immutable log, perhaps using blockchain technology, as a solution to the issue of verification.[308] Finally, one commenter suggested that it should be the duty of exchanges and broker-dealers to report eligible short positions.[309]

The Commission is adopting the reporting requirement as proposed. Consistent with the Commission's statement in the Proposing Release, the Commission does not intend to verify the accuracy of the data received from the Managers but may consider doing so after assessing whether such verification would be useful or necessary to enhance the integrity of the data. The reporting Managers are responsible for the completeness, timeliness, and accuracy of information included in their mandatory filings to the Commission. The Commission has the ability to conduct examinations to help evaluate whether reporting Managers are in compliance and, where necessary, the Commission may bring enforcement actions where potential violations are believed to have occurred.

i. New Reporting Regime—Comments and Final Rule

Rather than create a new reporting regime by adopting the Proposals, several industry commenters urged the Commission to leverage the existing data frameworks of FINRA, CAT, and other data filed with the Commission (*e.g.,* Form N–PORT).[310] These commenters stated that leveraging existing reporting frameworks would alleviate compliance burdens and associated costs,[311] and that existing reporting frameworks were already sufficient for short interest reporting.[312] These commenters stated, and the Commission acknowledges,[313] that there are multiple sources of existing public and non-public data related to short sales. FINRA and most exchanges collect and publish daily aggregate short sale volume data, and on a one month delayed basis publish aggregated information regarding short sale transactions. FINRA collects and aggregates short interest data from broker-dealer member firms, by security, twice each month.

In assessing how the Commission might leverage existing data to satisfy the mandate of section 929X, it is important to note differences in reporting entities, timing, and the specific data being collected in existing public and non-public sources of short sale-related data. The letters submitted by industry commenters critical of the Proposed Rule 13f–2 reporting regime did not explain with any specificity how the Commission could leverage existing sources of short data so that the Commission would receive equal or comparable data to that which will be reported on Form SHO, nor did Commenters articulate how short data that is currently available to market participants is comparable to data which would be reported on Form SHO and published by the Commission, rather the comments referenced leveraging of existing sources generally.[314]

After considering the viewpoints of commenters, the Commission believes that a new reporting regime will increase transparency into short positions consistent with the goals of DFA 929X, and that market participants and regulators alike will benefit from the required Form SHO disclosures, as they are distinct from existing short sale reporting regimes. Further, the short sale-related information that will be collected under Rule 13f–2 and Form SHO will fill an information gap for market participants and regulators by providing insights into increases and decreases in reported short positions. As stated in the Proposing Release, the Commission believes that the short position data reported pursuant to Rule 13f–2 on Form SHO will supplement the short sale information that is currently publicly available from FINRA and the exchanges.[315] In the Proposing Release, the Commission elaborated on the limitations of using existing data, such as the CAT or FINRA data, to reconstruct market events like the "meme" stock events of January 2021.[316] The Commission stated that while some existing sources report daily short sale volume, there are several limitations with regard to using existing data sources to accurately represent the short exposure of Managers. The short sale data reported on Form SHO will include the daily "net" activity by reporting Managers on each settlement date during the calendar month in the security for which information is being reported, and such information is not currently available from FINRA or the exchanges. Moreover, because FINRA's existing short interest data reports aggregate short positions on a bimonthly basis,[317] those reports do not reflect the timing with which short positions increase or decrease in the two-week period between the two reporting dates. The short sale data reported on Form SHO will help to fill that information gap. The Commission continues to believe that publication of this additional aggregated information can help to further inform market participants regarding overall short sale activity by Managers with substantial short positions and will provide regulators as well as market participants with important information regarding the timing of increases and decreases in the reported short positions.[318] Finally, compared to other existing reporting regimes, the Reporting Thresholds in Rule 13f–2 are designed to require the reporting of only substantial, hence more informative, short positions.[319]

Further, the Commission understands that while FINRA makes publicly

---

[308] *See, e.g.,* Comment from Joseph M. Grato (Mar. 21, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20120589-272777.htm* ("Joseph Grato Comment"); Jim Lee Comment.

[309] *Jonathan Dumaine Comment.*

[310] *See, e.g.,* Ropes & Gray Letter, at 2*;* Two Sigma Letter, at 9–10; ICI Letter, at 5; *see also* K&L Gates Letter, at 2 (stating that the Proposal "is unnecessary and, on balance, overly burdensome given the sufficiency of existing data availability"); Virtu Letter, at 2 (stating that the Commission "has not proffered a regulatory need or justification for why the current reporting regime is inadequate"); SIFMA Letter, at 13 ("respectfully disagree[ing] with the Commission's assertions that the data available to it through the existing reporting regimes is not sufficient to allow the SEC to meet its obligations under Section 929X"); Perkins Coie Letter, at 2; AIMA Letter, at 8–10 (stating that "[w]ith tailored refinements to FINRA reporting and the combination of the proposed CAT amendments . . . the Commission can still fulfill the statutory mandate and achieve the goals outlined in the Proposal but without creating additional reporting requirements, burdens and costs for many market participants"); SBAI Letter, at 2 (stating that instead of implementing a new reporting regime, the Commission should "[f]ocus should instead lie on making enhancements to FINRA's existing collection and activity fit for purpose."); T. Rowe Price Letter, at 3 (stating that "[g]iven the extensive data already available to the SEC through FINRA's existing short interest reporting, stock exchanges' reporting of short sale activity, and the [CAT], the SEC should extract the short data it desires from these sources, rather than create new reporting obligations for managers whose activity is already captured by these existing frameworks.").

[311] *See, e.g.,* Ropes & Gray Letter, at 2; SIFMA Letter, at 19.

[312] *See, e.g.,* SIFMA Letter, at 9–10; K&L Gates Letter, at 2; Virtu Letter, at 2.

[313] *See* Proposing Release, at 14953–4.

[314] *See, e.g.,* Virtu Letter, at 2 (stating that the Commissions should "explore ways to utilize the existing sources of data that already are available to the SEC rather than establishing yet another pool of short sale data.").

[315] *See* Proposing Release, at 14981–82. *See also infra* Part VIII.B.4.

[316] *See* Proposing Release, at 14981–82.

[317] The short interest data reported reflects aggregate short positions as of the specified reporting dates.

[318] Proposing Release, at 14995.

[319] With regard to Threshold B, as discussed in the Proposing Release, a $500,000 or more threshold for non-reporting company issuer securities is similar to the median dollar value of a position of 2.5 percent of the market capitalization of OTC stocks for which the Commission was able to obtain information on total shares outstanding. Hence, it is proportional to Threshold A in capturing substantial short positions. *See supra* Part II.A.3.a for additional discussion of Reporting Thresholds.

available short sale-related data pertaining to both exchange-traded equity securities and OTC equity securities that is reported to it by its member firms,[320] some of the exchanges require payment of a fee to access short sale-related data, which may make it difficult for some investors to access the data. The reporting regime under Rule 13f–2, by contrast, will provide aggregated short sale-related data in a readily accessible location (*i.e.,* EDGAR or the Commission website), free and accessible to all investors and other market participants. The Commission continues to believe that providing free, accessible, and more complete information to market participants regarding short sale-related data will aid market participants in their understanding of the level of negative sentiment about a particular equity security and the actions of short sellers collectively and aid the Commission's oversight of short selling.[321]

Other industry commenters were concerned about reporting burdens for smaller Managers, and one such commenter predicted that the increased reporting costs resulting from the Proposals and other related Commission proposed rulemakings could lead to industry consolidation and decrease competition and investor choice.[322] The Commission continues to believe that application of the Reporting Thresholds will not result in Rule 13f–2 applying to a significant number of small entities, especially considering the modification to Threshold A to be based on a monthly average gross short position rather than the proposed daily calculation.[323]

In response to comments about reporting burdens, the Commission is not adopting the proposed hedging requirement, not adopting Proposed Rule 205 and ''buy to cover'' reporting to CAT, and is streamlining Information Table 2, thus reducing the costs of reporting from the proposed rule and form as compared to Rule 13f–2 and Form SHO as adopted.[324]

B. Data Aggregation and Publication of Information by the Commission

1. Proposal

The Commission proposed to require Managers exercising investment discretion over short positions meeting specified thresholds to report information relating to end-of-the-month short positions on Information Table 1, and certain daily activity affecting such short positions on Information Table 2, of a new Form SHO. The Commission would aggregate the reported data by security, including daily short sale activity data, and then, on a delayed basis, make such aggregated data available to the public. As proposed, data would be aggregated across all reporting Managers for each reported equity security prior to publication. The Commission stated its belief that publicly disclosing the identity of individual reporting Managers may not be necessary to advance the policy goal of increasing public transparency into short selling activity, and that aggregating across reporting Managers would help safeguard against the concerns noted above related to retaliation against short sellers, including short squeezes, and the potential chilling effect that such public disclosure may have on short selling.[325]

As proposed, the Commission would publish aggregated information derived from data reported on Proposed Form SHO. The Commission estimated that it will publish such aggregated information within one month after the end of the reporting calendar month—*e.g.,* for data reported by Managers on Proposed Form SHO for the month of January, the Commission would expect to publish aggregated information derived from such data no later than the last day of February. This additional time prior to publication of data by the Commission following receipt of the monthly Proposed Form SHO reports would be used to aggregate the data received from the reporting Managers, and would also help to reduce the risk of imitative trading activity by market participants and help to protect report Managers' proprietary trading strategies.[326] In proposing an approach for reporting the short sale-related information gathered, the Commission sought to balance calls to level the playing field for retail investors by, for example, taking steps to enhance the transparency of short sale-related data, with, among other things, concerns raised—primarily by institutional investors—regarding potential ''chilling effect[s]'' on short selling and potential issuer and investor retaliation against an identified short seller.[327]

The Commission also presented, and sought comment on, an alternative approach for its publishing of information reported on proposed Form SHO that would offer greater transparency and less anonymization of the published short sale-related data.[328] Specifically, under this alternative, the Commission would publish the information reported to it at the individual Manager level rather than aggregate that information across all reporting Managers.[329] Before publication, a reporting Manager's identifying information would be removed to anonymize the information published.

2. Comments

Several commenters raised concerns about potential negative consequences of more detailed short position disclosures—particularly, negative effects on liquidity and price discovery, the facilitation of copycat trading, and the greater susceptibility of holders of short positions to short squeezes.[330] These commenters also preferred an ''aggregation'' approach to the alternative of publishing data at the individual Manager level, due to the commercially sensitive investment and trading information that Managers are required to report under Rule 13f–2.[331]

These commenters stated, however, that aggregation would not go far enough to lower the risk that the trading and investment behavior reported

[320] In mid-to-late Dec. 2022, FINRA began publishing short sale information for exchange-traded as well as OTC equity securities. *See Equity Short Interest Files,* FINRA, available at *https://www.finra.org/finra-data/browse-catalog/equity-short-interest/files.*

[321] Proposing Release, at 14952.

[322] *See, e.g.,* MFA Letter, at 2 (positing that combined costs of compliance with the Proposals and other related Commission proposed rulemakings would be ''insurmountable for small and newly-formed advisers''); Anonymous Fund Manager Letter, at 7–8. *See infra* Parts VIII.B, VIII.C.6.f, VIII.D.2 for a discussion of interactions between the economic effects of the adopted rule and other Commission rulemakings.

[323] *See infra* Part IX.

[324] *See generally infra* Part VIII.

[325] *See* Proposing Release, at 14955.

[326] *See id.,* at 14955.

[327] *See id.,* at 14955.

[328] *See id.,* at 14967.

[329] *Id.*

[330] *E.g.,* SBAI Letter, at 2 (concluding that ''only aggregate, anonymized, and delayed public reporting of short positions'' mitigates concerns about the potential risks of short position disclosures); Two Sigma Letter, at 1–3 (expressing concerns that disclosure of individual short positions could lead to revelation of commercially sensitive systematic investment strategies and to front-running and other actions that undermine those strategies, and that such disclosures would provide incomplete information, and potentially misleading signals, to investors); *see also* T. Rowe Price Letter, at 2 (raising concerns about the effects the rulemaking proposal would have on liquidity and price discovery); Law and Finance Professors Letter, at 2–3 (stating potential chilling effect on short selling if identities of short sellers are publicly disclosed).

[331] *E.g.,* Schulte Roth & Zabel Letter, at 4 (alternative proposal to publish anonymized short sale-related data reported on an individual Manager would risk eviscerating potential confidentiality protections of reporting Managers and jeopardize the confidentiality of a Manager's positions, strategies or proprietary business information); MFA Letter, at 3 (stating the need for ''robust data security protocols'' to protect information reported pursuant to Proposed Rule 13f–2).

would be attributable to a single Manager or set of Managers.[332] Commenters stated that the risk of Manager attribution would be heightened when only one Manager or a small set of Managers report a short position in the relevant security. Under these circumstances, market participants could use the information reported on Form SHO to extrapolate an individual Manager's overall position, and potentially the Manager's strategies or portfolio management methods across different clients.[333] One commenter expressed concern that Manager attribution/identification could result in retaliation against Managers by market participants.[334]

By contrast, other commenters favored the alternative approach of publishing reported information at the individual Manager level after removing all identifying information of the reporting Manager that the Commission sought comment on in the Proposing Release.[335] While expressing general support for rulemaking that increases transparency of short sale-related data, proponents of this alternative approach also criticized Proposed Rule 13f–2 for not going far enough.[336] These commenters pointed to a need for complementary reporting of long and short positions, and downplayed industry concerns about potential risks of greater transparency of short sale data, including, the costs and challenges of operationalizing Rule 13f–2 and the threat of ''copycat trading'' if short positions are disclosed pursuant to Rule 13f–2.[337] These commenters supported publishing short sale-related data that is ''current.'' [338] Two such commenters suggested that the Commission publish, or at least share on a confidential basis with issuers of the securities for which information is reported on Form SHO, the names of the firms shorting securities.[339] Other commenters further recommended that the Commission glean more from and build upon the experience of the European Union (''EU'') with publishing short sale-related data in developing an approach for gathering and reporting such data.[340] A few commenters also pointed out ways that, by monitoring the published information from Form SHO reports, the public and reporting companies could serve as watchdogs for the SEC, a ''first line of defense against abusive practices.'' [341]

3. Final Rule

The approach taken for publishing short sale-related data reported on Form SHO must balance competing interests of public transparency against the potential negative impacts on price discovery, and of short position and short activity disclosures on short selling as well as data security concerns. After considering the comments received, the Commission continues to believe that the indirect costs of publishing information reported at the individual Manager level would likely exceed those of publishing information aggregated across all reporting Managers.[342] More specifically, the Commission continues to believe that if the Commission were to release the information reported on Form SHO as filed, there would be a greater potential to reveal a reporting Manager's trading strategies and to signal whether a Manager has a large and potentially vulnerable short position. It would also make it easier for a market participant to deduce the identity of a reporting Manager, even if that Manager's identity remains anonymous.[343] The easier it is for a market participant to deduce the identities of individual short sellers, the greater the risk of retaliation, copycat trading and other market activity that might have an undesired chilling effect on price discovery.[344] For these reasons, and in response to commenters that raised concerns about potential negative consequences of more detailed short position disclosures, the Commission believes that the anticipated benefit of enhanced transparency by publishing reported information at the individual Manager level after removing all

[332] *E.g.,* MFA Letter, at 3 (stating that publishing aggregated short position data can help mitigate the risk of identification of Manager(s), but is not ''foolproof, . . . the effectiveness will depend on what data is published and with what frequency''); AIMA Letter, at 4 (stating that ''even if the data is anonymized, market participants could still identify certain reporting Managers.''); *see also* SIFMA Letter, at 5 (positing that reporting anonymized short sale data at the Manager level without first aggregating such information is inconsistent with the directive in 929X of DFA and could expose investment strategies of institutional investment managers and their clients to their detriment); T. Rowe Price Letter, at 2 (positing that ''attribution or anonymized manager-level data in public reports would be inappropriate and . . . create unacceptable risks to . . . [market] participants and discourage a useful source of liquidity provision.'').

[333] *See, e.g.,* ICI Letter, at 7–8 (further stating that risk of Manager identification ''may be especially high'' for [regulated investment] funds that currently disclose their identities as well as their individual short positions on Form N–PORT filings with the Commission).

[334] MFA Letter, at 9 (citing potential for retaliation against short sellers if Manager's confidential information reported on Proposed Form SHO is leaked).

[335] *See, e.g.,* Better Markets, at 13; Comment from An Investor (Apr. 4, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20122297-278355.htm;* Comment from Rick Sweeney (Oct. 10, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-309597.htm* (Rick Sweeney Comment). *But see* Samuel Meadows Comment (''It would be strongly against retails best interests to have the reports published at the managers level. This would make finding and understanding the scope of shorting very difficult. I believe it is best to have the report aggregated with other reporting Managers reports. Ease of access to this information is critical in creating fairer markets.''); Comment Letter from Matthew D. Brusch, Interim President and CEO, National Investor Relations (Apr. 28, 3033), at 4, *available at https://www.sec.gov/comments/s7-08-22/s70822-20127576-288806.pdf* (''NIRI Letter''); K&L Gates Letter, at 5–6. *See* Proposing Release, at 14967.

[336] In addition to underscoring the need for transparency in the reporting of short sale-related data, commenters recommended ways to enhance the transparency of U.S. stock market transactions with the creation of a ''transparent and publicly viewable platform'' through which U.S. stock market securities would be traded, and the use of block chain technology to allow verification of transactions in real time. *See, e.g.,* Joseph Grato Comment; Anonymously Submitted Comment (Mar. 7, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-271636.htm;* Comment from Jason Payne (Mar. 7, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20118798-271634.htm;* Comment from Lex Stultz (Mar. 13, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20119199-272005.htm;* Comment from Devon Turcotte (Mar. 15, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20119399-272285.htm.*

[337] *See* WTI Letter. These and other commenters expressed concern for the danger to ''fair and free'' U.S. markets posed by ''the lack of transparency, the inability to adequately quantify short interest, and the ability of firms to skirt regulations through derivative positions such as options and security-based swaps.'' These commenters also called for symmetry in the level of disclosures and transparency for short positions as is currently the case for long positions, to allow retail and institutional investors to conduct the same type of analysis regarding short positions as is currently possible for long positions using data from Form 13F.

[338] *See, e.g.,* NIRI Letter, at 4 (stating that the alternative approach to publishing Form SHO reports would bring short position information to the marketplace faster, closer in real time to when the Form SHO is filed).

[339] *See id.* (recommending confidential disclosures of short position and identifying Manager information reported on Form SHO to an issuer whenever a ''large short position'' is reported for a security of that issuer, or alternatively, only to those issuers that request such confidential information); Letter from Tim Quast, President and Founder, Modern Networks IR LLC (Apr. 4, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20122528-278558.pdf* (urging Commission to publish the names of reporting Managers) (''Modern IR Letter'').

[340] Better Markets Letter, at 13 (suggesting reliance on ''EU's experience with publishing much more comprehensive, specific, and current information'' in developing an approach for gathering and reporting short sale data that enhances the usability of short position information to be published pursuant to Proposed Rule 13f–2 without ''inviting some of the more damaging consequences'' of doing so). More generally, a few commenters recommended harmonizing Proposed Rule 13f–2 requirements with potentially overlapping EU and UK regulations. *See, e.g.,* WTI Letter, at 2–3; HSBC Letter, at 14–15.

[341] *E.g.,* Anonymously Submitted Comments (Oct. 14, 2022, Oct. 24, 2022, Oct. 29, 2022, Oct. 31, 2022, Nov. 1, 2022); Rick Sweeney Comment.

[342] *See infra* Part VIII.E.2.a.

[343] *Id.*

[344] *Id.*

identifying information of the reporting Manager does not justify the costs were the Commission to take that approach in publishing information reported to it on Form SHO.

Some commenters suggested the Commission adopt an approach similar to that of the EU structure whereby individual short sellers' names are made public.[345] The final rule, as modified, addresses the potential risk of retaliation towards individual short sellers, and the potential chilling of the incentive of gathering information and price discovery.[346] For more discussion of the EU's approach and the Commission's decision to aggregate and publish anonymized data instead, see Part VIII.E.1.c.

Further, aggregating across reporting Managers will address certain non-financial costs and burdens identified by commenters by helping to safeguard against the concerns raised about potential chilling effects on short selling and data security regarding the information reported by Managers on Form SHO.[347] Additionally, the Commission anticipates that many potential negative effects on the market will be mitigated by the delay in publication of the aggregated data. Accordingly, the Commission is adopting as proposed the approach of publishing, on a delayed basis, aggregated short sale-related data reported on Form SHO and treating each filed Form SHO confidentially.

III. Proposed Amendment to Regulation SHO To Aid Short Sale Data Collection

A. Proposed Rule 205

Under Proposed Rule 205, a broker-dealer would be required to mark a purchase order as ''buy to cover'' if, at the time of order entry, the purchaser (*i.e.,* either the broker-dealer or another person) has a gross short position in such security in the specific account for which the purchase is being made at such broker-dealer. A broker-dealer would be required to mark a purchase order as ''buy to cover,'' regardless of the size of such purchase order in relation to the size of the purchaser's gross short position in such security in the account, and regardless of whether the gross short position is offset by a long position held in the purchaser's account at the broker-dealer at the time of order entry. Unlike the netting requirements under Rule 200 of Regulation SHO, the ''buy to cover'' order marking determination under Proposed Rule 205 would be made on a ''gross'' basis. Under the proposed rule, short positions held by the purchaser in any account(s) other than the purchasing account, as well as offsetting long positions held by the purchaser in the purchasing account or any other account(s), would not be considered by a broker-dealer when making a ''buy to cover'' order marking determination. The Proposed CAT Amendments, discussed below, would require CAT reporting firms to report ''buy to cover'' order marking information to CAT.

B. Comments

Some commenters expressed support to adopt Proposed Rule 205, and generally applauded the potential added transparency that ''buy to cover'' order marking could help provide.[348] Other commenters stated that the proposed rule would assist the Commission in monitoring short selling activity and help to ensure compliance with the requirements of Regulation SHO.[349]

The Commission also received numerous comments that opposed the adoption of Proposed Rule 205.[350] In opposing Proposed Rule 205, these commenters voiced concerns regarding the extensive costs and burdens associated with anticipated systems changes necessary to implement and report ''buy to cover'' order marking as proposed.[351] A number of these commenters stated that a ''buy to cover'' order mark does not currently exist and would require broker-dealers to effectively redesign and update their order creation systems and communications protocols to accommodate the recording and downstream reporting of a ''buy to cover'' order mark.[352] One commenter stated that all industry participants (which it described as ''all institutions and all broker-dealers'') will also need to create a new ''buy to cover'' order type and capture that in their respective books and records protocols and regulatory reporting systems.[353] One commenter suggested that costs to implement changes necessary to comply with the requirements of Proposed Rule 205 could range from $5 million to $10 million, or more.[354]

Some commenters that opposed the adoption of Proposed Rule 205 expressed general concerns that the proposed single account ''gross'' short position methodology (which, by design, does not require the broker-dealer to consider the purchaser's other positions held in that account, in other accounts at the broker-dealer, or elsewhere) could routinely result in inaccurate ''buy to cover'' order marking reporting by broker-dealers.[355] Some commenters also questioned whether

[345] *See* WTI Letter at 2–3; Better Markets Letter at 13 and 16. *See also* Proposing Release, at 15005.

[346] *See supra* Part II.A.2.b.

[347] *Id.*

[348] *See, e.g.,* Comment from Mark Tate (Mar. 1, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20118151-271054.htm* (''Mark Tate Comment'') (believed that increased information about marking trades as ''buy to cover'' is a ''good thing for the market''); Comment from An Investor (Apr. 4, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20122297-278355.htm* (expressing general support for Proposed Rule 205 and the ''gross'' short position approach); Comment from Jean Garcia-Gomez (Oct. 9, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-309610.htm* (''Jean Garciz-Gomez Comment'') (expressing general support for ''buy to cover'' order marking); Comment from Aladdin Erzrumly (Oct. 19, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-312058.htm* (expressing general support for ''buy to cover'' order marking); Comment from Brian Herrmann (Jan. 20, 2023), *available at https://www.sec.gov/comments/s7-08-22/s70822-323670.htm* (expressing general support for Proposed Rule 205).

[349] *See, e.g.,* Better Markets Letter (stating that ''buy to cover'' order marking should assist the Commission in monitoring short sale activity and actually ensure compliance with Regulation SHO requirements); ICI Letter (Apr. 26, 2022) (stating that, to the extent that the Commission requires information on close outs of open short positions, ICI supports the proposed approach of amending Rule 205 of Regulation SHO to require a broker-dealer to mark transactions as ''buy to cover,'' and supports the simplified single account gross short position approach as proposed); BIO Letter (stating that ''buy to cover'' reporting would assist in understanding ''the full lifecycle of short positioning in the biotechnology industry'').

[350] *See, e.g.,* SIFMA Letter; Virtu Letter; AIMA Letter; Comment Letter from Joanna Mallers, Secretary, FIA Principal Traders Group (Apr. 27, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20127313-288259.pdf* (''FIA PTG Letter''); Comment Letter from Howard Meyerson, Managing Director, Financial Information Forum (Apr. 25, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20126605-287256.pdf* (''FIF Letter''); STA Letter; XR Securities Letter; Comment Letter from Kirsten Wegner, Chief Executive Officer, Modern Markets Initiative (Apr. 4, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20122473-278481.pdf* (''MMI Letter'').

[351] *See, e.g.,* FIA PTG Letter, at 2 (requiring the reporting of orders on an order-by-order basis with either a ''buy to cover'' or bona fide market making attestation appears unnecessary from an added transparency perspective and therefore unnecessarily costly); MMI Letter, at 2; Virtu Letter, at 3 (''If this aspect of the Proposal were adopted, firms would have to reprogram their systems to recognize a 'buy to cover' order. We believe that this would be exceedingly burdensome, costly, and challenging for broker-dealers to make the required changes and provide the required information.''); STA Letter, at 4 (stating that ''buy to cover'' as proposed would ''impose tremendous costs on industry firms by essentially forcing them to keep two separate position aggregations'' and suggesting that there be an exemption for firms with ''low'' amounts of ''buy to cover'' order types); FIF Letter, at 10; XR Securities Letter, at 2; SIFMA Letter, at 3; FIA PTG Letter, at 2.

[352] *See, e.g.,* SIFMA Letter, at 23–24; Virtu Letter, at 3; FIF Letter, at 3; STA Letter, at 6; XR Securities Letter, at 2; FIA PTG Letter, at 2–3.

[353] *See* FIF Letter, at 3.

[354] *See* SIFMA Letter, at 24.

[355] *See, e.g.,* Virtu Letter, at 5; AIMA Letter, at 16; SIFMA Letter, at 22–23; FIF Letter, a 6.

the proposed ''buy to cover'' order marking reporting would provide regulatory benefits, including identifying signals of a ''short squeeze,'' as was suggested by the Commission in the proposing release.[356]

Commenters highlighted the inherent differences and resulting complexities between Proposed Rule 205's single account ''gross'' short position methodology for purchases, and Regulation SHO's all accounts net position order marking requirements for sales. These commenters generally stated that if Proposed Rule 205 were adopted, broker-dealers would be required to create and maintain, at great expense, two separate order marking systems that utilize very different methodologies—one for determining whether a purchase order should be marked as ''buy'' or ''buy to cover,'' and another for determining whether a sell order should be marked as ''long'' or ''short.'' [357] Some of these commenters suggested that if the Commission were intent on adopting a ''buy to cover'' order marking reporting requirement, it should instead consider utilizing the Commission's ''alternative'' approach.[358] These commenters stated that utilizing this ''alternative'' approach would help to ensure that Proposed Rule 205 would operate in a manner that is more consistent with current Regulation SHO order marking requirements, which would effectively help reduce complexity and interpretive confusion for broker-dealers. Another commenter suggested that the Commission consider an exception for firms with ''low'' amounts of ''buy to cover'' order types.[359]

One commenter stated that additional guidance or clarification would be necessary if the Commission adopted Proposed Rule 205.[360] Another commenter stated that Proposed Rule 205 fails to recognize that broker-dealers would need to rely on representations from purchasers/account holders in order to accurately report ''buy to cover'' order marking information, similar to how broker-dealers currently rely on account holders when marking sale orders ''long'' or ''short.'' [361] One commenter stated that this would be especially true where the broker-dealer does not custody the purchaser's positions (*i.e.,* where the customer's positions are custodied ''away,'' such as at a prime broker or bank), and for a number of operational reasons, be equally true even when the broker-dealer custodies the purchaser's positions.[362]

The Commission is not adopting Proposed Rule 205 in light of questions raised by commenters regarding potential operational issues with the requirement as proposed that merit further consideration, and the Commission will continue to evaluate the issues raised to determine if any further action is appropriate.

IV. Amendments to CAT

In July 2012, the Commission adopted 17 CFR 242.613 (''Rule 613 of Regulation NMS''), which required national securities exchanges and national securities associations (the ''Participants'') [363] to jointly develop and submit to the Commission a national market system plan to create, implement, and maintain a CAT that captures customer and order event information for orders in NMS securities.[364] The goal of Rule 613 was to create a modernized audit trail system that provides regulators with more timely access to a sufficiently comprehensive set of trading data, thus enabling regulators to more efficiently and effectively reconstruct market events, oversee market behavior, and investigate misconduct. On November 15, 2016, the Commission approved the national market system plan required by Rule 613, the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'').[365]

Section 6.4(d) of the CAT NMS Plan provides that each Participant, through its Compliance Rule,[366] must require Industry Members [367] to record and electronically report certain information to the CAT Central Repository. Compliance rules have been adopted by each Participant. As such, any broker-dealer that is a member of a national securities exchange or a member of a national securities association must report each order and reportable event, which includes the original receipt or origination, modification, cancellation, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order to the CAT.[368] This requirement is designed to provide regulators, including the Commission, access to comprehensive information regarding the lifecycle of orders, from origination to execution, as well as the post-execution allocation of shares.

[356] *See e.g.,* Virtu Letter, at 6 (''The Proposal's rationale for requiring broker-dealers to mark transactions a 'buy to cover'—*i.e.* to facilitate the identification of potential 'short squeeze' activity—is equally unpersuasive. As described above, the data that will be reported under this provision will bear little resemblance to a firm's actual short sale positions and therefore will not yield meaningful information that would allow the Commission to target short squeeze activity.''); SIFMA Letter, at 23 (believed there is only a remote chance that Proposed Rule 205 reporting might identify signals of a short squeeze that would not otherwise be identifiable to the Commission through other currently available information).

[357] *See, e.g.,* STA Letter, at 4; FIF Letter, at 8; FIA PTG Letter, at 2–3; MMI Letter, at 2; SIFMA Letter, at 24; XR Securities Letter, at 2; Virtu Letter, at 5.

[358] *See, e.g.,* MMI Letter at 2; FIF Letter, at 2. In the Proposing Release, the Commission explained that it had considered an ''alternative approach'' that would have required the broker-dealer, when making a ''buy to cover'' order marking determination, to net all positions (long positions and short positions) held by the purchaser in any account, whether at the broker-dealer itself, or elsewhere. *See* Proposing Release, at 14968.

[359] STA Letter, at 5.

[360] XR Securities Letter, at 2.

[361] SIFMA Letter, at 23.

[362] SIFMA Letter, at 23.

[363] The Participants include: 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.; Financial Industry Regulatory Authority, Inc.; Investors' Exchange LLC; Long-Term Stock Exchange, Inc.; MEMX LLC; Miami International Securities Exchange LLC; MIAX Emerald, LLC; MIAX PEARL, LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market LLC; New York Stock Exchange LLC; NYSE American LLC; NYSE Arca, Inc.; NYSE Chicago, Inc.; and NYSE National, Inc.

[364] *See Consolidated Audit Trail,* Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012).

[365] Exchange Act Release No. 79318 (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 84943 at 84696. 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 (the ''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 Aug. 29, 2019, which they designated as effective on filing. Under the amendment, the limited liability company agreement of a new limited liability company named Consolidated Audit Trail, LLC serves as the CAT NMS Plan, replacing in its entirety the CAT NMS Plan. *See* Exchange Act Release No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

[366] ''Compliance Rule'' means, with respect to a Participant, the rule(s) promulgated by such Participant as contemplated by section 3.11 of the CAT NMS Plan. *See* CAT NMS Plan, section 1.1.

[367] An ''Industry Member'' means a member of a national securities exchange or a member of a national securities association. *See* CAT NMS Plan, section 1.1.

[368] ''Central Repository'' means a repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to Rule 613 of Regulation NMS and the CAT NMS Plan. *See* CAT NMS Plan, section 1.1.

Broker-dealers, through the Compliance Rule adopted pursuant to the CAT NMS Plan, are required to report certain short sale order data, including for sell orders, whether an order is long, short, or short exempt,[369] but not other short sale order data, including when a buy order is designed to close out an existing short position, or whether a market participant is relying on the bona fide market making exception to the Regulation SHO locate requirement in Rule 203. To supplement the short sale-related data that would be reported by Managers to the Commission pursuant to Proposed Rule 13f–2 and on Proposed Form SHO, the Commission proposed to amend the CAT NMS Plan to require the Participants to require CAT reporting firms to report certain additional short sale-related data to the CAT, as discussed below.

A. Proposal To Require ''Buy to Cover'' Order Marking

The Commission proposed that Industry Members be required to report to the CAT ''buy to cover'' information, which was proposed to be collected pursuant to Regulation SHO through Proposed Rule 205 (discussed above). Specifically, the Commission proposed to amend section 6.4(d)(ii) of the CAT NMS Plan by adding new paragraph 6.4(d)(ii)(D) which would require the Participants to update their Compliance Rules to require Industry Members to report for the original receipt or origination of an order to buy an equity security, whether such buy order is for an equity security that is a ''buy to cover'' order as defined by Proposed Rule 205(a).[370] This provision would have required Industry Members to identify ''buy to cover'' equity orders received or originated by Industry Members and Customers[371] as ''buy to cover'' orders in order receipt and order origination reports submitted to the CAT Central Repository.

The Commission, as discussed in Part III above, is not adopting Proposed Rule 205 which would have established a new ''buy to cover'' order marking requirement. Accordingly, the Commission is likewise not adopting an amendment to add new paragraph 6.4(d)(ii)(D) to the CAT NMS Plan which would have required the Participants to update their Compliance Rules to require Industry Members to report ''buy to cover'' order marking information to CAT.

B. Proposal To Require Reporting of Reliance on Bona Fide Market Making Exception

The Commission also proposed to require CAT reporting firms that are reporting short sales to indicate whether such reporting firm is asserting use of the bona fide market making exception under Regulation SHO for the locate requirement in Rule 203(b)(2)(iii) (*i.e.,* the BFMM locate exception) for the reported short sales. Specifically, the Commission proposed to amend section 6.4(d)(ii) of the CAT NMS Plan to add a new paragraph (E) which would require Participants to update their Compliance Rules to require Industry Members to report to the CAT, for the original receipt or origination of an order to sell an equity security, whether the order is a short sale effected by a market maker in connection with bona fide market making activities in the security for which the BFMM locate exception is claimed.[372] The Commission believed that this information would provide valuable data to both the Commission and other regulators regarding the use of this narrow exception. The Commission believed that requiring Industry Members to identify short sales for which they are claiming the bona fide market making exception would provide the Commission and other regulators an additional tool to determine whether such activity qualifies for the exception, or instead could be indicative of, for example, proprietary trading instead of bona fide market making activity.

Rule 203(b)(1) of Regulation SHO generally prohibits a broker-dealer from accepting a short sale order in an equity security from another person, or effecting a short sale in an equity security for its own account, unless the broker-dealer (i) has borrowed the security, (ii) has entered into a bona fide arrangement to borrow the security, or (iii) has reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due.[373] This is generally referred to as the locate requirement. Rule 203(b)(2) of Regulation SHO provides an exception to the locate requirement for short sales effected by a market maker in connection with bona fide market making activities.[374] To qualify for the BFMM locate exception,[375] a market maker must be engaged in bona fide market making activities at the time they effect a short sale. The Commission adopted this narrow exception to Regulation SHO's locate requirement for market makers that may need to facilitate customer orders in a fast moving market without possible delays associated with complying with such a requirement.[376]

Comments and Final Rule

Some commenters supported requiring CAT reporting firms to report the use of the BFMM locate exception to CAT.[377] These commenters were in favor of the potential added transparency that BFMM locate exception reporting could provide.[378]

[369] Section 1.1 of CAT NMS Plan defines ''Material Terms of the Order,'' which includes, for sell orders, ''whether the order is long, short, [or] short exempt[.]''

[370] *See* Proposed section 6.4(d)(ii)(D) of the CAT NMS Plan; Proposed Rule 205(a) of Regulation SHO, 17 CFR 242.205(a)).

[371] Section 1.1 of the CAT NMS Plan defines the term ''Customer'' as (a) the account holder(s) of the account at a registered broker-dealer originating the order; and (b) any person from whom the broker-dealer is authorized to accept trading instructions for such account, if different from the account holder(s). *See also* 17 CFR 242.613(j)(3).

[372] *See* Proposed section 6.4(d)(ii)(E) of the CAT NMS Plan.

[373] 17 CFR 242.203(b)(1).

[374] 17 CFR 242.203(b)(2). The Commission has provided guidance on indicia of bona fide market making activities eligible for the locate exception. *See* Regulation SHO Adopting Release (setting forth examples of activities that would not be considered to be bona fide market making activities); *see also* Exchange Act Release No. 58775 (Oct. 14, 2008), 73 FR 61698 at 61690 (Oct. 17, 2008) (''2008 Regulation SHO Amendments'') (adopting amendments to Regulation SHO and providing additional guidance on what constitutes bona fide market making). Only market makers that are engaged in bona fide market making activity in the security at the time they effect a short sale are eligible for the locate exception. *See* 2008 Regulation SHO Amendments, at 61699.

[375] Rule 204 of Regulation SHO also provides an extended close-out period for a fail to deliver resulting from bona fide market making activities. 17 CFR 242.204.

[376] *See* Regulation SHO Adopting Release, at 48015 n.67; *see also* Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action to Respond to Market Developments, Exchange Act Release No. 58166 (July 15, 2008); Amendment to Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action to Respond to Market Developments, Exchange Act Release No. 58190 (July 18, 2008) (excepting from the Emergency Order bona fide market makers); *see also* Proposing Release, at 14970–71 (Mar. 16, 2022) (''To qualify for the bona fide market making exception, however, a firm must be engaged in bona fide market making at the time of the short sale in question. The Commission adopted this narrow exception to Regulation SHO's locate requirement for market makers that may need to facilitate customer orders in a fast moving market without possible delays associated with complying with such a requirement.'').

[377] Virtually all these comments were submitted by individual investors, with the vast majority being submitted through an identical (or nearly identical) base letter from a grassroots advocacy campaign ''by, and for, retail investors.'' These commenters stated that they were part of a self-identified group called ''We the Investors'' (''WTI''). WTI supported the adoption of BFMM locate exception reporting. WTI also suggested that the BFMM locate exception be eliminated altogether. *See* WTI Letter.

[378] *See e.g.,* Michael Behrens Comment; Mark Tate Comment; Comment from Taj Reilly (Mar. 14,

Continued

Other commenters stated that such reporting would help the Commission to monitor short selling activity and ensure compliance with Regulation SHO's requirements, and stated that it is important that the Commission have the surveillance tools and data such as BFMM locate exception reporting to improve the Commission's oversight of financial markets and compliance with existing regulations and otherwise ''police'' the markets.[379]

Other commenters opposed the adoption of BFMM locate exception reporting to CAT.[380] These commenters generally believed that the costs and burdens associated with the proposal, including costs to update systems to accommodate BFMM locate exception reporting to CAT, would materially outweigh the benefit of the information reported to CAT.[381] These commenters, however, did not provide cost estimates. The Commission continues to believe, as stated in the Proposing Release, that Industry Members will incur an initial, one-time external expense for software and hardware to facilitate reporting of the new data elements to CAT, and separately estimated such costs for Industry Members that report directly to the CAT, and those that use third-party reporting agents for CAT reporting. The Commission continues to believe that the ongoing burden associated with reporting to the CAT is already accounted for in the existing information collections burdens associated with Rule 613 and the CAT NMS Plan Approval Order submitted under Office of Management and Budget (OMB) number 3235–0671.[382]

One commenter stated that adopting the proposed BFMM locate exception would be operationally difficult and costly to implement.[383] This commenter stated that, under the proposal, the BFMM locate exception information would be required to be reported at the time the short sale order is effected, requiring that order entry systems, and other downstream systems, be updated to allow the BFMM locate exception information to be reported to CAT.[384] To implement the rule, the Commission expects that Industry Members will incur an initial, one-time external expense for software and hardware to facilitate reporting of the new data elements to CAT but believes that the benefits of such data, as discussed further below, will justify such costs. Brokers or dealers generally include fields in order-entry systems, and related downstream systems, to indicate whether the broker or dealer obtained a locate as well as the source of such locate under Rule 203(b). As stated by the commenter, brokers or dealers may wish to update their order entry systems and related downstream systems as a convenient method to track their use of the BFMM locate exception to ensure accurate reporting of the use of the BFMM locate exception to CAT. As a result, brokers or dealers may wish to make one-time updates to such systems to add a field or notation to indicate whether the broker or dealer is claiming the BFMM locate exception for the short sale transaction. However, brokers or dealers may also use other means to ensure compliance with the final rule.

This commenter agreed with the Commission that a broker-dealer is required to determine whether the firm is eligible for the BFMM locate exception at the time a short sale is effected but expressed concerns that market makers that quote and trade on multiple trading venues, for example, might encounter certain systematic or operational difficulties in making, and reporting, such determination using existing systems design. Specifically, this commenter stated that ''it may be systematically and/or operationally difficult for the broker to define when it is globally acting in a bona fide market maker capacity given the granular details of a market maker's many activities, and the existing systems design.'' [385] However, the final rule does not alter the requirements for the use of the BFMM locate exception. The final rule requires that brokers or dealers report their use of the BFMM locate exception as provided under Regulation SHO.

Rule 203(b)(2)(iii) provides an exception to the locate requirement for ''[s]hort sales effected by a market maker in connection with bona-fide market making activities *in the security for which this exception is claimed.*'' [386] Thus, for purposes of qualifying for the BFMM locate exception, ''a market maker must also be a market maker in the security being sold, and must be engaged in bona-fide market making in that security at the time of the short sale.'' [387]

Some commenters stated that the Commission and other regulators can currently request a particular market maker to provide information regarding its use of the BFMM locate exception, and questioned why the Commission would need to require such costly reporting to CAT.[388] Another commenter stated that there is no data or evidence in the Proposing Release to suggest that the Commission's access to such data has been limited in any way under the current request process.[389] However, the Commission has stated that Regulation SHO does not require market makers to specifically record whether they are relying on the BFMM locate exception,[390] although brokers or dealers should be able to identify what trading activity qualifies for the BFMM locate exception so a firm can demonstrate its eligibility for the asserted exception.[391] To the extent a broker or dealer has documented such eligibility, the Commission and its staff have access to such documents.[392] The final rule will capture information regarding the use of the BFMM locate

2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20119322-272211.htm;* Comment from Sebastian Stankiewicz Comment (Mar. 15, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-272501.htm;* Comment from An Investor (Apr. 4, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20122297-278355.htm;* Jean-Garcia Gomez Comment; Comment from Andrew Gatley (Oct. 31, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-317527.htm. See also* WTI Letter.

[379] *See e.g.,* Better Markets Letter; WTI Letter.

[380] *See e.g.,* SIFMA Letter; Virtu Letter; STA Letter; XR Securities Letter; FIA PTG Letter.

[381] *See e.g.,* SIFMA Letter, at 24–25; FIA PTG Letter, at 3; Virtu Letter, at 6.

[382] *See infra* Part VII.C.

[383] *See, e.g.,* SIFMA Letter, at 24–25; Virtu Letter, at 5.

[384] SIFMA Letter, at 24–25.

[385] SIFMA Letter, at 25 n.64.

[386] 17 CFR 242.203(b)(2)(iii). Further, the locate is required prior to each short sale order unless the broker or dealer has determined that an exception applies. *See* Rule 203(b)(1). A broker or dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker or dealer has: (i) borrowed the security, or entered into a bona-fide arrangement to borrow the security; or (ii) reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) documented compliance with Rule 203(b)(1).

[387] *See* 2008 Regulation SHO Amendments, at 61699; *Shortening the Securities Transaction Settlement Cycle,* Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872, 13911–12 at n.411 (May 5, 2023) (''Settlement Cycle Adopting Release'').

[388] *See e.g.,* SIFMA Letter, at 24–25 (''Given that the information that would result from this proposed reporting requirement is already available to the SEC and other regulators on demand, SIFMA believes that the cost and burden of implementing the requirement would materially outweigh the benefit of such information.''); Virtu Letter, at 6 (''The Proposal offers no data or evidence that its access to data about the use of the exception has been limited in any way under the current process it uses to collect such information from broker-dealers, nor that there are widespread violations or other abuses of the exception that warrant imposing substantial costs and burdens on market makers also to report this information to CAT.'').

[389] Virtu Letter, at 6.

[390] Proposing Release, at 14971.

[391] *See* Regulation SHO Adopting Release, 48011 n.27 (''As with any rule, broker-dealers relying on [an] exception should be prepared to monitor for compliance with its conditions, and maintain records documenting such compliance.'').

[392] *See, e.g.,* section 17(b) of the Exchange Act.

exception to Regulation SHO [393] which will provide the Commission and SROs with comprehensive information about market practices with respect to the use of the BFMM locate exception.[394] Because brokers or dealers asserting the BFMM locate exception are already required to demonstrate eligibility for the exception, the costs of reporting should be confined primarily to the one-time implementation costs related to updating CAT and any methods elected by the broker or dealer, such as updating order entry systems and related systems, to ensure compliance.

Another commenter stated that regulators should utilize other existing short sale data available through CAT that could identify activity that is ''disproportionate to the usual market making patterns of practices of the broker-dealer'' in order to determine if the BFMM locate exception is being misused.[395] The commenter, however, did not provide detail describing how disproportionate the activity would be before the Commission could determine whether the exception is being misused. Data showing the existence of short sales would not be sufficient to assess whether the exception is being misused. Another commenter suggested that CAT already has ample existing data fields, including a market maker account holder designation field, and questioned the need for a BFMM locate exception data field.[396] Further, a broker or dealer's status as a market maker under an exchange's rules, or by self-assertion, is not sufficient by itself to establish eligibility to use the BFMM locate exception; the broker or dealer that is a market maker must be effecting short sales ''in connection with bona-fide market making activities in the security for which [the] exception is being claimed.'' [397] Further, as discussed above, the broker or dealer, whether it calls itself a market maker, or has an account it describes as a market maker account, must still determine eligibility for the BFMM locate exception for each transaction rather than globally.[398] Therefore, collecting the data regarding the use of the BFMM locate exception will be useful for the Commission, including to assess the use of the exception throughout the industry.

Another commenter stated that there was no data or evidence in the Proposing Release to suggest that there are widespread violations or abuses of the BFMM locate exception that warrant the costs imposed by the CAT reporting requirements for the BFMM locate exception.[399] As the Commission stated in the Proposing Release, there are a number of settled enforcement actions against brokers or dealers in connection with their use of the exception.[400] In addition, one commenter stated that ''it may be systematically and/or operationally difficult for the broker to define when it is globally acting in a bona fide market maker capacity given the granular details of a market maker's many activities, and the existing systems design.'' [401] However, this comment concerns compliance with Regulation SHO rather than reporting of the use of the BFMM locate exception in CAT; the new requirements do not affect compliance with Regulation SHO.

Another commenter did not believe that the BFMM locate exception information reported to CAT would assist the Commission in identifying violations or misuse of the BFMM locate exception ''because the data can be manipulated by bad actors and is susceptible to human errors of inappropriately marking short sales with the BFMM indicator when they are not eligible.'' [402] The fact that bad actors may act contrary to the requirement is not an appropriate reason not to adopt a requirement. Similarly, human error is always possible. In addition, the human error the commenter describes, if widespread, could be an indication of noncompliant use of the BFMM locate exception.

Another commenter stated that if BFMM locate exception reporting were adopted, ''most market making firms will simply tag that new [BFMM locate exception] field with the affirmative.'' [403] Again, the fact that a commenter speculated that some brokers or dealers may violate the requirement by providing incorrect data is not a reason to not adopt a requirement. Understanding whether market makers always claim the BFMM locate exception (as this commenter suggests), sometimes claim the exception, or never claim the exception, will provide important information and context regarding how market makers use the exception.[404]

Some commenters asked that the Commission provide additional clarity regarding what constitutes bona fide market making activities eligible for the BFMM locate exception, and requested that the Commission confirm that certain market making activity (*e.g.,* through wholesale market making and other activities in connection with facilitating customer orders in the OTC market) was bona fide market making activity for purposes of claiming the BFMM locate exception.[405] One of these commenters expressed concerns regarding recent Commission statements related to the BFMM locate exception.[406] The statements that the

[393] Proposing Release, at 14971.

[394] FIA PTG Letter, at 3 (''Requiring the reporting of orders on an order-by-order basis with either a 'buy to cover' or bona fide market making attestation appears unnecessary from an added transparency perspective and therefore unnecessarily costly.'').

[395] STA Letter, at 3.

[396] XR Securities Letter, at 2.

[397] *See, e.g.,* Rule 203(b)(2)(iii), which requires that the broker or dealer (1) be a market maker; (2) that is effecting short sales *in connection with bona-fide market making activities,* and (3) in *the* security for which the exception is claimed. Section 3(a)(38) defines the term ''market maker.''

[398] *See supra* n.374.

[399] Virtu Letter, at 6.

[400] *See* Proposing Release, at 14971.

[401] *See* SIFMA Letter, at 25 n.64.

[402] STA Letter, at 3.

[403] XR Securities Letter, at 3.

[404] One commenter disagreed with existing Regulation SHO order marking requirements, with a specific focus on a statement made by Commission staff that a broker or dealer should generally not continue to mark orders ''long'' if it has submitted orders beyond the number of shares for which it is long. *See* Virtu Letter, at 3–5; *see also* FAQ 2.5, *Responses to Frequently Asked Questions Concerning Regulation SHO,* Division of Market Reg., *available at https://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm.* This commenter generally stated that this results in virtually all sell orders being marked as short sales and thus, information that is reported to CAT under the proposal would not be representative of the market maker's ''actual'' short position and would not be useful short sale-related information. Brokers or dealers must mark sell orders ''long,'' ''short,'' or ''short exempt,'' and must obtain a locate for all sales marked short unless the broker or dealer can determine that the short sale is ''effected by a market maker in connection with bona-fide market making activities in the security for which this exception [BFMM locate exception] is claimed.'' *See* 17 CFR 242.203(b)(2)(iii).

[405] *See* SIFMA Letter, at 25 (''Moreover, and especially to the extent that there is a requirement to identify reliance on the exception through CAT, the SEC should re-confirm that, while bona fide market making is based on certain 'facts and circumstances' as set forth in prior interpretive guidance, there are different ways in which broker-dealers engage in bona fide market making, including not only through making markets on exchanges, but equally through wholesale market making and other activities in connection with facilitating customer orders in the OTC market.''); *see also* STA Letter, at 3 (STA recommends that the Commission clarify its views on the scope of the BFMM exception, citing as an example an ''OTC market makers that provide extensive liquidity for retail trades but do not affect the trades pursuant to published quotations.'').

[406] *See* SIFMA Letter, at 25 n.67 (''SIFMA further notes the SEC's recent statements in its recent proposing release on registration of significant market participants that 'bona fide market-making exceptions under Regulation SHO are only available to registered broker-dealers that publish continuous quotations for a specific security in a manner that puts the broker-dealer at economic risk', that '[b]roker-dealers that do not publish continuous quotations, or publish quotations that do not subject the broker-dealer to such risk (*e.g.,* quotations that are not publicly accessible, are not near or at the market, or are skewed directionally towards one side of the market), would not be eligible for the bona fide market maker exceptions' and that

Continued

commenter references in particular releases are restatements of multiple prior Commission statements regarding the BFMM locate exception.[407] One commenter expressed concerns that the proposal to require BFMM locate exception reporting to CAT was an effort by the Commission to further limit the availability of the BFMM locate exception in a manner that would be inconsistent with Commission's original Regulation SHO guidance.[408] This commenter expressed particular concerns with the Commission's statement in the Proposing Release that the proposed BFMM locate exception reporting would be an additional tool to determine whether such activity qualifies for the BFMM locate exception or conversely ''could be indicative of, for example, proprietary trading instead of bona fide market making.'' The Commission has consistently stated that the BFMM was intended to be a ''narrow'' exception,[409] and the collection of information about its usage will be helpful for the Commission to determine whether it is being used appropriately as such. The reported information will indeed be used as an ''additional tool to determine whether such activity qualifies'' for the BFMM locate exception as part of the Commission's regulation of short sales, for example, by determining whether brokers or dealers are using the exception for proprietary trading, which is not appropriate. Other commenters called for the elimination of the BFMM locate exception itself.[410] Such requests are outside the scope of this rulemaking. However, the BFMM locate exception is useful for brokers and dealers that are, for example, trying to meet demand in fast-moving markets where they might otherwise be forced to back away from published, marketable quotes being hit by prospective purchasers solely because of the locate requirement.

One commenter stated that the costs imposed on market makers to implement and maintain the proposed regulatory requirements might result in wider spreads, reduced liquidity, and might represent a barrier to entry for new market participants.[411] To the extent the commenter is concerned that the costs of implementing reporting may be passed on in the form of wider spreads or reduced liquidity, on balance the benefits of transparency justify such costs. Importantly, it is unclear how *reporting* the data would create negative results on spreads or market liquidity because the reported exception data will only be provided to regulators and not made public. If the commenter is concerned that once the data is reported, the Commission may become more aware of potential misuse of the BFMM locate exception as described by commenters, the consequences identified by the commenter would not flow from the requirement to report the use of the exception, but may instead result from the misuse of it. Collecting the data will help the Commission with its oversight of the use of the exception, including with regard to potentially abusive ''naked'' short selling.[412] The BFMM locate exception, if properly utilized, benefits investors and the market by preserving market liquidity,[413] but it should not be used for speculative[414] or potentially abusive ''naked'' short selling.[415] Instead, the BFMM locate exception data reported to the CAT will provide the Commission with a better understanding of the use of this limited exception, which should help to ensure that the exception is not subject to misuse by brokers or dealers in violation of the Commission's short selling rules.

In response to commenters that generally requested additional guidance[416] regarding the scope of bona fide market making activity eligible for the BFMM locate exception, the primary requirement is that a broker or dealer that is a market maker provide widely accessible, continuous quotations at or near the market for which it is at risk.[417] For example, the Commission has stated that for purposes of Regulation SHO, a market maker engaged in bona fide market making is a ''broker-dealer that deals on a regular basis with other broker-dealers, actively buying and selling the subject security as well as regularly and continuously placing quotations in a quotation medium on both the bid and ask side of the market.''[418] Moreover, the Commission has stated that ''[b]roker-dealers that do not publish continuous quotations, or publish quotations that do not subject the broker-dealer to such risk (*e.g.,* quotations that are not publicly accessible, are not near or at the market, or are skewed directionally towards one side of the market), would not be eligible for the bona-fide market-maker

'broker-dealers that publish quotations but fill orders at different prices than those quoted would not be engaged in bona fide market making for purposes of Regulation SHO.''). SIFMA cited to Further Definition of ''As a Part of a Regular Business'' in the Definition of Dealer and Government Securities Dealer, Exchange Act Release No. 94524 (Mar. 28, 2022), 87 FR 23054, 23068–69 at n.157 (Apr. 18, 2022).

[407] *See* 2008 Regulation SHO Amendments, at 61698–99; Regulation SHO Adopting Release, at 48015.

[408] SIFMA Letter, at 25.

[409] *See* 2008 Regulation SHO Amendments, at 61698–99; Regulation SHO Adopting Release, at 48015.

[410] *See* Better Markets Letter, at 14 (''The SEC has correctly concluded that naked short sales are abusive. The SEC established this loophole, which permits the largest proprietary trading firms to engage in naked short selling, on the theory that it facilitates trading in hard-to-borrow securities. However, the SEC's settlement regulations with respect to mandatory buy-ins already provide special accommodations to market-makers that cannot close out their short positions within the standard failure-to-deliver close-out timeframe. This accommodation already in place calls into serious question whether the large loophole in the locate requirement serves any legitimate purpose. At the very least, the SEC must closely monitor the information it receives regarding reliance on this exception to determine whether elimination of this exception is warranted.''); *see also* WTI Letter.

[411] *See* STA Letter, at 4.

[412] *See generally Amendments to Regulation SHO,* Exchange Act Release No. 60388 (July 27, 2009), 74 FR 38266, 38267–68 (July 31, 2009) (''2009 Regulation SHO Amendments'').

[413] *See* Regulation SHO Adopting Release, at 48025 (''[e]xcepting bona-fide market making activity from the locate requirement will benefit investors and the market by preserving necessary market liquidity.'').

[414] *See, e.g.,* 2008 Regulation SHO Amendments, at 61699 (''For example, the Commission has stated that bona-fide market making does not include activity that is related to speculative selling strategies or investment purposes of the broker-dealer and is disproportionate to the usual market making patterns or practices of the broker-dealer in that security.''); *see also* Regulation SHO Adopting Release, at 48015.

[415] *See, e.g.,* 2008 Regulation SHO Amendments, at 61691 (''We have previously noted that abusive 'naked' short selling, while not defined in the federal securities laws generally refers to selling short without having stock available for delivery and intentionally failing to deliver stock within the standard . . . settlement cycle.''). *See also* Regulation SHO Adopting Release, at 48009, n.10; Exchange Act Release No. 56212 (Aug. 7, 2007), 72 FR 45544, n.3 (Aug. 14, 2007) (''2007 Regulation SHO Final Amendments''); Exchange Act Release No. 57511 (Mar. 17, 2008), 73 FR 15376 (Mar. 21, 2008) (''Naked Short Selling Anti-Fraud Rule Proposing Release'').

[416] *See, e.g.,* SIFMA Letter, at 25; STA Letter, at 3.

[417] *See, e.g.,* Settlement Cycle Adopting Release, at n.411 (''Under Regulation SHO's bona fide market making exceptions, the broker-dealer generally should be holding itself out as standing ready and willing to buy and sell the security by continuously posting widely accessible quotes that are near or at the market. The market maker must be at economic risk for such quotes.''); *see also* 2008 Regulation SHO Amendments, at 61699. Thus, a market-maker that continually executed short sales away from its posted quotes would generally be unable to rely on the bona-fide market making exceptions of Regulation SHO. *See* Regulation SHO Adopting Release, at 48015 n.68. The market-maker must also be engaged in bona fide market making in that security at the time of the short sale for eligibility for the exceptions. *See* 2008 Regulation SHO Amendments, at 61699.

[418] *See, e.g.,* 2008 Regulation SHO Amendments, at 61699; *see also Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Close-Out Requirements for Short Sales and an Interpretation on Prompt Receipt and Delivery of Securities,* Exchange Act Release No. 32632 (July 14, 1993), 58 FR 39072, 39074 (July 21, 1993); *see also* Settlement Cycle Adopting Release, at 13911–12 n.411.

exceptions under Regulation SHO.'' [419] Notably, ''broker-dealers that publish quotations but fill orders at different prices than those quoted would not be engaged in bona-fide market making for purposes of Regulation SHO.'' [420]

After considering the comments received regarding the proposal to require CAT reporting firms that are reporting short sales to indicate whether such CAT reporting firm is asserting use of the BFMM locate exception, the Commission is adopting this proposed amendment to CAT with a few technical modifications to improve the readability of the amendment.[421] The Commission recognizes that there will be costs to broker-dealers to implement changes to their respective systems and processes to accommodate the reporting of the BFMM locate exception information to CAT. For the reasons described above, as well as reasons stated in the Proposing Release, the Commission believes that the benefits to the Commission in its administration of short sale regulations will justify the burdens and costs to CAT reporting firms. This reporting requirement will not adversely affect short selling activity or liquidity in the market as it requires that brokers or dealers that are market makers provide information that is, or should be, readily available to the market maker at the time they effect a short sale, to the Commission without having to request access. The requirement does not change how such brokers or dealers that are market makers use the exception itself, and the data will not be published.

V. Other Comments

Other commenters also discussed issues that were beyond the scope of the rulemaking, such as suggestions for the Commission to ban short selling, enhance Regulation SHO's locate or close-out requirements, address potentially abusive ''naked'' short selling, and reduce the reporting timeframes or requirements for Form 13F reporting, among others.[422]

VI. Compliance Date

The Commission received one comment regarding a compliance date for Rule 13f–2 reporting requirements; that commenter recommended that Managers be given at least 18 months to comply with the new requirements.[423] Specifically, the commenter stated that ''[g]iven the complexity and significance of the operational build required by the proposed rule, we think a minimum of 18 months would be an appropriate implementation timeframe to give advisers adequate time to come into compliance with any new requirements.'' [424] Due to the modifications from the proposal which will reduce the complexity of the operational build, Managers should require less time than suggested by the commenter. Although the data that will result from the Rule 13f–2 reporting requirements will be useful to market participants and regulators as soon as it is available, it is prudent to implement the rule at a measured pace to help ensure that Managers have adequate time to update systems to meet the reporting requirements of Rule 13f–2. Accordingly, a compliance date of 12 months after the effective date of this release for Rule 13f–2 strikes the appropriate balance between the Commission's goal of increasing transparency of short sale-related information and providing Managers with adequate time to implement systems and processes to comply with the Rule 13f–2 reporting requirements.[425]

The Commission will begin publishing the aggregated short sale related data collected, pursuant to Rule 13f–2, three months after the above stated compliance date of 12 months after the effective date of this release. The three-month window for the Commission to publish aggregated Form SHO data is intended to ensure that Commission systems are operating as designed in order to publish the aggregated data.

Consistent with a suggestion by the commenter, the compliance date for the CAT amendments will be 18 months after the effective date of this release, as there were not modifications to that requirement from proposal. This will allow CAT reporting firms adequate time to update systems to facilitate reporting to CAT.[426] An 18-month compliance period for the amendment to CAT strikes the appropriate balance between improving the Commission's administration of short sale regulations and providing CAT reporting firms adequate time to implement changes to their respective systems and processes to accommodate the reporting of BFMM locate exception information to CAT, and is reasonable given that the information to be reported is, or should be, readily available to the market maker at the time they effect a short sale.[427]

VII. Paperwork Reduction Act Analysis

A. Background

Certain provisions of Rule 13f–2, Form SHO, and the Amendment to CAT impose ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[428] The title for the collection of information is: ''Amendments to Enhance Short Sale Data'' (OMB Control No. 3235–0804). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid control number. The requirements of this collection of information are mandatory for Managers under Rule 13f–2 and Form SHO, and Plan Participants and CAT reporting firms under the Amendment to CAT.

---

[419] *See* Settlement Cycle Adopting Release, at 13911–12 n.411.

[420] *Id. See also* Regulation SHO Adopting Release, at 48015 n.68 (''Moreover, a market maker that continually executed short sales away from its posted quotes would generally be unable to rely on the bona-fide market making exception'' of Regulation SHO).

[421] The amendment includes the following non-substantive, technical changes to the rule text: adding the word ''for'' preceding ''a short sale'' to clarify that reporting is required for a short sale in which the bona fide market maker exception is claimed, adding ''the'' preceding ''exception'' and adding ''in'' preceding Rule 203(b)(2)(iii) to clarify that the bona fide market making exception is found in Rule 203(b)(2)(iii).

[422] One commenter understood the rule as a ''self-reporting'' rule rather than as a mandatory reporting rule. Comment from Sarah (Feb. 25, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20117824-270590.htm.*

[423] MFA Letter 2, at 3 (stating that the Commission should ''provide an appropriate amount of time for firms to comply with any new requirements [under Rule 13f–2] (18 months at a minimum)'' due to the operational build required for compliance with Proposed Rule 13f–2 and Proposed Form SHO).

[424] *Id.*

[425] In addition, with respect to the compliance date, several commenters requested the Commission to consider interactions between the proposed rule and other recent Commission rules. In determining compliance dates, the Commission considers the benefits of the rules as well as the costs of delayed compliance dates and potential overlapping compliance dates. For the reasons discussed throughout the release, to the extent that there are costs from overlapping compliance dates, the benefits of the rule justify such costs. *See infra* Parts VIII.B, VIII.C.6.f, and VIII.D.2 for a discussion of the interactions of the final rule with certain other Commission rules.

[426] For discussion of the compliance date for the adopted amendment to the CAT NMS Plan to require the reporting to the CAT of reliance on the bona fide market making exception in Regulation SHO, see *Notice of the Text of the Amendment to the National Market System Plan Governing the Consolidated Audit Trail for Purposes of Short Sale-Related Data Collection,* Exchange Act Release No. 34–98739 (Oct. 13, 2023), published elsewhere in this issue of the **Federal Register**, which will have an effective date of 60 days after date of publication in the **Federal Register** and a compliance date of 18 months after the effective date.

[427] *See supra* Part IV.B. *See also infra* Part VII.C for discussion of costs and burden estimates related to compliance with the amendment to CAT.

[428] 44 U.S.C. 3501 *et seq.*

In accordance with the PRA, the Commission is submitting the final amendments to the rules to the Office of Management and Budget (OMB) for review. The Commission published a request for comments on these collection of information requirements in the Proposing Release,[429] and submitted the proposed requirements to the Office of Management and Budget (OMB) for review in accordance with the PRA.[430] The Commission received some comments regarding the Commission's estimates of paperwork burdens and costs associated with anticipated compliance of Rule 13f–2, Form SHO, and the Amendment to CAT, which are addressed in this section.

As discussed above, Rule 13f–2 and related Form SHO are designed to provide greater transparency of short sale-related data to regulators, investors, and other market participants by requiring certain Managers to file monthly on Form SHO, through EDGAR in Form SHO-specific XML, certain short position and activity data. Under Rule 13f–2 and Form SHO, only those Managers that meet a specified Reporting Threshold for an equity security will be required to file Form SHO. Such information will provide additional context to the Commission and other regulators regarding the lifecycle of short sales, assist in reconstructing market events, and improve Commission oversight of short selling.

The Amendment to CAT is intended to supplement the short sale-related data that will be reported by certain broker-dealers to the Commission pursuant to Rule 13f–2 and Form SHO. The Commission's amendment to CAT requires, for original receipt or origination of an order for equities, the Participants' Compliance Rules require their broker-dealer members record and report whether the order is a short sale for which the BFMM locate exception in Rule 203 under Regulation SHO for the reported short sale is being claimed. This information will provide valuable data to both the Commission and other regulators regarding the use of the BFMM locate exception. Given the differences in the information collections applicable to these parties, the burdens applicable to Managers and broker-dealers are separated in the analysis below.

[429] *See* Proposing Release, at 14980–81.

[430] 44 U.S.C. 3507(d); 5 CFR 1320.11.

B. Burdens for Managers Under Rule 13f–2 and Form SHO

1. Applicable Respondents

As discussed above, Rule 13f–2 and Form SHO require Managers that trigger a Reporting Threshold to file monthly via EDGAR, on Form SHO, certain short position and activity data. Under section 13(f)(6)(A) of the Exchange Act and for purposes of Rule 13f–2, Managers include any person, other than a natural person, investing in or buying and selling securities for its own account, and any person (including a natural person) exercising investment discretion with respect to the account of any other person.[431] Thus, the requirements of Rule 13f–2 could apply, for example, to investment advisers that exercise investment discretion over client assets, including investment company assets; broker-dealers; insurance companies; banks and bank trust departments; and pension fund managers or corporations that manage corporate investments or employee retirement assets.

In the Proposing Release, the Commission stated that it believed that the burden associated with Proposed Rule 13f–2 and the related Proposed Form SHO reporting in EDGAR would be similar to a Manager's reporting requirements under former Form SH. In October 2008, the Commission adopted interim final temporary Rule 10a–3T, which required institutional investment managers that exercise investment discretion with respect to accounts holding section 13(f) securities having an aggregate fair market value of at least $100 million to file Form SH with the Commission following a calendar week in which it effected a short sale in a section 13(f) security, with some exceptions. Form SH included information on short sales and positions of section 13(f) securities, other than options.[432] The Commission estimated in the Proposing Release, that based on Form SH data, each month, approximately 1,000 Managers would trigger a Reporting Threshold for at least one security, and therefore be required to file a Proposed Form SHO.[433] The Commission did not receive any comments regarding the estimated number of Managers that would be required to file a Form SHO, or an alternative estimated number of Managers that commenters believed would be more appropriate.

As discussed above, the Commission is adopting aspects of the Proposal with certain modifications to Form SHO reporting requirements. For example, the modified reporting threshold for the U.S. dollar value-based prong of Threshold A for reporting company issuer securities is being adopted as a monthly average rather than a daily end-of-day calculation, which could result in fewer Managers being subject to Form SHO reporting requirements under Threshold A than under the Proposed Reporting Thresholds. However, the Commission continues to believe that 1,000 Managers is an accurate estimate when considering (1) Managers with discretion over less than $100 million, which were not required to file Form SH; (2) the fact that Form SH was only required to be filed for 13(f) securities that are included on the 13F List as opposed to all equity securities of both reporting and non-reporting company issuers; and (3) the fact that Form SH did not include a second, lower threshold (Threshold B) for short positions in securities of non-reporting company issuers. As such, the Commission continues to estimate that, each month, approximately 1,000 Managers will trigger a Reporting Threshold for at least one security, and therefore be required to file a Form SHO.

2. Burdens and Costs

The Commission explained in the Proposing Release that it believed that the burden associated with Proposed Rule 13f–2 and the related Proposed Form SHO reporting in EDGAR would be similar to a Manager's reporting requirements for former Form SH.[434] The Commission continues to believe

[431] *See also* Instructions to Form 13F.

[432] *Disclosure of Short Sales and Short Positions by Institutional Investment Managers,* 73 FR 61678. The rule extended the reporting requirements established by the Commission's Emergency Orders dated September 18, 2008, September 21, 2008, and October 2, 2008, with some modifications. *See supra* n.103.

[433] This estimate is similar to the estimate provided in the *Disclosure of Short Sales and Short Positions by Institutional Investment Managers,* Exchange Act Release No. 58785 (Oct. 15, 2008), 73 FR 61678 (Oct. 17, 2008). However, the number of estimated Form SHO filers represents a monthly, as opposed to weekly, filing, and therefore the Commission estimates fewer overall filings per month. Additionally, the estimate accounts for the estimate by the Commission staff that 252 Form SH filers would have been required to file had a threshold of 2.5% of shares outstanding or $10 million monthly average gross short position in an equity security been imposed during the analyzed time period. The estimate of 1,000 is higher than the 252 estimated Form SH filers to account for: (1) Managers with discretion over less than $100 million, which were not required to file Form SH; (2) the fact that Form SH was only required to be filed for 13(f) securities as opposed to all equity securities of both reporting and non-reporting company issuers; and (3) the fact that Form SH did not include a second, lower threshold (Threshold B) for short positions in securities of non-reporting company issuers.

[434] *See* Proposing Release, at 14972–73.

that the burden associated with Rule 13f–2 and related Form SHO reporting in EDGAR is similar to a Manager's reporting requirements for former Form SH. With respect to each applicable section 13(f) security, the Form SH filing identified the issuer and CUSIP number of the relevant security and required the Manager's start of day short position, the number and value of securities sold short during the day, the end of day short position, the largest intraday short position, and the time of the largest intraday short position.[435] In adopting interim temporary Rule 10a–3T, which required certain Managers to file weekly non-public reports via Form SH, the Commission estimated that Managers would spend approximately 20 hours to prepare and file each Form SH.[436] The Commission estimated in the Proposing Release for Form SHO that the burden associated with preparing and filing Form SHO in EDGAR would be approximately 20 hours per filing, consistent with that of former Form SH.[437]

Some commenters were concerned about the Commission's reliance on prior Form SH data in estimating Form SHO reporting burdens, as well as the estimated time burden of 20 hours for preparing and filing each required Form SHO.[438] One commenter stated that the estimated 20 hours to file Form SHO was ''not realistic'' and felt that reliance on Form SH for Form SHO burden estimates was not adequately justified in the Proposing Release.[439] Specifically, some commenters stated that the Proposing Release underestimated the costs of preparing proposed Information Table 2 in relying on the Form SH and Rule 10a–3T estimates, emphasizing the complexity of Form SHO as compared to Form SH.[440] One commenter stated that the Proposing Release's estimate of 20 hours needed to process and file Form SHO per month may be too low, and even if accurate, will impose a ''substantial ongoing burden.''[441] However, these commenters did not provide the Commission with alternative burden estimates for reporting Form SHO, or alternative sources of data for which to base Form SHO burden estimates.

In contrast, one commenter believed that Managers were not being genuine about their concerns regarding costs and burdens of complying with Form SHO reporting requirements, stating that they were able to comply with Form SH requirements.[442] The commenter also stated that the requirements of Form SHO should be less burdensome than the requirements of Form SH due to the decreased frequency of reporting.

Regarding comments of Form SHO's complexity as compared to Form SH, the adopted Form SHO, as described above, does not include the proposed requirement to report hedging status, which several commenters thought would be particularly burdensome or operationally difficult to implement.[443] As adopted, Form SHO also includes a streamlined Information Table 2, which reduces the granularity of the information reported, decreasing the costs and burdens that more detailed reporting of daily activity data as proposed would have imposed, further reducing complexity from the proposed rule and form.

As the Commission acknowledged in the Proposing Release, and continues to acknowledge, the information required under former Form SH differs from that required under Form SHO. However, the Commission continues to believe that Form SH is an appropriate basis for Form SHO burden estimates. Form SH involved the same type of entities (Managers) and the same activity (short positions) as Form SHO. While recognizing that the information required under former Form SH differs from that required under Form SHO, the Commission continues to believe that both forms require the reporting of short sale-related data of similar depth and complexity.[444] Notably, Rule 13f–2 requires monthly reporting if certain conditions are met, as opposed to the weekly reporting required by Form SH for Managers that effected short sales within the preceding week,[445] which is anticipated to decrease the overall volume of reports required to be filed by Managers under Form SHO in comparison to Form SH.

As such, and since the Commission did not receive comments citing alternative sources of data that commenters believed would result in more accurate Form SHO burden estimates, the Commission continues to believe that Form SH is an appropriate basis for which to estimate Form SHO burdens. The Commission continues to estimate that the burden associated with preparing and filing Form SHO in EDGAR will be approximately 20 hours per filing, consistent with the corresponding burdens for former Form SH, and consistent with estimates in the Proposing Release.[446] Accordingly, the Commission estimates that the burden associated with preparing and filing Form SHO across all managers collectively is approximately 240,000 hours per year.[447]

The Commission received one comment regarding the approximate overall cost of $217.55 per Form SHO filing from the Proposing Release. This commenter stated that this cost was ''not realistic,'' but, again, did not provide a more accurate cost estimate, or alternative data source for which to base a cost estimate.[448] The Commission believes that the hourly cost of internal expertise required for each filing will be $251.36, which includes a blended calculation of the estimated hourly rate for a compliance attorney, senior programmer, and in-house compliance clerk, an increase from the Proposing

[435] Form SH was adopted in the wake of the 2008 financial crisis and remained in effect until July 2009.

[436] *See Disclosure of Short Sales and Short Positions by Institutional Investment Managers,* 73 FR 61686 (stating that, ''[t]he 20 hour per filing estimate is based on data received from a small sample of actual filers and a random sample of filings conducted by our Office of Economic Analysis.'').

[437] *See* Proposing Release, at 14973–74.

[438] *See, e.g.,* MFA Letter, at 15; Two Sigma Letter, at 5–7.

[439] Two Sigma Letter, at 5–7 (citing letters received by the Commission that it had underestimated the burden of Form SH and describing the complexity of Form SHO as compared to Form SH).

[440] *See, e.g.,* MFA Letter, at 15; Two Sigma Letter, at 5–7.

[441] Anonymous Fund Manager Letter, at 8.

[442] *See* WTI Letter, at 2 (''The protests of the industry in terms of the effort required to comply with the Proposal ring hollow given the Commission's experience with interim temporary Rule 10a–3T—firms had no problem complying and the data provided was useful to the Commission. Indeed, the Proposal is easier to comply with, given the monthly rather than weekly reporting of interim temporary Rule 10a–3T.'').

[443] *See, e.g.,* T. Rowe Price Letter, at 3–4; Virtu Letter, at 3; MFA Letter, at 4.

[444] Under Form SH, Managers who met the applicable threshold and effected a short sale in a section 13(f) security in the preceding week were required to file a report identifying the open short position, closing short position, largest intraday short position, and the time of the largest intraday short position, for that security during each calendar day of the prior week. *See Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action To Respond to Market Developments,* Exchange Act Release No. 58591 (Sept. 18, 2008), 73 FR 55175, 55176 (Sept. 24, 2008).

[445] *See id.*

[446] Proposing Release, at 14973.

[447] 20 hours per filing × 1,000 filings by Managers each month × 12 months = 240,000 hours. In the Proposing Release PRA, the Commission estimated that 346 Form SH filers would have been required to file Form SHO had a threshold of 2.5% of shares outstanding or $10 million position dollar value been imposed during the analyzed time period. Due to the change in the Threshold A calculation of the dollar value prong of the Reporting Threshold for equity securities of reporting company issuers to be based on a monthly average gross short position rather than the proposed daily calculation, the estimated number of Form SH filers that would have been required to file a Form SHO decreased from 346 to 252. However, the Commission continues to estimate that 1,000 Managers will be subject to Form SHO reporting per month.

[448] *See* Two Sigma Letter, at 5–7.

Release's estimated $217.55 to account for inflation.[449] Taken together, the estimated burden hours and hourly rate for the filing of Form SHO result in an estimated annual cost to the industry of $60,326,400.[450] The Commission, however, recognizes that advances in technology over time could result in Managers spending less time preparing and filing Form SHO than is estimated above.[451]

Consistent with its estimates in the Proposing Release, the Commission also anticipates that most Managers will file Form SHO directly in the structured XML-based data language for Form SHO,[452] rather than using the fillable web form provided by EDGAR, resulting in some limited additional costs for each filing. While the Commission received comments about the use of Form SHO-specific XML generally,[453] it did not receive comments regarding the PRA burden estimates of using Form SHO-specific XML. The Commission estimates that Managers that file Form SHO using a structured XML-based data language could incur an additional burden of 2 hours of work by a programmer,[454] at an estimated cost of $772.[455] The Commission further estimates that Managers will collectively spend up to approximately 24,000 hours and $9,264,000 per year to file Form SHO directly in a structured XML-based data language.[456] The Commission also estimates that a similar, additional burden of 2 hours of work by a programmer per filing will apply to Managers filing an amended Form SHO directly in a structured XML-based data language.

Also consistent with the estimates in the Proposing Release, the Commission estimates that approximately 3.5 percent of the Managers that file Form SHO each month will also file an amended Form SHO, resulting in an additional burden and cost for an estimated 35 Managers each month.[457] The additional burden could take up to the original 20 hours to process and file, as it will require the filing of an entirely new Form SHO.[458] The associated wage rate for filing the amended Form SHO is consistent with the cost of expertise required to file the original Form SHO, estimated to be $251.36 per hour.[459] The Commission also estimates that each amended Form SHO will be filed directly using a structured XML-based data language, resulting in a corresponding additional burden of 2 hours of work by a programmer per amended Form SHO filing. The Commission did not receive any comments regarding the estimated percentage of Managers that will file an amended Form SHO each month, or the costs and burden estimates of filing an amended Form SHO.

PRA TABLE 1—ESTIMATED MANAGER BURDEN AND COSTS ASSOCIATED WITH FORM SHO REPORTING

	Managers (monthly)	Form SHO reports processed and filed (annual)	Hours needed to process and file Form SHO (average)	Total industry burden hours to process and file Form SHO (annual)	Wage rate (average)	Total industry cost burden (annual)
Form SHO Filings	1,000	12,000	20	240,000	$251.36	$60,326,400
Use of Structured XML-Based Data Language in Form SHO Filings	1,000	12,000	2	24,000	386	9,264,000
Amended Form SHO Filings	35	420	20	8,400	251.36	2,111,424
Use of Structured XML-Based Data Language in Amended Form SHO Filings	35	420	2	840	386	324,240
Total				273,240		72,026,064

[449] The $251.36 wage rate reflects current estimates of the blended hourly rate for an in-house compliance attorney ($425), a senior programmer ($386) and in-house compliance clerk ($82). $251.36 is based on the following calculation: (($425) + ((($386 + $82) ÷ 2) × 10)) ÷ 11) = $251.36. The estimated proportion of compliance attorney (1/11th) to senior programmer and in-house compliance clerk (10/11th) time burden is based on commenter input and computation of the estimated burden for the filing of Form 13F–HR. *See Electronic Submission of Applications for Orders,* Exchange Act Release No. 93518 (Nov. 4, 2021), 86 FR 64839 (Nov. 19, 2021) at 64860–61 (''Electronic Submission of Applications for Orders''). The $425 per hour and $386 per hour figures for a compliance attorney and a senior programmer, respectively, are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013 (''SIFMA Report''), modified by Commission staff to account for an 1,800-hour work year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. The $82 per hour figure for a compliance clerk is based on salary information from the SIFMA Report, modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead. *See also Form PF; Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers; Requirements for Large Private Equity Fund Adviser Reporting,* Release No. IA–6297, 88 FR 38146, 38195–98 (June 12, 2023).

[450] 20 hours per filing × 1,000 filings by Managers each month × 12 months × $251.36 per hour = $60,326,400.

[451] *See Electronic Submission of Applications for Orders,* 86 FR 64859 (stating that ''[c]ommenters stated that the advances in technology have made the process of completing and filing Form 13F highly automated, reducing the time and external costs to managers in complying with this requirement.'').

[452] Most Managers will be familiar with other EDGAR Form-specific XML data languages, the use of which is required for the filing (by Managers that exercise investment discretion with respect to accounts holding 13(f) securities having an aggregate fair market value on the last trading day of any month of any calendar year of at least $100 million) of Form 13F. *See* Frequently Asked Questions About 13F, *available at https://www.sec.gov/divisions/investment/13ffaq.htm.* The Commission estimates that all of the 1,000 Managers estimated to file Form SHO each month will do so directly using the structured XML-based data language rather than the fillable web form provided by EDGAR.

[453] *See* XBRL Letter; Comment from An Investor (Apr. 4, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20122297-278355.htm.* Comments regarding the use of XML are addressed in Part II.A.4.

[454] The 2-hour estimated burden is consistent with similar estimates for the use of structured XML data formats for the filing of Form N–CR and Form 24F–2. *See Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N–CSR and Form N–1A,* Exchange Act Release No. 34–97876 (July 12, 2023), 88 FR 51404, 51514 (Aug. 3, 2023); *see also Securities Offering Reform for Closed-End Investment Companies,* Exchange Act Release No. 88606 (Apr. 8, 2020), 85 FR 33290, 33329 n.439 (June 1, 2020) (stating that ''[w]e assume that the burden of tagging Form 24F–2 in a structured XML format would be 2 hours for each filing.'').

[455] The $386 per hour figure for a senior programmer is based on salary information from the SIFMA Report. 2 hours × $386 = $772.

[456] 2 hours per filing × $386 per hour × 1,000 filings each month × 12 months = $9,264,000.

[457] The estimate of 3.5% of Regulation SHO filers that are anticipated to file an amended Form SHO is based on the frequency of recent filings of amended Form 13F. For the reporting period of Dec. 31, 2022, there were 6,924 holdings reports for Form 13F–HR submitted, 244 of which were amended. (244 ÷ 6,924 = 3.5%).

[458] *See* Form SHO, Special Instructions, at 4.

[459] *See* Proposing Release, at 14974.

Consistent with estimates in the Proposing Release, in addition to the costs associated with the reporting burden, Managers could incur an initial technology-related burden of 325 hours, at an hourly estimated wage rate of $366,[460] for an estimated total cost of $118,950 per Manager,[461] to update their current systems to capture the required information and automate and facilitate the completion and filing of Form SHO. The Commission generally believes that the type of Managers that will trigger a Reporting Threshold will likely have sophisticated technologies and be able to implement systems to help automate the reporting requirements of Rule 13f–2. As discussed in the Proposing Release, the estimate of 325 initial technology-related burden hours for Managers filing Form SHO was based on the estimated initial filing burden (325 hours) for large hedge fund advisers to fulfill amendments to the reporting requirements for Form PF,[462] and is similar to the initial technological infrastructure-related burden (355 hours) for the proposed security-based swap position reporting requirements of proposed Rule 10B–1(a).[463] While Managers most likely have other existing reporting obligations, the Commission recognizes that Managers may need to update their systems to ensure timely and accurate filing of the specific information required under Form SHO.

One commenter stated that the estimated 325 hours initial technology-related burden was ''not realistic'' but did not provide an alternative estimate.[464] One commenter stated that the initial estimated costs for initial technology projects per Manager represented a ''significant portion'' of a smaller Manager's information technology budget but did not state that the estimate was inaccurate.[465] As a result of not adopting the proposed hedging requirement, which a number of commenters thought would be operationally difficult to implement,[466] the technology-related burden will likely be reduced from that which was estimated in the Proposing Release.

The Commission did not receive any comments that provided an alternative hourly estimate for the initial technology related burden for Managers filing Form SHO, or an alternative, more accurate source for which to base the initial technology related burden for Managers filing Form SHO. Additionally, in response to the comment that the Commission generally underestimated the initial technology-related burden, and that the technology-related burden is likely reduced from the Proposing Release given the Commission's decision not to adopt the proposed hedging requirement, the Commission continues to believe that an estimate of 325-hours for the initial technology-related burden is appropriate.

PRA TABLE 2—ESTIMATED MANAGER BURDEN AND COSTS ASSOCIATED WITH FORM SHO INITIAL TECHNOLOGY PROJECTS

	Managers with proposed Form SHO reportable short interest positions	Number of hours needed for initial technology projects (average)	Industry burden hours for initial technology projects	Wage rate (average)	Total industry cost burden
Form SHO Initial Technology Projects	1,000	325	325,000	$366	$118,950,000

C. Burdens and Costs Associated With the Amendment to CAT

1. Summary of Collections of Information

The amendment to the CAT NMS Plan requires Participants to update their Compliance Rules to require reporting by Industry Members of whether an original receipt or origination of an order to sell an equity security is a short sale for which a market maker is claiming the bona fide market making exception to the locate requirement in Rule 203(b)(2)(iii) of Regulation SHO.[467]

2. Use of Information

As discussed above, reporting of certain short sale information to the CAT provides valuable information for the Commission and other regulators in investigations and reconstruction of market events. Requiring Industry Members to identify short sales for which they are claiming the BFMM locate exception will provide the Commission staff and other regulators an additional tool to determine whether such activity qualifies for the exception, or instead is indicative of, for example, proprietary trading instead of bona fide market making.

3. Respondents

a. National Securities Exchanges and National Securities Associations

The respondents for the amendment to CAT include the 25 Plan Participants (the 24 national securities exchanges and one national securities association (FINRA)).[468]

[460] The Commission estimates that, of a total estimated burden of 325 hours, approximately 195 hours will most likely be performed by compliance professionals and 130 hours will most likely be performed by programmers working on system configuration and reporting automation. Of the work performed by compliance professionals, we anticipate that it will be performed equally by a compliance manager at a cost of $360 per hour and a senior risk management specialist at a cost of $416 per hour. Of the work performed by programmers, we anticipate that it will be performed equally by a senior programmer at a cost of $386 per hour and a programmer analyst at a cost of $280 per hour. ((($360 per hour × 0.5) + ($416 per hour × 0.5)) × 195 hours) + ((($386 per hour × 0.5) + ($280 per hour × 0.5)) × 130 hours) ÷ 325 = $366. *See Form PF; Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers; Requirements for Large Private Equity Fund Adviser Reporting,* Release No. IA–6297 (May 3, 2023), 88 FR 38146, 38195 (June 12, 2023). *See also* SIFMA Report.

[461] 325 initial technology-related burden hours × $366 per hour = $118,950.

[462] *See Form PF; Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers; Requirements for Large Private Equity Fund Adviser Reporting,* Release No. IA–6297 (May 3, 2023), 88 FR 38146, 38195 (June 12, 2023). (The Commission recognizes that adopted Rule 13f–2 will cover persons other than large hedge fund advisers, and that large hedge fund advisers may generally be more accustomed to existing Commission reporting requirements than some other persons that will be covered by adopted Rule 13f–2.).

[463] *See* Rule 10B–1 Proposal.

[464] *See* Two Sigma Letter, at 5.

[465] *See* Anonymous Fund Manager Letter, at 6–7.

[466] *See* Virtu Letter, at 3.

[467] *See supra* Part IV.

[468] The Participants are: BOX Options Exchange LLC; Cboe BZX Exchange, Inc.; Cboe BYX Exchange, Inc.; Cboe C2 Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX, Inc.; Cboe Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; Investors Exchange Inc.; Long-Term Stock Exchange, Inc.; MEMX, LLC; Miami International Securities Exchange LLC; MIAX PEARL, LLC; MIAX Emerald, 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 MKT LLC; and NYSE Arca, Inc., NYSE Chicago Stock Exchange, Inc., NYSE National, Inc.

b. Members of National Securities Exchanges and National Securities Associations

The respondents for the Amendment to CAT also include the Participants' broker-dealer members, that is, Industry Members. The Commission understands that there are currently 3,501 registered broker-dealers;[469] however, not all broker-dealers are expected to have new CAT reporting obligations under the Amendment to CAT.[470] Based on an analysis of CAT data from May 2023, conducted by Commission staff, the Commission estimates that approximately 100 broker-dealers will be required to report for the original receipt or origination of an order to sell an equity security whether the order is a short sale effected by a market maker in connection with bona fide market making activities in the security for which the BFMM locate exception in Rule 203(b)(2)(iii) of Regulation SHO is claimed. This is a decrease from the Commission's estimate in the Proposing Release of 104 broker-dealers that would be required to report for the original receipt or origination of an order to sell an equity security whether the order is a short sale effected by a market maker in connection with bona-fide market making activities in the security for which the exception in Rule 203(b)(2)(iii) of Regulation SHO is claimed, because there were 104 CAT reporters listed as equity market makers in CAT in November 2021, and 100 CAT reporters listed as equity market makers in CAT in May 2023.[471] The Commission also included an estimate of 1,218 broker-dealers that would have been required to report ''buy to cover'' information on buy orders for equity securities to CAT in the Proposing Release,[472] but since the Commission is not adopting the proposed ''buy to cover'' reporting requirement, such estimate is not included here. The Commission did not receive any comments on the estimated number of respondents under the proposed amendments to CAT.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The Commission received comments regarding the costs and burdens of the proposed amendments to CAT generally[473] but did not receive specific comments regarding the Proposing Release's PRA estimates related to the proposed CAT amendments. General comments regarding costs and burdens of the proposed CAT amendments are addressed in Part IV. The Commission's total burden estimates in this Paperwork Reduction Act section reflect the total burden on all Participants and Industry Members. The burden estimates per Participant or Industry Member are intended to reflect the average paperwork burden for each Participant or Industry Member, but some Participants or Industry Members may experience more burden than the Commission's estimates, while others may experience less. The burden figures set forth in this section are based on a variety of sources, including Commission staff's experience with the development of the CAT and estimated burdens for other rulemakings. Because the CAT NMS Plan applies to and obligates the Participants and not the Plan Processor, the Commission believes it is appropriate to estimate the Participants' external cost burden based on the estimated Plan Processor staff hours required to comply with the proposed obligations.[474] Put another way, pursuant to the Amendment to the CAT NMS Plan, the Participants will be obligated to make changes to the CAT, but the CAT is managed by the Plan Processor pursuant to contractual agreement, and so the Participants will be required to engage the Plan Processor to make any required changes.

a. Participant Burdens

The Amendment to CAT will require the Participants to engage the Plan Processor to modify the Central Repository to accept and process the new BFMM locate exception information on order receipt and origination reports. The Commission estimates that the Participants will incur an initial, one-time burden of 130 hours, or 5.2 hours per Participant, of staff time required to supervise and implement the changes necessary for the Plan Processor to accept and process the new data elements, and an initial, one-time, external cost of $113,800, or a per Participant expense of approximately $4,552 to compensate the Plan Processor for staff time required to make the initial necessary programming and systems changes to accept and process the new data elements, based on an estimate that it will take 300 hours of Plan Processor staff time to implement these changes.[475] The Commission did not receive comment on these estimates.

The Commission continues to believe that other Paperwork Reduction Act burdens that will apply to the Participants, including ongoing burdens and external expenses for the Plan Processor's acceptance and processing of the new data elements, are already accounted for in the existing Paperwork Reduction Act estimate that applies for Rule 613 and the CAT NMS Plan Approval Order, submitted under OMB number 3235–0671.[476] The prior Paperwork Reduction Act analysis incorporates any other potential Paperwork Reduction Act burdens for the Participants, because the existing Paperwork Reduction Act analysis accounts for initial and ongoing costs for, among other things, operating and maintaining the Central Repository, including the cost of systems and connectivity upgrades or changes necessary to receive and consolidate the reported order and execution information from Participants and their members, the cost to store data and make it available to regulators, the cost of monitoring the required validation parameters, and management of the Central Repository.[477] In addition, the Commission anticipates that each exchange and national securities association will file one Form 19b–4 filing to implement updated Compliance Rules. While such filings may impose certain costs on the exchanges, those burdens are already accounted for in the comprehensive Paperwork Reduction Act Information Collection submission for Form 19b–4.[478] The Commission does not expect the baseline number of 19b–4 filings to increase as a result of the Amendment to CAT, nor does it believe that the incremental costs exceed those costs used to arrive at the average costs and/

[469] This is based on FOCUS quarterly filings for 2023 Q1.

[470] *See supra* Part IV.B.

[471] *See* Proposing Release, at 14977.

[472] *Id.*

[473] *See, e.g.,* SIFMA Letter, at 25; FIA PTG Letter, at 3; Virtu Letter, at 6.

[474] The Commission derives estimated costs associated with Plan Processor and Industry Member staff time based on per hour figures from the SIFMA Report, modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[475] The estimated 300 hours of Plan Processor staff time include 200 hours by a Senior Programmer, 40 hours by a Senior Database Administrator, 40 hours for a Senior Business Analyst, and 20 hours for an Attorney. The Commission estimates that the initial, one-time external expense for Participants will be $113,800 = (Senior Programmer for 200 hours at $386 an hour = $77,200) + (Senior Database Administrator for 40 hours at $379 an hour = $15,160) + (Senior Business Analyst for 40 hours at $305 an hour = $12,200) + (Attorney for 20 hours at $462 an hour = $9,240).

[476] *See* CAT NMS Plan Approval Order, 81 FR 84911–43; *see also* OMB Control No. 3235–0671, 85 FR 37721 (June 23, 2020) (notice of submission of request for approval of extension).

[477] *See* CAT NMS Plan Approval Order, 81 FR 84918.

[478] *See* OMB Control No. 3235–0045 (Aug. 19, 2016), 81 FR 57946 (Aug. 24, 2016) (Request to OMB for Extension of Rule 19b–4 and Form 19b–4 PRA).

or burdens reflected in the Form 19b–4 PRA submission.

b. Broker-Dealer Burdens

The Commission anticipates that certain Industry Members will have initial, one-time burdens and costs relating to the Amendment to CAT, to update systems and processes as necessary to capture and report use of the BFMM locate exception to CAT. The Commission has estimated these initial burdens and costs below.

The Amendment to CAT will impose an ongoing annual burden relating to, among other things, personnel time to monitor each broker-dealer's reporting of the required data and the maintenance of the systems to report the required data and implementing changes to trading systems that might result in additional reports to the Central Repository. However, the Commission estimates that the ongoing burden imposed by the Amendment to CAT related to reporting to the CAT is already accounted for in the existing information collections burdens associated with Rule 613 and the CAT NMS Plan Approval Order submitted under OMB number 3235–0671.[479] Specifically, the CAT NMS Plan Approval Order takes into account requirements on broker-dealer members to comply with the CAT NMS Plan, including the requirement to maintain the systems necessary to collect and transmit information to the Central Repository,[480] provides aggregate burden hour and external cost estimates for the broker-dealer data collection and reporting requirement of Rule 613, and did not quantify the burden hours or external cost estimates for each individual component of the broker-dealer's data collection and reporting responsibility.[481] The Amendment to CAT will not require any Industry Member to submit new reports to the CAT, but to add limited additional information to existing reports in certain circumstances for certain Industry Members. The Commission does not believe that this will alter the estimates of ongoing burden and external costs in the existing Paperwork Reduction Act Analysis and the ongoing burden associated with these new collection requirements are accounted for in the existing Paperwork Reduction Act Analysis.

The Amendment to CAT will impose additional burdens on Industry Members that trade equity securities and rely upon or plan to rely upon the BFMM locate exception. Based on an analysis of data reported to the CAT in May 2023, and specifically the identification of all unique CAT Reporters that were identified as equity market makers (including different classes of market makers such as ''designated'' or ''lead'' market makers, and secondary liquidity providers), approximately 100 CAT Reporters will be subject to the new reporting obligation. Some broker-dealers that rely upon this exception may retain records regarding their eligibility for this exception for specific orders or for orders originated by specific desks or units of their business.

Regarding the obligation to report the BFMM locate exception information to the CAT, the Commission believes that it is appropriate to divide the 100 Industry Members, *i.e.,* the CAT reporters listed as equity market makers in CAT as of May 2023, that will be required to report this information into two categories: (i) Industry Members that report directly to the CAT; and (ii) Industry Members that use third-party reporting agents for CAT reporting. For purposes of this Paperwork Reduction Act analysis, the Commission estimates that of the 100 Industry Members that will be required to report this information, 58 Industry Members will be reporting this information directly to the CAT, and 42 Industry Members will be reporting this information through third-party reporting agents. The Commission believes this is a reasonable estimation because the majority of Industry Members that are identified as market makers in the CAT have developed their own systems and technology to report directly to the CAT. The Commission believes that the majority of market makers handle reporting themselves because they likely submit a sufficient number of reportable events. The Commission did not receive any comments regarding the estimated number of broker-dealers that would be required to report for the original receipt or origination of an order to sell an equity security whether the order is a short sale effected by a market maker in connection with bona-fide market making activities in the security for which the exception in Rule 203(b)(2)(iii) of Regulation SHO is claimed, or about the estimated proportion of insourcing vs. outsourcing Industry Members. As such, the Commission is keeping the proportion of insourcing vs. outsourcing Industry Members the same as in the Proposing Release, but reflective of the estimated 100 broker-dealers rather than 104 broker-dealers from the Proposing Release.

The Commission estimates that the 58 insourcing Industry Members that report directly to the CAT will incur an initial, aggregate, one-time burden of 15,080 hours, or that each of these CAT Reporters will incur an initial, average one-time burden of 260 hours, and that each of these 58 insourcing Industry Members will incur an initial, aggregate, one-time external expense of approximately $870,000 for software and hardware to facilitate reporting of the new data elements to CAT, or that each insourcing Industry Member will incur an initial, average one-time external expense of approximately $15,000.[482] The Commission did not receive any comments about the cost and burden estimates for insourcing Industry members.

The Commission estimates that the 42 outsourcing Industry Members that use third-party reporting agents to report to the CAT will incur an initial, aggregate, one-time burden of 420 hours, or that each of these outsourcing Industry Members will incur an initial, one-time burden of 10 hours on average, and that these 42 outsourcing Industry Members will incur an initial, aggregate, one-time external expense of approximately $42,000 for software and hardware to facilitate reporting use of the BFMM locate exception to CAT, or that each outsourcing Industry Member will incur an initial, average one-time external expense of approximately $1,000.[483]

[479] *See* CAT NMS Plan Approval Order, 81 FR 84911–43. While there is no recordkeeping requirement related to reporting use of the BFMM locate exception, brokers or dealers should be prepared to monitor for compliance with conditions and maintain records documenting such compliance. *See* Regulation SHO Adopting Release, 48011 n.27 (''As with any rule, broker-dealers relying on [an] exception should be prepared to monitor for compliance with its conditions, and maintain records documenting such compliance.''). There would be a minimal additional ongoing burden for such brokers or dealers to record that they have determined such eligibility for each transaction reported to CAT.

[480] *See, e.g.,* CAT NMS Plan Approval Order, 81 FR 84930.

[481] *See* CAT NMS Plan Approval Order, 81 FR 84930.

[482] The Commission is basing this figure on the estimated burden and external costs for a broker-dealer that handles orders subject to customer specific disclosures required by Rule 606(b)(3) to update their systems to capture the data and produce a report to comply with Rule 606. *See Disclosure of Order Handling Information,* Exchange Act Release No. 84528 (Nov. 2, 2018), 83 FR 58338, 58383 (Nov. 19, 2018). This is a reasonable proxy for estimating the burdens and costs associated with updating data capture systems for reporting purposes here because in both rulemakings broker-dealers were required to update in-house data reported for pre-existing reporting obligations.

[483] The Commission believes that the estimated burden and external costs for outsourcing Industry Members is reasonable because the burden on individual Industry Members should be significantly lower than insourcing Industry Members because of the difference in how these

Continued

The Commission did not receive any comments about the cost and burden estimates for outsourcing Industry Members.

As discussed above, the Commission continues to believe that the ongoing burden associated with reporting to the CAT is already accounted for in the existing information collections burdens associated with Rule 613 and the CAT NMS Plan Approval Order submitted under OMB number 3235–0671.[484] Because this information is already collected and maintained by market makers that engage in equity trading and claim the exception pursuant to 17 CFR 240.17a–3 (''Rule 17a–3 of the Exchange Act''), there is no new ongoing burden associated with collecting or recording the information necessary to effectuate CAT reporting of this new element.

PRA TABLE 3—SUMMARY OF ESTIMATED INITIAL ONE-TIME BURDENS RELATED TO CAT BFMM AMENDMENT

Name of information collection	Type of burden	Number of entities impacted	Initial one-time hourly burden	Aggregate one-time hourly burden	Initial one-time cost	Aggregate one-time cost
CAT: Central Repository—Short Sale Data	Recordkeeping	25	5.2	130	$4,552	$113,800
CAT: Reporting of Bona Fide Market Making Exception—Insourcers.	Direct Report	58	260	15,080	15,000	870,000
CAT: Reporting of Bona Fide Market Making Exception—Outsourcers.	Third Party Disclosure	42	10	420	1,000	42,000

D. Collection of Information Is Mandatory

The information collections are required under Rule 13f–2 and Form SHO for Managers that meet the Reporting Threshold and the Amendment to CAT for Plan Participants to collect and process new CAT reportable information and for CAT Industry Members that engage in certain short sale activity.

E. Retention Period of Recordkeeping Requirement

Pursuant to 17 CFR 240.17a–4(b)(7) (''Exchange Act Rule 17a–4(b)(7)''), a broker-dealer must preserve for a period of not less than three years, the first two years in an easily accessible place, all written agreements (or copies thereof) entered into by such member, broker or dealer relating to its business as such, including agreements with respect to any account.

Pursuant to 17 CFR 240.17a–4(e)(7), a broker-dealer must maintain and preserve in an easily accessible place each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the member, broker or dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the member, broker or dealer until three years after the termination of the use of the manual.

Pursuant to 17 CFR 240.17a–1, every national securities exchange and national securities association shall keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such and in the conduct of its self-regulatory activity for a period of not less than five years, the first two years in an easily accessible place, subject to the destruction and disposition provisions of 17 CFR 240.17a–6 (''Rule 17a–6'').

F. Confidentiality

As discussed above, Rule 13f–2 requires certain Managers to file monthly in EDGAR, on Form SHO, certain short sale volume data and short interest position data. However, the Commission will aggregate the information reported by Managers on Form SHO prior to publication to protect the identity of reporting Managers.

To the extent that the Commission receives—through its examination and oversight program, through an investigation, or by some other means—records or disclosures from a broker-dealer that relate to or arise from the Rule that are not publicly available, such information will be kept confidential, subject to the provisions of applicable law.

With respect to the Amendment to CAT, Rule 613, and the CAT NMS Plan, information collected and electronically provided to the Central Repository will only be available to the national securities exchanges, national securities association, and the Commission. Further, the CAT NMS Plan includes policies and procedures designed to ensure the security and confidentiality of all information submitted to the Central Repository, and to ensure that all SROs and their employees, as well as all employees of the Central Repository, shall use appropriate safeguards to ensure the confidentiality of such data. The Commission will receive confidential information pursuant to this collection of information, and such information will be kept confidential, subject to the provisions of applicable law.

VIII. Economic Analysis

A. Introduction

The Commission is adopting a new rule and related form as well as an amendment that introduce new reporting requirements in connection with short sales. Rule 13f–2, Form SHO, and the amendment to CAT (collectively, the ''adoptions'') will improve the transparency of short selling activity to regulators, market participants and the investing public. The data provided by these adoptions will close informational gaps in the currently available data, which in turn will benefit market participants and help foster fair and orderly markets. The adoptions will also improve regulatory oversight and enhance regulators' examination of market behavior and recreation of significant market events. These improvements may, in turn, discourage market manipulation to the extent that it occurs.[485]

The Commission is mindful of the economic effects that may result from the adoptions of Rule 13f–2, Form SHO, and the amendment to CAT, including the benefits, costs, and the effects on efficiency, competition, and capital

firms report to the CAT. Outsourcing Industry Members will not be required to change internal CAT reporting systems, but instead will be responsible for making any updates necessary for CAT reporting agents to report this information to the CAT. The outsourcing Industry Members will have external costs associated with paying CAT reporting agents for any additional fees relating to the change, but because CAT reporting agents can report on behalf of numerous outsourcing Industry Members at the same time, the costs of any updates to their systems can be distributed amongst outsourcing Industry Members.

[484] *See supra* n.476.

[485] *See infra* Part VIII.C.1 for additional discussion on potential market manipulation.

formation.[486] The Commission recognizes that the adoptions might impose significant compliance costs on market participants. Requiring Managers [487] to report large positions and short sale activity will likely impose significant initial and ongoing costs on Managers. The amendment to CAT will also impose compliance costs on broker-dealers. The Commission is cognizant of these costs and has modified the Proposals in a way that is intended to reduce the burdens incurred by market participants without sacrificing the transparency that is expected to result from the adoption of the Proposals. Modifications from the proposed rule and form that are likely to reduce reporting costs to Managers relative to the Proposals include: revising a key reporting threshold based on a monthly average calculation instead of a daily calculation, which is expected to reduce the number of reporting entities; streamlining the reporting requirements of Forms SHO; not adopting the ''buy to cover'' CAT reporting requirement; and not adopting Rule 205. Overall, the Commission has sought to balance the costs of the adoptions against the benefit to transparency that will be provided to regulators and the public.

The Commission recognizes that the adoptions may lead to tradeoffs in market quality, with a risk of negative effects on price efficiency. A potential reduction in market manipulation through improved regulatory oversight stemming from the adoptions may have a positive impact on market quality. Furthermore, the adoptions will provide market participants with improved transparency into short selling activity, which might also lead to improved price efficiency. On the other hand, Rule 13f–2 and the disclosures Form SHO requires will increase the costs and risks of implementing large short positions, which might reduce price efficiency by reducing short selling and the positive effects of such short selling. Furthermore, public disclosure of information resulting from Rule 13f–2 and Form SHO might facilitate short squeezes, which in turn might also reduce market quality.[488]

The Commission has considered the economic effects of the adoptions and wherever possible, has quantified their likely economic effects. The Commission is providing both a qualitative assessment and quantified estimates of the adopted rule and CAT amendment's economic effects where feasible. The Commission has received comments on the Proposals and has addressed commenters' concerns with the economic analysis. The Commission has incorporated data and other information to assist it in the analysis of the economic effects of the adoptions. However, as explained in more detail below, because the Commission does not have, and in certain cases does not believe it can reasonably obtain data that may inform the Commission on certain economic effects, the Commission is unable to quantify certain economic effects. Further, even in cases where the Commission has some data, quantification is not practicable due to the number and type of assumptions necessary to quantify certain economic effects, which render any such quantification unreliable. Our inability to quantify certain costs, benefits, and effects does not imply that the Commission believes such costs, benefits, or effects are not significant.

The Commission is adopting the Manager reporting and disclosures to implement the statutory mandate of section 929X of the Dodd-Frank Act. Accordingly, many of the costs and benefits of Rule 13f–2 and Form SHO stem from the Commission's implementation of the statutory mandate. In addition, the Commission is exercising discretion in its design and implementation of Rule 13f–2 and Form SHO and recognizes that this discretion has economic effects. Specifically, the Commission is using this discretion to ensure that the disclosures are additive to currently available data and will be useful to both market participants and regulators, with a focus on addressing data limitations exposed by market events, especially the market volatility in January 2021. Additionally, the Commission is adopting a Proposed CAT amendment in order to address such data limitations outside of the context of the statutory mandate of section 929X.

The Commission has access to several sources of data that provide some short selling information, one of which is CAT. CAT data can be used by regulators for regulatory purposes, including analysis and reconstruction of broad-based market events; in market analysis in support of regulatory decisions; in market surveillance, investigations, and other enforcement activities. At times, these regulatory functions can benefit from information on short sale positions of market participants and how these positions change over time. CAT does not include data that can be used to track such positions, and as discussed further above, Commission staff experience in reconstructing the events of January 2021 provided insights into the challenges of using existing CAT data for this purpose. Other existing data sources, including public data sources, are also limited for these purposes as well as for informing members of the public and market participants. Specifically, current data fail to distinguish the type of trader engaged in short selling or identify individual short positions, as well as the fluctuation in those positions, even for regulatory use. Furthermore, current data do not track the use of the bona fide market maker exemption when short selling without the ''locate''.[489] The adopted rule will serve to increase the Commission's awareness and understanding of short sale activity by Managers with large short sale positions by requiring reporting of their reliance on the bona fide marker maker locate exception. The adopted amendment will serve the Commission in its regulatory capacity.

[486] Exchange Act section 3(f) requires the Commission, when it is engaged in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). In addition, Exchange Act section 23(a)(2) requires the Commission, when making rules pursuant to the Exchange Act, to consider among other matters the impact that any such rule would have on competition and not to adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78w(a)(2).

[487] *See infra* note 506 and the accompanying discussion in the text on the definition of ''Manager''.

[488] *See infra* Part VII.C.1. The Commission expects that for many securities, a limited number of Manager positions may surpass the reporting requirement thresholds. Given the eventual public release of the aggregate position sizes, there is a risk that other market participants will be able to potentially identify the Managers with large short positions and orchestrate short squeeze efforts against them (should they seem vulnerable against a short squeeze). Nevertheless, the Commission maintains the ability of identifying such behavior using CAT data, which could mitigate initiation of such behavior.

[489] *See supra* note 10 for description of the locate requirement of Rule 203 of Regulation SHO.

Existing data sources fail to accurately represent economic short positions of Managers due to several limitations.[490] While FINRA publishes aggregate short interest on a bimonthly basis, these data do not reflect the timing with which short positions expand or shrink in the two-week period between reporting dates.[491] Some other data sources report daily short sale volume[492] without distinguishing between short sale transactions that affect economic short positions and short sale transactions meant for purposes such as liquidity provision or hedging of long positions. As such, these existing short volume data may not be combined with the bimonthly short interest data to construct aggregate daily short positions of any particular Manager. Securities lending data, bolstered by the recently adopted 17 CFR 240.10c–1a (''Exchange Act Rule 10c–1a''), will offer a clearer picture of the relationship between short interest and securities being lent;[493] however, this does not allow the Commission or the public to observe and monitor large short positions of Managers.[494] No existing data identify short positions of individual traders. Even though some regulatory data, *e.g.,* CAT data, identify short transactions of individual traders, they may not be utilized to reconstruct short positions because economic short positions may change in the absence of any short sale transactions. Thus, the Commission is adding to the existing data sources to further illuminate the short selling market.[495]

These data limitations inhibit regulators from performing functions such as market surveillance and market reconstruction. For example, the Commission does not have regular access to information about Managers who hold large short positions, even if those positions are held for a long period of time. If the positions are sufficiently large and prices move against the positions, the Commission currently cannot efficiently assess the risk that these positions impose on the market more broadly.[496] Further, with existing data, the Commission may have difficulty reconstructing significant market events, thereby inhibiting the Commission from quickly understanding market events and providing efficient market oversight.

B. Baseline

The baseline against which the costs, benefits, and the effects on efficiency, competition, and capital formation of the final rule are measured consists of the current state of the equity market, current practices of Managers and broker-dealers, and the current regulatory framework. The economic analysis considers existing regulatory requirements, including recently adopted rules, as part of its economic baseline against which the costs and benefits of the final rule are measured.[497]

---

[490] One commenter stated that the data reported from Form SHO would only provide very limited additional relevant insight relative to FINRA short interest data. *See* SBAI Letter at 2. The Commission reiterates that Form SHO data are additive to existing data, including FINRA short interest data. More specifically, publicly released Form SHO data will indicate which equities have large short positions held by institutional investment managers. This is different from seeing large short interest, which may indicate many smaller positions, including those held by retail investors. Large short positions accumulated by Managers are often based on fundamental research, in contrast to smaller positions which more likely stem from hedging or arbitrage strategies. Therefore, information on the magnitude of aggregate large short positions, especially in relation to overall short interest, may highlight the degree to which short sales of a particular security are concentrated among Managers guided by fundamental research relative to hedging or arbitrage strategies. Thus, Form SHO will provide novel information on short sale behavior relative to other short sale data sources.

[491] FINRA requires all members to report settled short positions in equities of all customer and proprietary accounts twice per month. According to the schedule it has adopted, FINRA publishes the short sale data about a week after each reporting due date. *See, e.g.,* Short Interest Reporting, *available at https://www.finra.org/filing-reporting/regulatory-filing-systems/short-interest.*

[492] FINRA reports daily off-exchange short sale volume data that aggregate, for each exchange-listed security, short sale transactions reported to a FINRA TRF or ADF. *See Short Sale Volume Data,* FINRA, *available at https://www.finra.org/finra-data/browse-catalog/short-sale-volume-data.* Registered exchanges also report daily short sale volume aggregated at the security level, often charging a fee. *See, e.g., TAQ Group Short Sales & Short Volume,* New York Stock Exchange, *available at https://www.nyse.com/market-data/historical/taq-nyse-group-short-sales.*

[493] Specifically, one will be able to look at a particular securities lending data to see if changes in short interest correspond to many smaller lending transactions or a smaller quantity of large securities loans, which may indicate market sentiment towards the particular company. However, it is impossible to discern whether these securities loans are being borrowed by numerous short sellers or instead concentrated among a small number of large short sellers. This information will be covered by Rule 13f–2 if the short seller(s) crosses the Report Thresholds. In addition, unlike FINRA short interest data, Rule 13f–2 data will incorporate Managers that are not FINRA members. Furthermore, while fees are required to access exchanges' short volume and short transaction data, market participants will not have to pay a fee to view publicly released Form SHO data.

[494] Unlike the Commission, however, the public will observe anonymized, aggregated data covering gross short sale positions of Managers that exceed at least one of the Reporting Thresholds.

[495] One commenter stated that Form SHO data collected by the Commission would not fully capture the short selling market. *See* SBAI Letter at 3. The Commission has not stated that Form SHO data provides a complete perspective of the short selling market. However, Form SHO data will reveal large short positions of Managers, which is not readily available from any other data source.

[496] *See infra* Part VIII.C.1 for discussion of how the Commission might use Form SHO data for understanding market events.

[497] *See, e.g., Nasdaq* v. *SEC,* 34 F.4th 1105, 1111–15 (D.C. Cir. 2022). This approach also follows SEC staff guidance on economic analysis for rulemaking. *See* Staff's ''Current Guidance on Economic Analysis in SEC Rulemaking'' (March 16, 2012), *available at https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf* (''The economic consequences of proposed rules (potential costs and benefits including effects on efficiency, competition, and capital formation) should be measured against a baseline, which is the best assessment of how the world would look in the absence of the proposed action.''); *Id.* at 7 (''The baseline includes both the economic attributes of the relevant market and the existing regulatory structure.''). The best assessment of how the world would look in the absence of the proposed or final action typically does not include recently proposed actions, because doing so would improperly assume the adoption of those proposed actions.

Several commenters requested the Commission consider interactions between the economic effects of the proposed rule and other recent Commission proposals.[498] Commenters indicated there could be interactions between this rulemaking and five proposals [499] that have since been adopted: Rule 10c–1a,[500] Beneficial Ownership Reporting,[501] Private Fund Advisers,[502] Settlement Cycle,[503] and the May 2023 SEC Form PF Amending Release.[504] These rules were not included as part of the baseline in the Proposing Release because they were not adopted at that time. In response to commenters, this economic analysis considers potential economic effects arising from any overlap between the compliance period for the final amendments and each of these recently adopted rules.[505]

1. Institutional Investment Managers

The potential universe of persons who meet the definition of Manager is broad and diverse. Exchange Act section 13(f)(6)(A) defines the term ''institutional investment manager'' as ''includ[ing] any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person.'' [506] Exchange Act section 3(a)(9) states that ''[t]he term 'person' means a natural person, company, government, or political subdivision, agency, or instrumentality of a government.'' '' 'Company' means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code or similar official or any liquidating agent for any of the foregoing, in his capacity as such.'' [507] As a result, Managers exercising discretion over the accounts of others include but are not limited to

[498] *See, e.g.,* MFA Letter 2, at 3–4 (''We believe the Commission should take into account the sheer scope of all its recently proposed rules when determining whether to adopt any final rules or in setting compliance dates for any of the new requirements''); Eric J. Pan, President and CEO, and Susan Olson, General Counsel, Investment Company Institute (Aug. 17, 2023), at 3, *available at https://www.sec.gov/comments/s7-04-22/s70422-246959-547222.pdf* (''ICI Letter 2'') (''we request that the Commission . . . publish a thorough analysis of the cumulative effects of the Interconnected Rules that accounts for interconnections and dependencies among them'').

[499] *Reporting of Securities Loans,* Release No. 34–93613 (Nov. 18, 2021), 86 FR 69802 (Dec. 8, 2021) (*see* Ji ří Król,Deputy CEO, Global Head of Government Affairs, Alternative Investment Management Association Ltd (Aug. 11, 2023), at 4, *available at https://www.sec.gov/comments/s7-08-22/s70822-243880-514482.pdf*) (''AIMA Letter 2''); *Modernization of Beneficial Ownership Reporting,* Release No. 33–11030 (Feb. 10, 2022), 87 FR 13846 (Mar. 10, 2022) (*see* MFA Letter 2, at 3; Jennifer Han, Executive Vice President, Chief Counsel and Head of Regulatory Affairs, Managed Funds Association, and National Association of Private Fund Managers (July 21, 2023), at 14–15, *available at https://www.sec.gov/comments/s7-08-22/s70822-233179-486723.pdf) (''NAPFM Letter''),* ICI Letter 2, at 7 n. 13); *Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers,* Release No. IA–5950 (Jan. 26, 2022), 87 FR 9106 (Feb. 17, 2022) (*see* MFA Letter 2, at 3; NAPFM Letter 10–12); *Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews,* Release No. 1A–5955 (Feb. 9, 2022), 87 FR 16886 (Mar. 24, 2022) (*see* MFA Letter 2, at 3; NAPFM Letter 10–12); *Shortening the Securities Transaction Settlement Cycle,* Release No. 34–94196 (Feb. 9, 2022), 87 FR 10436 (Feb. 24, 2022) (*see* ICI Letter 2 at 7 n. 13).

[500] *See Reporting of Securities Loans,* Release No. 34–98737 (Oct. 13, 2023) (''Rule 10c–1a''). The securities loan reporting rule requires any person who loans a security on behalf of itself or another person to report information about securities loans to a registered national securities association (namely, FINRA) and requires FINRA to make certain information it receives available to the public. The covered persons will include market intermediaries, securities lenders, broker-dealers, and reporting agents. The final rule's compliance dates require that FINRA propose its rules within four months of the effective date of final Rule 10c–1a, or approximately May 2024, and finalize them no later than 12 months after the effective date of final Rule 10c–1a, or approximately January 2025; that FINRA implement data retention and availability requirements for reporting 24 months after the effective date of final Rule 10c–1a, or approximately January 2026; that covered persons report Rule 10c–1a information to FINRA starting on the first business day thereafter; and that FINRA publicly report Rule 10c–1a information within 90 calendar days thereafter, or approximately May 2026. *See* Rule 10c–1a, Part VIII.

[501] *See Modernization of Beneficial Ownership Reporting,* Release No. 33–11253 (Oct. 10, 2023) (''Beneficial Ownership Reporting''). Among other things, the amendments generally shorten the filing deadlines for initial and amended beneficial ownership reports filed on Schedules 13D and 13G, and require that Schedule 13D and 13G filings be made using a structured, machine-readable data language. The new disclosure requirements and filing deadlines for Schedule 13D are effective 90 days after publication in the **Federal Register**. The new filing deadline for Schedule 13G takes effect on September 30, 2024, and the rule's structured data requirements have a one-year implementation period ending December 18, 2024. *See* Beneficial Ownership Reporting, Part II.G.

[502] *See Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews,* Release No. IA–6383 (Aug. 23, 2023), 88 FR 63206 (Sept. 14, 2023) (''Private Fund Advisers Adopting Release''). The Private Fund Advisers Adopting Release includes new rules designed to protect investors who directly or indirectly invest in private funds by increasing visibility into certain practices and restricting other practices, along with amendments to the Advisers Act books and records rule and compliance rule. The amended Advisers Act compliance provision for registered investment advisers has a November 13, 2023 compliance date. The compliance date is March 14, 2025 for the rule's quarterly statement and audit requirements for registered investment advisers with private fund clients. For the rule's adviser-led secondaries, restricted activity, and preferential treatment requirements, the compliance date is September 14, 2024 for larger advisers and March 14, 2025 for smaller advisers. *See* Private Fund Advisers Adopting Release, Parts IV, VI.C.1.

[503] *See* Settlement Cycle Adopting Release. Settlement Cycle Adopting Release shortens the standard settlement cycle for most broker-dealer transactions from two business days after the trade date to one business day after the trade date (''T+1''). With certain exceptions, the rule has a compliance date of May 28, 2024. *See* Settlement Cycle Adopting Release, Parts VII, VII.B.3.

[504] *See Form PF; Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers; Requirements for Large Private Equity Fund Adviser Reporting,* Release No. IA–6297 (May 3, 2023), 88 FR 38146 (June 12, 2023) (''May 2023 SEC Form PF Amending Release''). The Form PF amendments require large hedge fund advisers and all private equity fund advisers to file reports upon the occurrence of certain reporting events. For new sections 5 and 6 of Form PF, the compliance date is December 11, 2023; for the amended, existing sections, it is June 11, 2024. *See* May 2023 SEC Form PF Amending Release, Part II.E.

[505] In addition, commenters indicated there could also be overlapping compliance costs between the final amendments and proposals (or in the case of Release No. 34–93784, a portion of the proposal) that have not been adopted. *Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies,* Release No. 33–11028 (Feb. 9, 2022), 87 FR 13524 (Mar. 9, 2022) (*see* MFA Letter 2, at 3; NAPFM Letter 18–19); *Outsourcing by Investment Advisers,* Release No. IA–6176 (Oct. 26, 2022), 87 FR 68816 (Nov. 16, 2022) (*see* MFA Letter 2, at 3; NAPFM Letter 17–18); *Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices,* Release No. 33–11068 (May 25, 2022), 87 FR 36654 (June 17, 2022) (*see* MFA Letter 2, at 3; NAPFM Letter 19–20); *Safeguarding Advisory Client Assets,* Release No. IA–6240 (Feb. 15, 2023), 88 FR 14672 (Mar. 9, 2023) (*see* MFA Letter 2, at 3; NAPFM Letter 9–10); *Prohibition Against Fraud, Manipulation, or Deception in Connection With Security-Based Swaps; Prohibition Against Undue Influence Over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions,* Release No. 34–93784 (Dec. 15, 2021), 87 FR 6652 (Feb. 4, 2022) (*see* MFA Letter 2, at 3; NAPFM Letter 13–14; AIMA Letter 2, at 3; ICI Letter 2, at 7 n. 13); *Prohibition Against Conflicts of Interest in Certain Securitizations,* Release No. 33–11151 (Jan. 25, 2023), 88 FR 9678 (Feb. 14, 2023) (*see* MFA Letter 2, at 3; NAPFM Letter at 21–22); *Further Definition of ''As a Part of a Regular Business'' in the Definition of Dealer and Government Securities Dealer,* Release No. 34–94524 (Mar. 28, 2022), 87 FR 23054 (Apr. 18, 2022) (*see* NAPFM Letter 12–13); *Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities,* Release No. 34–95763 (Sept. 14, 2022), 87 FR 64610 (Oct. 25, 2022) (*see* NAPFM Letter 16–17); *Amendments Regarding the Definition of ''Exchange'' and Alternative Trading Systems (ATSs) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities,* Release No. 34–94062 (Jan. 26, 2022), 87 FR 15496 (Mar. 18, 2022) (*see* NAPFM Letter 22–23). To the extent those proposals are adopted, the baseline in those subsequent rulemakings will reflect the existing regulatory requirements at that time.

[506] *See also* Exchange Act section 3(a)(35) defining when a person exercises ''investment discretion'' with respect to an account.

[507] *See* section 2(a)(8) of the Investment Company Act. The term ''company'' in the Exchange Act ''ha[s] the same meaning[ ] as in the Investment Company Act of 1940.'' Exchange Act section 3(a)(19).

investment advisers exercising investment discretion over client assets, including investment company assets such as mutual funds, ETFs, and closed-end funds; banks and bank trust corporations offering investment management services; pension fund managers; firms, including broker-dealers and insurance companies, managing corporate or employee investment assets; and individuals exercising investment discretion over the accounts of others. Also, as a result of the definition of Manager, the set of Managers excludes natural persons buying and selling securities only for their own account but does include natural persons exercising discretion over the account of another person.[508]

Notwithstanding the broad statutory definition of Manager, it is the Commission's understanding that only a fraction of Managers is believed to engage in short selling and fewer still engage in any substantial short selling. Registered broker-dealers' market making operations, for example, engage in short selling but, with the exception of option market makers, generally do not hold large positions overnight. The Commission is also aware, for example, that advisers to both hedge funds and registered investment companies engage in short selling to varying degrees. However, with the exception of hedge funds, institutional investors are viewed as ''largely absent'' from the short selling portion of the financial markets.[509] Using actual investment strategies employed by registered investment companies[510] as a proxy for the number of Managers in the public fund markets engaged in short selling, the number of such Managers is likely to be relatively small. A Division of Economic and Risk Analysis White Paper survey of all mutual fund Form N–SAR filings in 2014 found that ''[w]hile 64 percent of all funds were allowed to engage in short selling, only 5 percent of all funds actually did so.''[511] As of December 2022, there were 7,164 registered investment companies with total equity positions valued at approximately $14.7 trillion. Of those, 138 funds had short positions with a total short position value of approximately $15 billion. Of the funds with short positions, only 15 funds held positions equal to or greater than $10 million.[512] Additionally, according to an analysis of publicly available Form PF data, approximately sixteen percent of single-strategy hedge funds employ strategies involving short selling.[513]

While information about Managers' investments other than from funds managed by investment advisers is limited, the Commission understands that such other Managers, other than options market makers due to their routine use of hedging transactions, do not frequently establish short positions that would be large enough to be subject to the rule's reporting requirement.[514] One possible proxy for the number of Managers that might potentially have a reporting obligation is a fraction of the number of Managers reporting positions on Form 13F because such persons by definition manage accounts holding section 13(f) securities having an aggregate fair market value of at least $100 million, making such Managers more likely to have the resources to engage in short selling that exceeds Rule 13f–2's thresholds. As of March 31, 2023, 8,551 Managers[515] with investment discretion over approximately $38.79 trillion reported holdings on Form 13F in Section 13(f) securities.[516] The Commission also believes that registered investment advisers, particularly those managing hedge funds, are the primary Managers likely to be affected by Rule 13f–2. Though the Commission lacks data to quantify the exact number affected parties, the Commission estimates that the total number of Managers with reporting obligations will be between 252 and 1,000.[517]

2. Short Selling

Short selling is a widely used market practice, which allows investors to

[508] To the extent that a natural person exercising discretion over the account of another person has a short position exceeding the thresholds, that natural person would be subject to the costs associated with Rule 13f–2 and the Form SHO. We expect such a natural person would likely use the fillable web form provided by EDGAR to input Form SHO disclosures. Few Managers that are natural persons would be likely to have short positions large enough to exceed the threshold. *See infra* Part VIII.C.6 for more information on Managers' costs.

[509] Peter Molk Frank Partnoy, *Institutional Investors as Short Sellers?,* 99 B.U. L. Rev. 837, 839 (2019). Molk and Partnoy's paper ''identif[ies] the regulatory and other barriers that keep key categories of institutions, specifically, mutual funds, insurance companies, pension funds, banks, sovereign wealth funds, endowments, and foundations, from acquiring significant short positions.'' *Id.* at 844.

[510] As of Dec. 20212, there were 9,050 mutual funds (excluding money market funds) with approximately $22,652 billion in total net assets, 2,819 ETFs organized as an open-end fund or as a share-class of an open-end fund with approximately $5,910 billion in total net assets, 680 registered closed-end funds with approximately $363 billion in total net assets, 701 unit investment trusts with approximately $2,184 billion in total net assets, and 15 variable annuity separate accounts registered as management investment companies on Form N–3 with $237 billion in total net assets. Estimates of the number of registered investment companies and their total net assets are based on an analysis of Form N–CEN filings as of July 31, 2023. For open-end management funds, closed-end funds, and management company separate accounts, total net assets equals the sum of monthly average net assets across all funds in the sample during the reporting period. *See* Item C.19.a (Form N–CEN). For UITs, we use the total assets as of the end of the reporting period, and for UITs with missing total assets information, we use the aggregated contract value for the reporting period instead. *See* Item F.11 and F.14.c in Form N–CEN.

[511] Daniel Deli *et al.,* Use of Derivatives By Registered Investment Companies at 8, *DERA White Paper* (2015), *available at https://www.sec.gov/files/derivatives12-2015.pdf.*

[512] This is based on an analysis of data provided by registered investment companies to the Commission on Form N–PORT filings received through July 31, 2023.

[513] As of 2022 Q4, there are 1,107 hedge funds out of 6,553 Equity Single-Strategy hedge funds (excluding fund-of-funds hedge funds) that employ short selling in an Long/Short and Short Bias strategy. Assets under management (AUM) in these types of hedge funds total approximately $1.165 trillion. 2022 Q2 Private Fund Statistics, Division of Investment Management Analytics Office, *available at https://www.sec.gov/divisions/investment/private-funds-statistics.shtml.* Data includes both U.S. and non-U.S. domicile hedge funds managed by SEC-registered investment advisers with at least $150 million in private fund assets under management. The data do not include hedge funds that were classified as multi-strategy on Form PF. These hedge funds could employ short selling as part of their multi-strategy. Data for non-U.S. domicile hedge funds with an equity short-bias strategy is not publicly available for 2022 Q2. In this case the last publicly available values were used (7 funds with a total AUM of $1 billion) from 2019 Q3. As of the end of 2021, hedge fund assets totaled approximately $4 trillion. Global Hedge Fund Industry Assets Top $4 Trillion for the First Time, Reuters (Jan. 20, 2022) (retrieved from Factiva database).

[514] For example, according to Molk and Partnoy ''insurance companies generally are not active short sellers. Short selling by insurance companies is used almost exclusively to hedge positions, and generally is not used with respect to equity positions at all.'' *Supra* note 509, at 850. *See also* Molk and Partnoy discussion about banks and trusts. ''Trust administrators . . . have a history of adopting conservative investment strategies. Although shorting can be used to reduce risk when matched with similar long positions, using short selling as an income generation tool is not consistent with the overall conservative investment tradition.'' *Id.* at 854.

[515] A portion of these filings are Form 13Fs filed to declare that the filer's holdings are reported on another filer's Form 13F. Thus, not all 8,551 Managers' Form 13Fs represent unique holdings.

[516] The statistic is computed by the Commission from data filed on Form 13F.

[517] *See supra* Part VII.B.1 for more information on the estimates of how many Managers would have reporting obligations. The Commission estimated the number of reporting Managers using the short sale activity of Managers that submitted Form SH. Only Managers that exercised investment discretion over accounts with aggregate fair market values of at least $100,000,000 in securities described in Rule 13f–1(c) under the Exchange Act, and effected short sales of those securities, were required to file Form SH. Given that Managers included in the Form SH data may be a subset of Managers with obligations under Rule 13f–2, the estimate of 252 Managers is likely lower than the number who will ultimately report Form SHO. However, the Commission lacks data to better estimate the universe of Managers with obligations under 13f–2. *See also infra* Part VIII for a discussion of the applicability of Form SH data to estimating the number of Managers affected by Rule 13f–2.

profit if an asset declines in value or to hedge risks. Market participants can build an economic short position using traditional means (*i.e.,* borrowing shares and selling them into the market to buy back later) or they can gain short exposure using derivatives. This section provides an overview of the current state of obtaining short exposure to equities and the different means of short selling—*i.e.,* traditional means and using derivatives.

a. Short Selling Equities

A short sale is the sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller.[518] In general, short selling is used to profit from an expected downward price movement, to provide liquidity in response to unanticipated demand, or to hedge the risk of an economic long position in the same security or in a related security.[519] To short sell a stock, the short seller borrows shares of a stock from a lender—typically a long-term investor such as a mutual fund or pension fund—and sells those shares into the market. Later, the short seller purchases the same number of shares and returns them to the lender. The profit on the transaction for the short seller is the difference between the price at which the shares were initially sold and the price at which the investor re-purchased the shares—less any fees such as securities lending fees. If the price of the stock goes down then this difference will be positive and the short seller will make money. Short selling contributes to price efficiency when short sellers trade to incorporate negative information into stock prices.

In addition to short selling based on negative sentiment, market participants also short sell to hedge existing positions. Hedging is a particularly potent motive to short sell a stock for options market makers who can hedge the risk of writing a call option by short selling the underlying stock in the stock market. Other investors use short selling to hedge out an unwanted component of a stock's return. For example, an investor who wants to buy a particular stock to trade on stock specific information but does not want to expose itself to industry risk can hedge industry risk by short selling an industry index ETF while purchasing the underlying security. Market makers also use short selling extensively to maintain two sided quotes in the temporary absence of inventory. Lastly, traders may use short selling as part of algorithmic trading strategies attempting to benefit from temporary pricing anomalies. While short selling to trade on information or to hedge generally results in short positions that are held for some time, registered broker-dealers engaged in market making operations and algorithmic technical traders generally close their positions by the end of the day and thus their short positions generally do not show up in existing measures of short interest.[520]

Short selling generally entails more risk than holding a long position. At worst, a buyer of a long position can lose its entire investment. This is not true for a short seller. If the stock price increases from the short sale price, the investor loses money and since prices could potentially rise indefinitely, the short seller could lose more than the value of its original investment. Additionally, margin requirements for short selling are typically 150 percent—including the proceeds of the short sale plus an additional 50 percent of the value of the short position.[521] If the stock price goes up, the investor may receive a margin call, which would require the investor to commit additional assets to meet margin requirements. To protect itself from losses, if an investor is unable to meet margin requirements, the broker-dealer may close the short position at a significant loss to the short seller. These dynamics can make it difficult for investors to maintain short positions in highly volatile stocks.

Short selling is facilitated by the securities lending market. Borrowing shares generally occurs two days after the short sale is executed. This is because stock market transactions normally settle two business days after the transaction occurs, while securities lending transactions settle on the same day.[522] Consequently, a short seller (or its broker-dealer) will gauge the ability to borrow shares prior to executing the short sale, referred to as obtaining a ''locate,'' but would actually borrow the share on the day that it is required to deliver the share to settle the stock market transaction.

Short selling is prevalent in equity markets in general. A common ratio used to capture the amount of short selling is the short interest ratio, which measures the fraction of shares sold short at a given point in time divided by the total shares outstanding for that security. Figure 1 below presents the time series average for short interest outstanding for equities with different characteristics. This Figure shows that short interest tends to be higher for small-cap stocks than for mid- or large-cap stocks.[523]

Another way to measure the prevalence of short selling in financial markets is by analyzing the fraction of transactions that involve a short seller. Short sellers are involved in nearly 50 percent of trading volume, while only about 2 percent of shares outstanding are held short in the U.S. equity markets.[524] This average volume of short selling tends to be much higher than the typical changes in short interest,[525] suggesting that a significant fraction of short selling volume is reversed very quickly. Such short selling is indicative of the fact that short selling is a key component of modern market making strategies and technical algorithmic trading.[526]

BILLING CODE 8011–01–P

[518] *See* Rule 200(a) of Regulation SHO, 17 CFR 242.200(a). *See also* Regulation SHO Adopting Release.

[519] One commenter supported this statement, stating that short selling provides liquidity and is an important hedging tool. *See* SBAI Letter at 2.

[520] *See infra* Part VIII.B.4.i for a discussion of existing short interest data.

[521] Regulation T specifies that in most situations margin requirements for equity short sales must be 150%. *See* 12 CFR 220.12.

[522] On Feb. 15, 2023, the Commission adopted a rule to shorten the settlement cycle to one business day; compliance by broker-dealers will be required as of May 28, 2024. *See* Settlement Cycle Adopting Release.

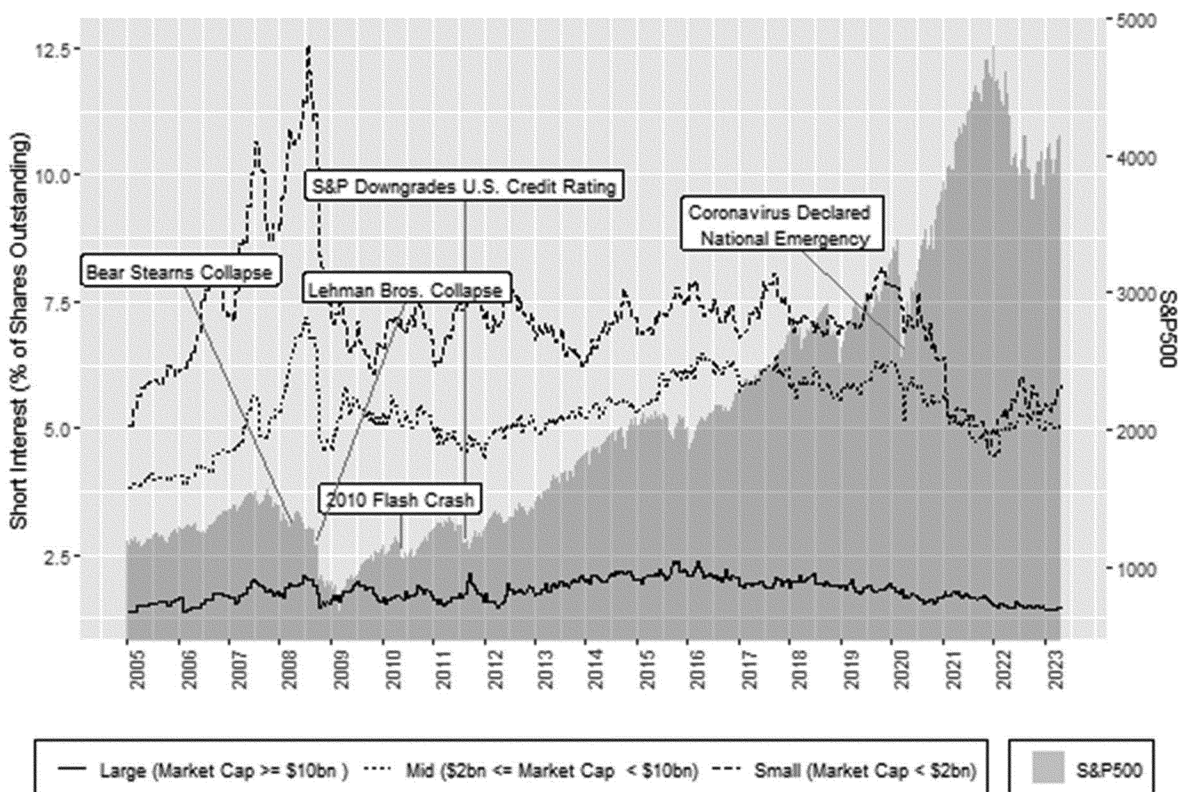
[523] One commenter stated that biotechnology companies, 90% of which have market capitalizations that would qualify as small-cap or micro-cap stocks, face an outsized proportion of short positions. *See infra* note 593.

[524] *See* DERA 417(a)(2) Study. Figure F.1 in the DERA 417(a)(2) Study (showing that the level of short selling as a percentage of trading volume grew from 2007 to 2013 to about 50%). *See also* D. Rapach, M.C. Ringgenberg, and G. Zhou, *Short Interest and Aggregate Stock Returns,* J. of Fin. Econ. 46–65 (2016).

[525] The Commission analyzed trading volume for common shares during the year 2019. This analysis revealed that the average common share during this period traded approximately 5% of shares outstanding each week, with approximately half of all trades involving short sellers. Consequently, total short selling volume amounts to approximately 5% of shares outstanding every two weeks for a typical stock. In contrast, from 2015 through 2019, absolute changes in short interest approximately every two weeks have equaled about a half of a percent of shares outstanding. Thus, the total amount of short selling volume occurring is an order of magnitude larger than the changes in short interest over the same time period. These statistics suggest that the majority of short selling transactions likely do not involve long term traders building short positions. Additionally, the correlation coefficient for bimonthly changes in short interest and short selling volume in 2019 is only about 0.018. This low correlation suggests that the economic forces driving total short selling volume and changes in short interest are likely different.

[526] *See infra* Part VIII.C.3 for a more detailed discussion of short selling and liquidity provision.

Figure 1: Short Interest Ratio for Non-Financial Common Stocks, Jan. 2005 – Feb. 2023



This figure plots the weighted average short interest ratio for three groups of stocks based on market capitalization on a bi-weekly basis from for January 2005 to April 2023. Large cap stocks are defined as having a market capitalization of greater than $10 billion, mid cap as $2 billion to less than $10 billion, and small cap as less than $2 billion. We estimate the short interest ratio for each stock as the number of shares in short interest reported by the exchanges on a bi-weekly basis and obtained from the Compustat North America Supplemental Short Interest File (for NYSE- and Nasdaq-listed stocks), divided by shares outstanding obtained from the Center for Research in Security Prices, LLC (CRSP) daily stock files. Since short interest is reported as of the settlement date, we match short interest to the trading date two days prior to the short interest report date. The sample includes non-financial (i.e., excluding stocks with SIC code between 6000 and 6999) and common stocks (i.e., CRSP share code of 10 or 11). Following Blocher & Ringgenberg (2019), we discard stocks whose short interest ratio and adjusted short interest ratio (where the adjusted short ratio is adjusted for stock splits, buybacks, etc.) differ by more than 10%, in order to exclude potential asynchronous adjustments for stock splits in the shares outstanding and short interest datasets. Furthermore, stock-date observations for which a stock has multiple *gvkey'*s (Compustat identifier) or *permno*'s (CRSP identifier) per date are removed. We then take the value-weighted average short interest ratio within a group, using market capitalization as weights. Market capitalization is calculated as shares outstanding multiplied by the closing price (obtained from the CRSP daily stock files) two days prior to the short interest record date. S&P 500 values are obtained from the CRSP Index file. *See* Jesse Blocher, Matthew C. Ringgenberg, et al., *When Do Short Sellers Exit Their Positions?*, SSRN (Aug. 27, 2018), *available at* https://ssrn.com/abstract=2634579.

BILLING CODE 8011–01–C

b. Taking Short Positions Via Derivatives

Trading in derivatives affects short selling in two key ways. First, derivatives offer investors an alternative means to express negative sentiment rather than short selling the stock. For instance, an investor wishing to profit from the decline of a security's value can also trade in various derivative contracts, including options and security-based swaps. Providing evidence of this alternative means of short selling, academic research shows that investors do indeed use options as an alternative means to obtain short-like economic exposure when standard short selling is restricted.[527]

[527] *See* Robert Battalio and Paul Schultz, *Regulatory Uncertainty and Market Liquidity: The 2008 Short Sale Ban's Impact on Equity Option Markets,* 66 J. of Fin. 2013–2053 (2011); B.D. Grundy, B. Lim, and P. Verwijmeren, *Do Option Markets Undo Restrictions on Short Sales? Evidence from the 2008 Short-Sale Ban,* 106 J. of Fin. Econ. 331–348 (2012). *See also* G.J. Jiang, Y. Shimizu, and

Among the most popular derivative contracts are options, specifically put and call options. Call options give the owner of the option the right but not the obligation to purchase a stock at a specific price on a future date. Put options are similar but give the owner of the option the right but not the obligation to sell a stock at a specific price at a future date. In a put option the seller of the option is taking a long position in the underlying security while the purchaser of the put is taking a short position. The opposite is true for a call option.

In addition to options, convertible securities (in which the security can be converted into an equity security) and security-based swaps can be used to create the same economic exposure as a short position.[528] Convertible debt securities offer the owner a stream of payments and the ability to convert the security into equity should the owner's strategy deem this beneficial.[529] Security-based swaps include total-return swaps in which two counterparties agree to exchange or ''swap'' payment with each other as a result of changes in a security characteristic, such as its price.[530] As with options, in each of these derivative contracts one party is inherently long and the other party is inherently short. These derivatives, and other more exotic derivatives, tend not to be as standardized as options, and are traded over-the-counter. Security-based swap transactions are reported to and publicly disseminated by security-based swap data repositories.[531]

In addition to providing an alternative means of expressing a bearish sentiment, trading in derivatives frequently leads to related trading in the stock market as derivatives' counterparties seek to hedge their risk. For example, an options market maker who sells a put has taken on long exposure to the underlying security and may hedge this position by opening a short position in the underlying security. Thus, option market makers who sell large quantities of put options may amass large short positions in the underlying equities to hedge their options exposure.

3. Current Short Selling Regulations

The Commission adopted Regulation SHO[532] to update short sale regulation in light of numerous market developments since short sale regulation was first adopted in 1938 and to address concerns regarding persistent failures to deliver and potentially abusive ''naked'' short selling.[533]

In adopting Regulation SHO, the Commission recognized that short sales can provide important pricing information[534] and liquidity to the market.[535] However, the Commission was also concerned with the negative effect that failures to deliver may have on shareholders and the markets. For example, large and persistent failures to deliver may deprive shareholders of the benefits of ownership, such as voting and lending, and sellers that fail to deliver securities on settlement date may attempt to use their failures to engage in trading activities to improperly depress the price of a security.

Due to continued concerns regarding failures to deliver, and to promote market stability and preserve investor confidence, the Commission has amended Regulation SHO on several occasions. For example, the Commission eliminated certain original exceptions to Regulation SHO's close-out requirements,[536] strengthened those same close-out requirements by adopting Rule 204,[537] and reintroduced a short sale price test restriction by adopting Rule 201.[538] In addition, the Commission adopted a targeted antifraud rule, Rule 10b–21, to further address failures to deliver in securities

C. Strong, *Back to the Futures: When Short Selling is Banned* (2019), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3420275.*

[528] On Sept. 19, 2019, the Commission approved the ''Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-based Swap Participants, and Broker-Dealers'' which established a regulatory regime for security-based swaps under Title VII of the Dodd-Frank Act. *See Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers,* Exchange Act Release No. 87005 (Sept. 19, 2019), 84 FR 68550 (Dec. 16, 2019), *available at https://www.sec.gov/rules/final/2019/34-87005.pdf.*

[529] Convertible debt securities are also employed in hedging strategies whereby the equity is sold short while the convertible security of that equity is held long.

[530] On July 9, 2012, the Commission approved rules and definitions of Security based swaps. *See* 17 CFR parts 230, 240, and 241; Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Commodity Futures Trading Commission and Securities and Exchange Commission, 77 FR 48208 (Aug. 13, 2012), *available at https://www.sec.gov/rules/final/2012/33-9338.pdf.*

[531] *See, e.g.,* 2015 *Regulation SBSR Adopting Release,* supra note 97; Security-Based Swap Data Repository Registration, Duties, and Core Principles, Exchange Act Release No. 74246 (Feb. 11, 2015), 80 FR 14437 (Mar. 19, 2015); *Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* Exchange Act Release No. 78321 (July 14, 2016), 81 FR 53545 (Aug. 12, 2016) (''2016 Regulation SBSR Adopting Release''). *See also Order Approving Application for Registration as a Security-Based Swap Data Repository,* 86 FR 8977 (Feb. 10, 2021), *available at https://www.sec.gov/rules/other/2021/34-91798.pdf.*

[532] *See* Regulation SHO Adopting Release.

[533] In a ''naked'' short sale, the seller does not borrow or arrange to borrow the securities in time to make delivery to the buyer within the standard two-day settlement cycle. As a result, the seller fails to deliver securities to the buyer when delivery is due (also known as a ''failure to deliver'').

[534] Efficient markets require that prices fully reflect all buy and sell interest. Market participants who believe a stock is overvalued may engage in short sales in an attempt to profit from a perceived divergence of prices from true economic values. Such short sellers add to stock pricing efficiency because their transactions inform the market of their evaluation of future stock price performance. This evaluation is reflected in the resulting market price of the security. *See* Exchange Act Release No. 48709 (Oct. 28, 2003), 68 FR 62972 (Nov. 6, 2003), *available at https://www.sec.gov/rules/proposed/34-48709.htm#P179_15857.*

[535] Market liquidity is generally provided through short selling by market professionals, such as market makers, who offset temporary imbalances in the buying and selling interest for securities. Short sales effected in the market add to the selling interest of stock available to purchasers, and reduce the risk that the price paid by investors is artificially high due to a temporary contraction of selling interest. Short sellers covering their sales also may add to the buying interest of stock available to sellers. *See* Exchange Act Release No. 48709 (Oct. 28, 2003), 68 FR 62972 (Nov. 6, 2003), *available at https://www.sec.gov/rules/proposed/34-48709.htm#P179_15857.*

[536] As initially adopted, Regulation SHO included two major exceptions to its then existing close out requirements: the ''grandfather'' provision and the ''options market maker'' exception. Due to continued concerns regarding failures to deliver, and the fact that the Commission continued to observe certain securities with failures to deliver that were not being closed out consistent with its then existing close out requirements, the Commission eliminated the ''grandfather'' provision in 2007 and the ''options market maker'' exception in 2008. *See* Exchange Act Release No. 56212 (Aug. 7, 2007), 72 FR 45544 (Aug. 14, 2007) (eliminating the ''grandfather'' provision to Regulation SHO's close out requirement), *available at https://www.sec.gov/rules/final/2007/34-56212fr.pdf;* Exchange Act Release No. 58775 (Oct. 14, 2008), 73 FR 61690 (Oct. 17, 2008) (eliminating the ''options market maker'' exception to Regulation SHO's close out requirement), *available at https://www.sec.gov/rules/final/2008/34-58775fr.pdf.*

[537] In 2008, the Commission adopted 17 CFR 242.204T (''temporary Rule 204T''), and in 2009 adopted Rule 204. Rule 204 further strengthens Regulation SHO's close out requirements by making those requirements applicable to failing to deliver results from sales of all equity securities, while reducing the time-frame within which failures to deliver must be closed out. *See* Exchange Act Release No. 60388 (July 27, 2009), 74 FR 38266 (July 31, 2009), *available at https://www.sec.gov/rules/final/2009/34-60388fr.pdf.*

[538] In 2004, the Commission initiated a year-long pilot to study the removal of short sale price tests for approximately one-third of the largest stocks. After review of the pilot's data, the Commission proposed the elimination of all short sale price tests. In June 2007, the Commission adopted a rule that eliminated all short sale price tests, including Rule 10a–1, a predecessor to Regulation SHO. The rule became effective in July 2007. In 2010, the Commission reinstituted a short sale price test restriction by adopting Rule 201. *See* Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010), *available at https://www.sec.gov/rules/final/2010/34-61595fr.pdf.*

that have been associated with ''naked'' short selling.[539]

Regulation SHO requires broker-dealers to properly mark sale orders as ''long,'' ''short,'' or ''short exempt,'' to locate a source of shares prior to effecting a short sale (also known as the locate requirement), and to close out failures to deliver that result from long or short sales. In addition, if the price of an equity security has experienced significant downward price pressure, Regulation SHO temporarily restricts the price at which short sales may be effected.

Regulation SHO imposes certain recordkeeping obligations on broker-dealers. However, the Commission does not have market-wide information on how often the bona fide market making exception is used. Furthermore, bona fide market making information is not reported on a regular basis, instead the Commission must request bona fide market making records on a broker-dealer by broker-dealer basis.[540]

In addition, regulations currently do not require market participants to record, report, or track when short sellers ''buy to cover'' their short sales. This makes it difficult for regulators to assess compliance with Rule 105 and with close out requirements in Rule 204.

4. Existing Short Selling Data

There are several sources of short selling data that are available both publicly and for regulatory purposes. In general, these data sources lack information about levels of and the timing of changes in economic short positions for specific Managers in specific securities. Some sources report aggregate short positions at the security level, but their content is not granular enough to further the understanding of short selling strategies. Other sources provide granular short volume information, but they are unable to distinguish short transactions that impact short positions from those that do not and do not contain all activity that can change short positions. Some regulatory data sources report short transactions at the individual investor level, but using these data to estimate short positions would be significantly inaccurate and inefficient.

a. Bimonthly Short Interest Data

One of the primary data sources for aggregate short selling data is the bimonthly short interest data collected by FINRA.[541] FINRA collects aggregate short interest information in individual securities on a bimonthly basis as the total number of shares sold short in a given stock as of the middle and end of each month. Then the exchange that lists the given stock, or FINRA itself in the case of OTC stocks, distributes the collected data.[542] FINRA computes short interest using information it receives from its broker-dealer members pursuant to FINRA Rule 4560 reflecting all trades cleared through clearing broker-dealers.[543] FINRA Rule 4560 requires generally that broker-dealers that are FINRA members report ''short positions'' in customer and proprietary firm accounts in all equity securities twice a month through FINRA's web-based Regulation Filing Applications (RFA) system.[544] FINRA defines ''short positions'' for this purpose simply as those resulting from ''short sales'' as defined in Rule 200(a) of Regulation SHO under the Exchange Act.[545] Member firms must report their short positions to FINRA regardless of position size.[546] The process of gathering and validating short interest data takes approximately two weeks.[547] Thus the data are available with approximately a two week lag.

FINRA short interest data are widely available and are used by academics and other market participants.[548] Furthermore, these short interest data are found to predict future stock and market returns over the monthly and annual horizons, suggesting that the bimonthly short interest data capture the economic short selling based on fundamental research.[549] However, these data face two major limitations. First, the information does not provide insight into the timing with which short positions are established or covered over the two-week reporting period. This precludes the possibility of understanding the behavior of aggregate economic short selling in the two weeks leading up to the reporting date.[550] Second, given that short interest is aggregated at the security-level, the aggregation does not provide an understanding of certain aspects of the underlying short selling activity. For example, the data cannot inform on whether short sentiment is broadly or narrowly held or held by persons with larger positions. The data also does not inform on the extent to which short interest has been hedged.

b. Short Selling Volume and Transactions From SROs

Since 2009, many SROs have been publishing two short selling data sets, including same day publication of daily aggregated short sale volume in individual securities[551] and publication of short sale transaction information on no more than a two-month delay.[552]

[539] Rule 10b–21 is an antifraud provision that supplements existing antifraud rules, including 17 CFR 240.10b–5 (''Rule 10b–5''), and was adopted to further evidence the liability of short sellers. Specifically, Rule 10b–21 applies to short sellers, including broker-dealers acting for their own accounts, who deceive specified persons about their intention or ability to deliver securities in time for settlement, while failing to deliver securities by settlement date. Among other things, the rule highlights the specific liability of short sellers who deceive their broker-dealers about their source of borrowable shares for purposes of complying with Regulation SHO's locate requirement, or who misrepresent to their broker-dealers that they own the shares being sold and subsequently fail to deliver shares. *See supra* note 14, *available at https://www.sec.gov/rules/final/2008/34-58774.pdf.*

[540] *See supra* Part IV.B for a discussion on the use of the bona fide market making locate exception.

[541] *See* DERA 417(a)(2) Study at 17–18, *supra* note 6.

[542] *See Short Interest—What It Is, What It Is Not,* FINRA Inv'r Insights (Apr. 12, 2021), *available at https://www.finra.org/investors/insights/short-interest.*

[543] *Id.* (Short interest for a listed security at any date reported by FINRA is ''a snapshot of the total open short positions in a security existing on the books and records of brokerage firms on a given date.'').

[544] FINRA Rule 4560 excludes short sales in ''restricted equity securities,'' as defined in Securities Act Rule 144, from the reporting requirement.

[545] *See* FINRA Rule 4560(b)(1).

[546] *See* FINRA Market Regulation Department, *General for Short Interest Reporting Instructions* (Dec. 18, 2008) (reporting instructions to FINRA member firms), *available at https://www.finra.org/Industry/Compliance/RegulatoryFilings/ShortInterestReporting/P037072.*

[547] *See* DERA 417(a)(2) Study at 17–18, *supra* note 6.

[548] *See supra* note 491. FINRA and the listing exchanges make these data publicly available with biweekly updates.

[549] *See, e.g.,* Peter N. Dixon and Eric K. Kelley, *Business Cycle Variation in Short Selling Strategies: Picking During Expansions and Timing During Recessions,* 57(8) J. of Fin. and Quantitative Analysis 3018–3047 (2022); see also Ekkehart Boehmer, Zsuzsa R. Huszar, and Bradford D. Jordan, The Good News in Short Interest, 96 (1) *Journal of Financial Economics* 80–97 (2010); Stephen Figlewski, *The Informational Effects of Restrictions on Short Sales: Some Empirical Evidence,* 16 (4) J. of Fin. and Quantitative Analysis 463–476 (1981).

[550] For example, the public will not have information on stock-specific volatility in real-time that may relate to short selling of the particular stock. Such volatility may be explained, though only through assumption, once the bimonthly short interest data becomes available. Assumption is necessary because the data are still not at the daily level.

[551] *See Short Sale Volume and Transaction Data, available at https://www.sec.gov/answers/shortsalevolume.htm* (showing hyperlinks to the websites where SROs publish this data). *See also supra* note 492. *See, e.g., FINRA's Daily Short Sale Volume Files* (which provide aggregated volume by security on all short sale trades executed and reported to a FINRA reporting facility during normal market hours). *See* FINRA Information Notice, *Publication of Daily and Monthly Short Sale Reports* (Sept. 29, 2009), *available at https://www.finra.org/sites/default/files/NoticeDocument/p120044.pdf.*

[552] *See FINRA's Monthly Short Sale Transaction Files* (which provide detailed trade activity of all short sale trades reported to a consolidated tape. *See supra* note 492. *See also* Short Sale Volume and Transaction Data, *available at https://www.sec.gov/answers/shortsalevolume.htm.* Additional

Some SROs make the historical daily short volume data available to market participants for a fee.[553] The fact that market participants and academic users pay these subscription fees indicate that these data are utilized. In addition to these daily short volume data, several SROs provide intraday short sale transaction information for the orders that execute on their respective venues. As an example, FINRA provides information from FINRA's Trade Reporting Facility (''TRF'') and Alternative Display Facility (''ADF'') [554] (the TRF and ADF are together referred to herein as ''FINRA's Reporting Facilities''). Overall, these different sources of daily and intraday short volume data provide greater, though different, levels of granularity relative to the bimonthly short interest observations discussed earlier.

Despite offering higher granularity than bimonthly short interest data, these existing short volume data provided by the SROs, including FINRA, have a number of limitations. First, the data do not provide insight into the activities of either individual traders, or different trader types. Consequently, it is not possible with existing short selling data provided by the SROs to separate trading volume associated with market makers, algorithmic traders, investment managers, or other trader types. Form SHO will address this limitation by providing data on the gross short sale positions and activity of investment managers with large short sale positions.

Additionally, the data do not provide insight into activities that may reduce exposure, making the use of these data to estimate investor sentiment fraught with potential bias. Moreover, these data provide information only on short sales, whereas short positions could also change because investors can increase or decrease their positions in ways other than short selling the stock. For example, investors can increase their short positions by exercising put options and delivering borrowed shares or by delivering borrowed shares when they are assigned call options. Investors can reduce their short positions in an equity when they, for example, ''buy to cover'' their positions, purchase shares in a secondary offering,[555] convert bonds to stock, or redeem ETF shares containing the equity. As a result, the short selling volume and transactions data cannot easily explain changes in short interest, exposing a gap between these two types of existing data.

Aggregate short selling statistics and short selling transactions data have different lags with which they are available. Aggregate short selling volume statistics are usually made available by the SROs by the end of the following business day. For the transactions data, the lag can be much longer, and in some cases the data are released with a one-month lag—implying that some short selling transactions data are not available for two months.[556]

There is also a concern that these data may over-represent the total volume of short sales occurring in the market. This is because Regulation SHO provides specific criteria regarding what is a long sale.[557] If a market participant is unclear whether its trade will meet all the requirements at settlement to be marked a long sale, then it may choose to mark the trade as short to not run afoul of Regulation SHO requirements, even if the trade is likely an economic long sale.[558]

c. Securities Lending

Securities lending data provide information on stock loan volume, lending costs, and the percentage of available stock out on loan. In the equity market, a primary reason for end borrowers to engage in a securities loan is to facilitate a short sale,[559] leading to a close correlation between information about certain loan volumes and short interest. Therefore, some market participants use securities lending data as a measure of short sale positions.[560] Since the proposing release, the Commission has adopted Rule 10c–1a. Below, we describe the baseline securities lending data—commercial securities lending data as well as forthcoming Rule 10c–1a data.[561]

i. Commercial Securities Lending Data

The securities lending industry appears to use commercial securities lending data widely,[562] though these data are generally available only by subscription.[563] The use of commercial

transaction data has been available at various times, including transaction data from the Regulation SHO Pilot, which has been discontinued by most exchanges in July 2007 when the uptick rule was removed. *See* Exchange Act Release No. 55970 (June 28, 2007), 72 FR 36348 (July 3, 2007), *available at https://www.sec.gov/rules/final/2007/34-55970.pdf.* The Pilot data comprised short selling records available from each of nine markets: American Stock Exchange, Archipelago Exchange, Boston Stock Exchange, Chicago Stock Exchange, NASD, Nasdaq Stock Market, New York Stock Exchange, National Stock Exchange, and the Philadelphia Stock Exchange. *See* SEC Division of Trading and Markets, Regulation SHO Pilot Data FAQ, *available at https://www.sec.gov/spotlight/shopilot.htm#pilotfaq.*

[553] *See, e.g.,* TAQ Group Short Sale & Short Volume, *New York Stock Exchange, available at https://www.nyse.com/market-data/historical/taq-nyse-group-short-sales* (for short sale data relating to all NYSE owned exchanges). *See* Short Sale Volume and Transaction Reports from Nasdaq Trader, *available at https://nasdaqtrader.com/Trader.aspx?id=shortsale* (for short sale data for Nasdaq exchanges); see also Short Sale Daily Reports, *Chicago Board Options Exchange* (for Cboe exchanges), *available at https://datashop.cboe.com/us-equity-short-volume-and-trades.*

[554] Each TRF provides FINRA members with a mechanism for the public reporting of transactions effected otherwise than on an exchange. *See* FINRA, *Market Transparency Trade Reporting Facility, available at https://www.finra.org/Industry/Compliance/MarketTransparency/TRF/.*

[555] *See supra* note 285.

[556] For example, a short sale transaction that takes place in late June could be released in a dataset in the month of August.

[557] *See* Rule 200(g) of Regulation SHO specifies when an order can be marked as long. *See also* Part IV.B; Regulation SHO Adopting Release. An economic long sale is a sale of an owned, not borrowed, security.

[558] *See* 2009 letter from Securities Industry and Financial Markets Association (''SIFMA'') commenting on an alternative short sale price test, expressing concern that compliance with Regulation SHO short selling marking requirements ''will result in a substantial over-marking of orders as ''short'' in situations where firms are, in fact, ''long'' the securities being sold.'' Letter from Securities Industry and Financial Markets Association (''SIFMA Letter''), *available at https://www.sec.gov/comments/s7-08-09/s70809-4654.pdf.*

[559] One reason for this is that the ''permitted purpose requirement'' of the Board of Governors of the Federal Reserve System's Regulation T, which broadly governs the lending activities of broker-dealers, specifies that a broker dealer may generally borrow or lend U.S. securities from or to a (non-broker-dealer) customer solely ''for the purpose of making delivery of the securities in the case of short sales, failure to receive securities required to be delivered, or other similar situations,'' unless an exemption applies. *See* 12 CFR 220.10(a).

[560] Some research has used stock lending data as a proxy for actual short sales. *See, e.g.,* Oliver Wyman, *The Effects of Short Selling Public Disclosure of Individual Positions on Equity Markets,* Alternative Investment Management Association (Feb. 2011), *available at https://www.managedfunds.org/industry-resources/industry-research/the-effects-of-short-selling-public-disclosure-of-individual-positions-on-equity-markets/.*

[561] While the adoption of Rule 10c–1a occurred before the adoption of Rule 13f–2, and Rule 10c–1a has certain intermediate compliance dates related to FINRA rulemaking that precede Rule 13f–2 compliance dates, we expect that the reporting and publication of Rule 13f–2 information will occur before the reporting and publication of Rule 10c–1a information. *See supra* Part VI and *infra* note 585. Rule 10c–1a is thus part of the baseline for Rule 13f–2, but significant aspects of Rule 10c–1a will be implemented later.

[562] Several commercial entities sell data on securities lending to clients. *See, e.g.,* 2011 Letter from Data Explorers (hereafter ''Data Explorers Letter'') in response to the request for comment relating to the proposed study of the cost and benefits of short selling required by Dodd Frank Act section 417(a)(2) *available at https://www.sec.gov/comments/4-627/4627-152.pdf.* As some commenters have stated, stock lending facilitates short selling. *See, e.g., Speech by Chester Spatt, former Chief Economist of the SEC* (Apr. 20, 2007), *available at https://www.sec.gov/news/speech/2007/spch042007css.htm.* The information sold by vendors may include volume of loans, lending costs, and the percentage of available stock out on loan.

[563] *See* DERA 417(a)(2) Study at 22–23. *See also* Rule 10c–a, Part IX.B.5.

security lending data as proxy for economic short interest has several limitations. These include the fact that commercial vendors of the securities lending data often impose access restrictions via give-to-get models. In addition, the data are not comprehensive and are based on voluntary contributions, which leads to self-selection bias. In this setting, the entities contributing data are mindful of whether other entities can access the data. As such, participation rates in data sharing reflects strategic considerations that may lower the extent of data shared by each entity, reducing the information content of the pool of data collected by each vendor.

The data for securities lending is potentially biased [564]—either containing information about the wholesale market or the customer market, but not both, making it difficult for a given market participants to obtain comprehensive security lending information from one source. Furthermore, even the cumulative data provided by vendors is still not be comprehensive, primarily because it is based on voluntary data contributions.[565] The reliance on voluntary data contributions increases the likelihood that data are missing in a non-random manner which can introduce biases into the data. To this end, the existing data accessible by an individual market participant may not accurately proxy short selling activity.

Existing commercial securities lending data only provide a noisy proxy of short sentiment. This is because current commercial securities lending data originates from either surveys of a subset of asset managers about their securities lending experience, or it comes from give-to-get arrangements where those involved in securities lending must give data to the data providers in order to be able access data from the data providers. Because the survey data are not comprehensive it can only provide a noisy proxy of actual short sentiment. The give-to-get data also provides only a noisy proxy because it too relies on voluntary data submissions. It is also generally limited to information about loans from lending programs to broker dealers (''Wholesale Loans''), which are made largely to facilitate clearing and settlement on a net basis at a clearing broker, rather than by transaction or position.[566] Thus, Wholesale Loans are not traceable to individual short sellers. Further, the Commission understands that broker-dealers will usually source shares to meet their net clearing and settlement requirements from other sources, such as their own inventory or customer margin accounts, before engaging in Wholesale Loans. Thus, current commercial securities lending data serve only as an imperfect measure of short sentiment.

ii. Rule 10c–1a Data

On October 13, 2023, the Commission adopted Rule 10c–1a.[567] Rule 10c–1a requires that the data elements in paragraph (c) of Rule 10c–1a, except for the size of the loan, are required to be made publicly available by an RNSA not later than the morning of the business day immediately after the covered securities loan is effected. Rule 10c–1a requires that the size of the loan be made publicly available by an RNSA on the twentieth day immediately after the covered securities loan is effected. In addition, Rule 10c–1a requires covered persons to report to an RNSA the legal name of each party to the loan (lender, borrower, and intermediary) and that an RNSA keep such information confidential. Next-day summary volume information will indicate the magnitude but not the direction of the activity, such that loan decreases are added to, not subtracted from, loan increases. Therefore, these data will not allow a viewer to discern between increases in aggregate short positions and decreases of aggregate short positions.

Because loans to end-borrowers are usually made to facilitate short sales,[568] these loans relate very closely to those customers' short positions. By aggregating the total amount of shares on loan in the ''customer'' category, market participants could likely estimate outstanding short interest with considerable accuracy, though with an approximately one-month delay.[569] Additionally, since each loan likely relates to a unique market participant, the Rule 10c–1a data will provide an indication of the distribution of short sentiment—that is, whether short interest is concentrated on a few short sellers with large positions, or whether it is spread out over many short sellers.[570] Examining the change in the size of a loan from the reported data can also indicate when individual market participants increased or decreased their short positions, albeit with an approximate one-month delay.

Pursuant to Rule 10c–1a, persons will be required to identify the legal name of all the parties to a securities loan without any delay to the RNSA. Consequently, regulators can use the data to track the size of shares on loan, and thus approximate an individual entity's short position with little delay, potentially even if that entity uses multiple broker-dealers to source shares. Because loan modifications, such as increases, decreases, or terminations of loans, must be reported, regulators can produce running estimates of changes in individual entity's estimated short positions.

d. CAT Data

Regulators can also extract short sale information from CAT data, which provide order lifecycle information for stocks and options.[571] The data contain an order mark that is a part of the ''material terms of the trade'' that indicates whether an order is a short sale. This order mark allows regulators to identify traders who are short selling and to see the order entry and execution times of these short sales. However, CAT was not designed to track traders'

[564] For example, while the Commission believes that certain currently available securities lending data products may be biased due to missing observations, the extent of the biases cannot be quantified as the data that would be needed to assess the extent of the bias are missing.

[565] Voluntary data contributions are provided either through customer market surveys or using a give-to-get model. The Commission believes that both give-to-get and customer market survey data lack comprehensiveness, as it is unlikely that the full universe of lending programs and borrowers contribute all data to any given data vendor. The voluntary nature of submissions to both give-to-get and customer market survey data may mean that some data may be withheld. Market participants that choose not to disclose their data to the commercial data vendors likely make that choice because it is in their strategic interest not to disclose, resulting in nonrandom omissions. These omissions likely insert bias into the commercial databases.

[566] *See* Rule 10c–1a, Part IX.B.2 for a more detailed discussion.

[567] Rule 10c–1a will provide the Commission and market participants with access to comprehensive securities lending data market data. *See* Rule 10c–1a; *see also supra* note 561.

[568] *See infra* Part VIII.C.2.

[569] While most loans that facilitate short sales likely come from this category of 'customer' loans, not all will. Some large market participants do not use broker dealers as an intermediary when sourcing loans, rather they maintain relationships directly with lending programs to source shares when they wish to short sale. These transactions would show up in the data as loans to ''Other'' entities. Lastly, to the extent that a broker dealer borrows shares to facilitate their own short selling, the loan would show up in the data as a loan to a broker dealer. However, by summing up all 'customer' and 'other' loans, market participants could likely estimate aggregate short interest with considerable accuracy. However, only publicly released Form SHO data will isolate large gross short sale positions of Managers. The delay of 21 days is due to the settlement of the loan occurring in T+1 manner plus the publication of the data 20 days after settlement.

[570] The ability to identify changes in customer short positions is reduced to the extent that some short sellers, such as large institutions, have relationships with and are able to spread their borrowing across multiple prime brokers, which would make short interest appear less concentrated.

[571] It is important to note that only regulators have access to CAT data.

positions or changes in those positions, but rather collects information to analyze trading and order lifecycles. As such, using CAT data to estimate positions and changes in those positions can be challenging.

Theoretically, one could use the order execution information in CAT data to estimate trader positions and track how those positions change over time. However, such estimates could be inaccurate due to several circumstances. First, CAT data do not include information on the long or short positions held in each account at the time that an Industry Member initially begins reporting to CAT. Thus, CAT does not provide an appropriate starting point for building short positions using investor-specific transaction information. Second, some investors may establish or cover short positions via other means that are not CAT-reportable events, for example: secondary offering transactions; option assignments; option exercises; conversions; or ETF creations and redemptions. Thus, there are activities that affect positions that are not contained in CAT in any capacity.

While CAT is not designed to track positions, CAT data can be used in very limited and specific circumstances to offer rough position estimates. When focused on one or few accounts, estimating positions, though potentially inaccurate, can be manageable. However, using transaction information to track positions across a broad set of positions is inefficient. Even in situations in which the above limitations do not apply, the use of CAT data to estimate short positions and changes in those positions for all or a large set of accounts is inefficient and would require a considerable amount of processing power, which would take time and reduce the processing power available for other CAT queries. This hinders the Commission's estimation of short positions in a timely fashion.

Other than the inefficient means of estimating positions described above, CAT does not distinguish buy orders that establish a long position from those that cover, and therefore reduce, a short position. While Commission staff were able to identify some short covering activity during the volatile period in January 2021, due to the difficulties described above, the staff analyzing the volatility associated with meme stocks could not easily identify short covering activity using CAT data alone and was thus hindered in their reconstruction of key events.[572]

Finally, even though CAT data identify short selling by market makers, the data do not provide information as to whether a broker-dealer is claiming use of the exception for bona fide market making from Regulation SHO's locate requirement. Rather, the Commission has to make individual document requests to obtain such information currently. The adopted amendment will make this information readily available to regulators in a uniform electronic format and consolidate it with the other material terms of orders required to be reported to CAT.

There are 24 national securities exchanges and one national securities association (FINRA) that are CAT Plan Participants. There are also 3,501 broker-dealers who have reporting obligations to CAT as Industry Members.[573] These Industry Members often use third-party reporting agents such as service bureaus for CAT reporting.

e. Exchange Act Form SH

For a ten-month period in 2008 and 2009,[574] the Commission required certain Managers to file confidential weekly reports of their short positions in section 13(f) securities, other than options, on Exchange Act Form SH, through temporary Rule 10a–3T.[575] *De minimis* short positions of less than 0.25 percent of the class of shares with a fair market value of less than $10 million were not required to be reported.[576] Additionally, only Managers that exercise investment discretion with respect to accounts holding section 13(f) securities having an aggregate fair market value of at least $100 million were required to report. The investment manager was required to report short positions to the Commission on Form SH on a nonpublic basis on the last business day of each calendar week immediately following any calendar week in which it effected short sales,[577] a more frequent disclosure interval than the quarterly public reporting of long positions required on Exchange Act Form 13F.[578]

In addition to the limited and temporary time period during which disclosure of short positions was required to be reported on Exchange Act Form SH, even at the regulatory level, the reporting requirements and data had several drawbacks and limitations. One drawback was that only Managers who exercised investment discretion with respect to accounts holding section 13(f) securities having an aggregate fair market value of at least $100 million were required to file Form SH, which excluded short-only funds and other large short sellers who did not file Form 13F. Additionally, the report was costly as Managers filing Form SH had a weekly reporting requirement. Additionally, data fields in Form SH including start of day short position, gross number of securities sold short during the day, and end of day short position were each subject to the *de minimis* reporting threshold, which resulted in unreported data points when only a subset of the fields exceeded the *de minimis* threshold. Furthermore, Form SH data were difficult to work with because they were not validated for errors such as duplicate entries, missing fields, or positions that were below the *de minimis* threshold and therefore did not need to be reported.[579]

5. Competition

Many Managers operate in the investment management industry.[580] In broad terms, investment management is a highly competitive industry. Investment managers compete for investors and investor funds. Among the bases on which Managers compete are returns, fees and costs, trading strategies, risk management, and the ability to gather information. It is costly for investment managers to do market research to gain an informational advantage. Investment managers who own a security have an advantage over those who do not in that a security owner can trade more cheaply on

[572] *See Staff Report on Equity and Options Market Structure Conditions in Early 2021,* SEC (Oct. 14, 2021), *available at https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf.*

[573] *See supra* Part VII.C.4.b for discussion of PRA costs for broker-dealers due to the CAT amendment. Not all 3,501 broker-dealers will bear the same costs due to the CAT amendment.

[574] *See* DERA 417(a)(2) Study at 18, *supra* Part II.A.3 at 6.

[575] With respect to each applicable section 13(f) security, the Form SH filing was required to identify the issuer and CUSIP number of the relevant security and reflect the manager's start of day short position, the number and value of securities sold short during the day, the end of day short position, the largest intraday short position, and the time of the largest intraday short position. The reporting requirement was implemented via a series of emergency orders followed by an interim final temporary rule, Rule 10a–3T. Exchange Act Release No. 58591 (Sept.18, 2008), 73 FR 55175 (Sept. 24, 2008); Exchange Act Release No. 58591A (Sept. 21, 2008), 73 FR 58987 (Sept. 25, 2008); Exchange Act Release No. 58724 (Oct. 2, 2008), 73 FR 58987 (Oct. 8, 2008); Exchange Act Release No. 58785 (Oct. 15, 2008), 73 FR 61678 (Oct. 17, 2008).

[576] *See* Exchange Act Release No. 58591 (Sept.18, 2008), 73 FR 55175 (Sept. 24, 2008).

[577] *See* Exchange Act Release No. 58785, 73 FR 61678.

[578] *Id.*

[579] *See* Proposing Release, at 14963 for information on the methodology and caveats of using Form SH data.

[580] *See supra* Part VIII.B.1 for discussion of Institutional Investment Managers.

negative information by simply selling whereas investment managers not owning the same security must establish some form of short exposure, such as selling a security short, to capitalize on any negative information that they have uncovered. Academic research suggests that when the cost of short selling increases, a security owner's advantage in terms of being able to profitably trade on gathered information increases, leading investors not owning a security to engage in less fundamental research.[581] The Commission is cognizant of such research and has taken steps to help ensure that the impact of published data will be minimized by delaying publication by approximately one month and anonymizing and aggregating reporting Managers' short position data.

Investment managers, like other investors that could be subject to Rule 13f–2, also compete by using proprietary trading strategies. They typically seek to trade in ways that would not expose their strategies because, if their strategies became known to others, the strategies could lose value and such Managers could also suffer higher trading costs. More specifically, other traders could use copycat trading strategies to try to mimic the Managers' strategy, potentially competing away the profitability of the strategy or other traders could anticipate when the Manager might trade, which could result in higher trading costs for the Manager. Some Managers also compete for returns by engaging in securities lending whereby assets are lent to other investors, often short sellers, for a fee. These fees in aggregate can be substantial.[582]

The Commission estimates there are 3,501 broker-dealers. These broker-dealers also compete with each other for order flow. The broker-dealer industry is a competitive industry with reasonably low barriers to entry to many segments of the industry. Most trading activity is concentrated among a small number of large broker-dealers, with thousands of small broker-dealers competing for niche or regional segments of the market. To limit costs and make business more viable, the small broker-dealers often contract with bigger broker-dealers to handle certain functions, such as clearing and execution, or to update technology. Larger broker-dealers often enjoy economies of scale over smaller broker-dealers and compete with each other to service the smaller broker-dealers who are both their competitors and customers.[583] Broker-dealers compete in multiple ways: reputation, convenience, and fees. Broker-dealers typically pass operating costs down to their customers in the form of fees.

C. Economic Effects[584]

1. Investor Protection and Market Manipulation

The adopted Rule 13f–2 and CAT amendment will enhance the Commission's ability to protect investors and investigate market manipulation by providing a clearer view into the short selling market and improving the Commission's reconstruction of significant market events. This in turn may lead to improved identification of manipulative short selling strategies which may also serve as a deterrent to would-be manipulators and thus may help prevent manipulation. It will also improve the Commission's observation of short sale activity that potentially poses a systemic risk. The Commission believes that the adoption of Rule 13f–2 and the CAT amendment will benefit investors by facilitating the Commission's observation of short selling and will thus help protect investors and help ensure the sufficiency of information related to short selling in the market.

The Commission believes that the Rule 13f–2, Form SHO, and the CAT Amendment will improve regulators' oversight of markets and enhance the Commission's and SROs' reconstruction of significant market events by providing a clearer view into the role that short selling plays in market events of interest. Specifically, the Commission could have used Form SHO data combined with other data to reconstruct market events and better understand the link between trading activity of large short seller and contemporaneous price volatility during the recent volatility associated with meme stocks. For example, while short sellers as a whole were exiting their positions during the period of heightened volatility, large short sellers may have been engaging in trading behavior that was distinct from other short sellers.

The recent adoption of Rule 10c–1a will further enhance the usefulness of adopted Form SHO.[585] As another source of data covering the short selling market, the Commission may use Rule 10c–1a data combined with Form SHO data in an attempt to match securities lending with actual short positions taken. While the timing of the data being received may be asynchronous, Form SHO and Rule 10c–1a data sources will have a natural relationship with each other. This combination of data can be useful for market reconstructions, but also useful in detecting activities such as naked short selling or other potential violations.

Hypothetically, if Form SHO data had been available to the Commission at the time of the market events of January 2021, the Commission could have used these data to examine the short selling behavior of individual large short sellers. Additionally, because short positions often take some time to create, the Commission could have attempted to identify individual short sellers with large short positions in the various meme stocks in January 2021 based on the most recent reports; the Commission could then have used CAT data to better understand how these short sellers traded during the heightened volatility.[586] One commenter stated that the lack of transparency into short positions did not just hamper the SEC's understanding of these events as they unfolded but, ''. . . may also be interfering with the SEC's and market

[581] This occurs because if an investor not owning the asset engages in fundamental research and discovers evidence that a stock may be overpriced, then it is costly for that investor to act on that information. This is not true for investors who own the asset as they can simply sell the shares that they own. *See, e.g.,* Peter N. Dixon, *Why Do Short Selling Bans Increase Adverse Selection and Decrease Price Efficiency?,* 11 (1) The Rev. of Asset Pricing Studies 122–168 (2021).

[582] The securities lending market is large and complex. *See* Parts IX.B.1–IX.B.4 of Rule 10c–1a for a more detailed description of this market and players.

[583] *See* Rule 613 Adopting Release.

[584] In preparing this economic analysis, the Commission accounted for the various types of Managers that could be subject to the reporting requirements. In general, the Commission believes that the economic effects of the rule are more influenced by the Managers' investment strategy and motivation for short selling rather than by the type of Manager that is reporting. Any exceptions are noted in the analysis. *See supra* Part VIII.C.1.

[585] Rule 10c–1a, which was adopted prior to Rule 13f–2, includes multiple compliance dates, and certain disclosures required by Rule 13f–2 may be implemented before certain of Rule 10c–1a's compliance dates. Due to this uncertainty, the Commission describes the effects of Rule 13f–2 and the CAT amendment as coming into existence prior to those associated with Rule 10c–1a but acknowledges that there may be a period in which this is not true. The beneficial combined effects will not materialize until the disclosure requirements of both rules are implemented. *See infra* note 615.

[586] Some academics have critiqued the Commission Staff's GameStop report, the Report on Equity and Options Market Structure Conditions in Early 2021, *available at https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf,* and some of its methods, which were driven by data availability. *See* Joshua Mitts, Robert Battalio, Jonathan Brogaard, Matthew Cain, Lawrence Glosten, and Brent Kochuba, *A Report by the Ad Hoc Academic Committee on Equity and Options Market Structure Conditions in Early 2021* (working paper) (2022), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4030179.*

observers' ability to say with confidence what happened in retrospect.'' [587] The Commission agrees that more data, as is being generated by the adoption of this rule, would have aided the Commission in analysis of the events of January 2021.

As noted above in Part VIII.B, Form SHO data will provide the Commission with data that are additive rather than duplicative.[588] After implementation of Rule 13f–2, the activity data provided in Form SHO will allow the Commission to observe how large short sellers respond to the heightened volatility, albeit with a time lag, due to the filing deadline. Specifically, the Commission will be able to observe more precisely which days reporting short sellers most actively increase or decrease their short positions and correlate this activity to market conditions on those days.

Analysis of Form SHO data during periods of high volatility might help the Commission maintain fair and orderly markets by highlighting key economic channels and mechanisms through which short selling could both impact and be impacted by periods of volatility. This information can, in turn, allow the Commission to more specifically tailor responses to similar or related events in the future. While the data provided by the CAT amendment will be visible to the Commission relatively quickly, the Form SHO data will only be available following a lag of at least two weeks.[589] Thus, while Form SHO data will be useful in market reconstruction, it will have limitations in its timeliness.

The bona fide market making information from the CAT Amendment will facilitate regulatory analysis of the use of the bona fide market making exceptions to Regulation SHO.[590] In particular, this information will provide regulators investigating potential Regulation SHO violations with clearer evidence regarding whether a market maker was relying on a bona fide market making exception. This might save a significant amount of time during an investigation. Having regular access to these data will provide the Commission with further insight into whether the exceptions for bona fide market making in Regulation SHO Rules 203 and 204 are being used appropriately, which may assist in assessing compliance with Regulation SHO.

The bona fide market making information might improve regulators' ability to interpret certain information in market reconstructions. Market reconstructions can sometimes benefit from regulators knowing when certain activity is either directional or market neutral because the motives and profitability of such trading types are different. The bona fide market making information will help regulators separate short selling that represents market makers' liquidity provision to facilitate investor demand from other short selling, including other market maker short selling. Since such short selling is more likely to be in response to customer demand, it is less likely to signify that the short seller anticipates a price decline, relative to cases in which the short seller is trading directionally.

Additionally, the data provided by adopted Rule 13f–2 and the CAT amendment may improve the Commission's ability and effectiveness in detecting certain types of fraud. Form SHO data will provide the Commission flags that may signal potential fraud during an examination. Additionally, the enhanced CAT data will provide the Commission with regular access to improved information with which to examine potential instances of fraud without needing to ask broker-dealers for information.

Enhanced fraud detection by the Commission may also help deter fraud, resulting in improved price efficiency and market quality. Some market participants and academics have raised concerns that short selling may in some instances offer the potential for stock price manipulation, including ''short and distort'' campaigns.[591] In ''short and distort'' strategies, which are illegal, the goal of manipulators is to first short a stock and then engage in a campaign to spread unverified bad news about the stock with the objective of panicking other investors into selling their stock in order to drive the price down.[592] If a ''short and distort'' campaign is suspected, then detecting this behavior using the position and activity data in Form SHO will be easier than using current data.

Short and distort campaigns are more likely to occur in stocks with lower market capitalizations with less public information.[593] Consequently, among these stocks, it may not take a very large short position in dollar terms to reach the daily average 2.5 percent of shares outstanding over the preceding calendar month threshold for smaller reporting issuers or the $500,000 or more at the end of a settlement day threshold for non-reporting company issuers.[594] As a result, it is likely that an entity engaging in such a practice will be required to report Form SHO data.[595] Consequently,

---

[587] *See* Better Markets Letter at 7.

[588] *See supra* Part VIII.B for discussion.

[589] Form SHO is required to be reported 14 days after the end of the month. Thus, trades happening in the first two weeks of the month will not be reported for more than a month.

[590] Two Regulation SHO rules include exceptions for bona fide market making. Rule 203(b)(2)(iii) exempts market makers selling short in connection with bona fide market making activities from the requirement that a short seller must either borrow or have reasonable grounds to believe he can borrow a security in time for delivery prior to effecting a short sale. *See* 17 CFR 242.203(b)(2)(iii). Rule 204(a)(3) provides that a failure to deliver positions attributable to bona fide market making activities by registered market makers, options market makers, or other market makers obligated to quote in the over-the-counter markets, must be closed out by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date (T+4), rather than the settlement day following the settlement date (T+1). *See* 17 CFR 242.204(a)(3).

[591] *See, e.g.,* comment letters submitted with regards to Short Sale Reporting Study Required by Dodd-Frank Act section 417(a)(2): Naphtali M. Hamlet (May 6, 2011); Jan Sargent (May 6, 2011); Lee R. Donais, President and CEO, L.R. Donais Company (May 8, 2011); Joseph A. Scilla (May 9, 2011); Jane M. Reichold (May 17, 2011); John Gensen (May 18, 2011); Victor Y. Wong (May 20, 2011); Kevin Rentzsch (May 24, 2011); Lynn C. Jasper (May 27, 2011); Donald L. Eddy (May 28, 2011); Al S. (June 10, 2011); Jeffrey D. Morgan, President and CEO, National Investor Relations Institute, at 3 (June 21, 2011) (''NIRI''); Professor James J. Angel, at 2 (June 24, 2011); and Dennis Nixon, CEO and Chairman, International Bancshares Corporation, at 1 (July 18, 2011). All letters are *available at https://www.sec.gov/comments/4-627/4-627.shtml.*

[592] If successful, the scheme can drive down the price, allowing the manipulators to profit when they ''buy to cover'' their short position at the reduced price. Short sellers could also engage in price manipulations by systematically taking short positions in one firm while taking long positions in the competitor. *See* Bodie Zvi, Alex Kane, and Alan J. Marcus, Investments and Portfolio Management, *McGraw Hill Education* (2011). *See also* Rafael Matta, Sergio H. Rocha, and Paulo Vaz, Predatory Stock Price Manipulation, *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3551282.*

[593] One commenter stated that biotechnology companies, 90% of which have market capitalizations that would qualify as small-cap or micro-cap stocks, face a disproportionately high share of short positions. The commenter believes that biotechnology firms are disproportionately targeted by short sellers for multiple reasons. First, because biotechnology companies cannot disclose interim data until validated, the time gap between milestone announcements makes these stocks targets for ''short-and-distort'' campaigns. Second, the commenter stated that short sellers of biotechnology firms will challenge patent claims in order to drive their stock prices lower, which makes short positions on these stocks more valuable. The commenter supports the Commission's inclusion of the 2.5% threshold, which would be reached before the $10 million daily average threshold for the majority of biotechnology firms. *See* Bio Letter at 5–8.

[594] Academic research has found that the average short interest in stocks targeted by activist short sellers is about 10%, while it is only 4% for non-targeted firms. Consistent with high information asymmetries, targeted firms also appear to have wider bid-ask spreads and higher disagreement among analysts. *See* W. Zhao, Activist Short-Selling and Corporate Opacity (Working Paper) (2020), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2852041.*

[595] *See, e.g.,* Y.T.F. Wong and W. Zhao, *Post-Apocalyptic: The Real Consequences of Activist*

Continued

if ''short and distort'' type behavior is suspected, then the Commission will be more likely to identify Managers with large short positions and thus quickly focus their inquiries on entities that could potentially profit from manipulation. The Commission could then match estimated ''buy to cover'' trading on individual days to statements or other actions of the investor which may indicate that the investor was engaging in such behavior.[596] In addition, the Commission could use CAT data to further investigate the trading activity of the alleged manipulator. CAT data would be used to corroborate Form SHO reporting to CAT reported transactions. Using the identified manager's data in CAT, the Commission could see all CAT reportable activity, but will not be able to see other activity such as options exercises or participation in secondary offerings from an issuer.

Enhanced oversight due to the adopted rule and amendment could also provide increased protection from other sources of harm caused by manipulative short sale activity. First, if firm manager decision-making is influenced by shifts in stock prices, as one theoretical study suggests,[597] then short sellers could seek to drive down stock prices when profitable projects are announced, which may cause firm managers to reassess these projects. Doing so may lead to worse managerial decision making and lower stock prices. Second, another theoretical study argues that due to high levels of leverage and interconnectedness in the finance industry, even small declines in stock prices due to manipulative short sellers could ripple through the financial system with large effects.[598] While manipulation is difficult to verify, should it be suspected, such activity might be more easily identified with Form SHO positions and activity data. The positions data will allow the Commission to more quickly identify individuals with large short positions and then use the activity to identify what data to gather, including CAT data to investigate their trading behavior to look for signs of manipulation. Improved detection capacity may also deter manipulative behavior due to increased fear of detection, potentially leading to an overall decline in fraudulent activity.[599]

Publicly releasing aggregated information about large short positions may, in some instances, increase the risk of trading behavior that is harmful to short sellers, including orchestrated short squeezes. More specifically, to the extent that Managers are still holding their short positions when the data becomes public, the Commission believes that the information disclosed pursuant to Rule 13f–2 and the disclosures Form SHO requires also might, in some cases, potentially facilitate manipulative strategies targeting short sellers, such as short squeezes.

However, the Commission has sought to reduce this risk by releasing only aggregated and anonymized data. Several commenters agreed that only aggregated and anonymized data should be published by the Commission in order to reduce the likelihood of short squeezes and chilling short sale activity, the latter of which could harm stock price efficiency and market liquidity.[600] In contrast, however, multiple commenters stated that individual Manager's positions should be publicly disclosed in order to uncover hidden short positions, which one commenter stated pose risks to investors and the markets.[601] The Commission has sought to balance the costs and benefits of Rule 13f–2 and Form SHO by collecting Manager-specific data, which should provide the Commission with improved detection of manipulative and potentially destabilizing activity, while publicly releasing only aggregated, anonymized data, which should reduce the likelihood of short squeezes and copycat behavior but still increase the transparency of large short sale activity.[602]

The Commission recognizes that the position size thresholds that underlie publicly released information may lead to the risk of Managers being identified by the public. The Commission estimates that 39 percent of stocks reported on Form SHO would only have one Manager above the reporting Threshold A.[603] By focusing on stocks in which market participants can ascertain that only one Manager exceeded the threshold,[604] combined with a Manager's posts on social media or information discovered by a private investigator, market participants may be able to identify the Manager holding the short position.[605] As such, the limited

Short-Selling. (Working Paper) (2017), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2941015.* Several commenters agreed that the 2.5% threshold for Rule 13f–2 was important because it protects firms with lower market capitalizations. *See, e.g.,* BIO Letter at 9.

[596] ''Buy to cover'' activity would be inferred from position changes reported on Form SHO. This method is only a proxy for ''buy to cover'' information. Specifically, the Commission would be assuming that changes in position came from ''buy to cover'' activity, though there are other mechanisms which could change a Manager's net position that do not occur from ''buy to cover'' transactions. Further, Form SHO will not show intraday short sales and buying to cover if the amounts are equal, as the net position will not change.

[597] *See* I. Goldstein and A. Guembel, *Manipulation and the Allocational Role of Prices,* 75 (1) The Rev. of Econ. Studies 133–164 (2008).

[598] *See* Markus K. Brunnermeier and Martin Oehmke, *Predatory Short Selling,* 18 (6) Rev. of Fin. 2153–2195 (2014). Similarly, some have also stated that short sellers may have played a role in the stock market crash at the beginning of the Great Depression. *See, e.g.,* Jonathan R. Macey, Mark Mitchell, and Jeffry Netter, *Restrictions on Short Sales: An Analysis of the Uptick Rule and its Role in View of the October 1987 Stock Market Crash,* 74 Cornell L. Rev 799, 801–802 (1989) (collecting reports of such allegations).

[599] *See* letters from Christine Lambrechts (hereafter ''Lambrechts Letter''), *available at https://www.sec.gov/comments/4-627/4627-14.htm; see also* International Association of Small Broker Dealers and Advisor, *available at https://www.sec.gov/comments/4-627/4627-109.pdf. See* NIRI Letter, *available at https://www.sec.gov/comments/4-627/4627-134.pdf.*

[600] For discussion of data aggregation, *see supra* Part II.C. *See also* MFA Letter, at 18; SIFMA Letter, at 22; AIMA Letter, at 5 comment letters of supporters.

[601] This commenter stated that reducing or eliminating the reporting thresholds to Form SHO would provide benefits. *See* Better Markets Letter, at 13. Several retail investor commenters also said that the reporting thresholds to Form SHO should be reduced or eliminated. *See supra* note 25.

[602] One commenter stated it was confusing that the Commission believes that the public release of Form SHO may give opportunities to orchestrate short squeezes, but at the same time, also help detect short squeezes. *See* Two Sigma Letter, at 10–12. While publicly released Form SHO data may, in some cases, increase the opportunity to orchestrate short squeezes, the Commission has reduced this risk by only releasing, aggregated, anonymized data. Moreover, this risk is further reduced by the Commission's ability to utilize disaggregated, Manager-identified short sale data in order to increase its detection of short squeezes and other manipulative behavior.

[603] Based on analysis of Form SH data. *See* Proposing Release, at 14963. Commenters questioned the use of Form SH data in this and other contexts. *See infra Box 1: Use of Form SH Data* for responses to comments on the use of these data.

[604] In some cases, identifying which equity securities reported to the public via Form SHO data had only one Manager reporting may not be difficult. For example, if the aggregated short positions reported in an equity security were less than $20 million, it could be estimated that one Manager had a short position of at least $10 million average over the month. However, this estimation could be incorrect if Managers' end of month gross short position differs significantly from their average gross short position over the month. This estimation could be further honed by looking at daily data to see changes in daily short positions to better estimate the size of the position, and thus the number of Managers.

[605] For example, one issuer, upon learning that short sellers had taken a large short position in the issuer, reportedly sent a letter to all shareholders urging them to request physical custody of their shares from their broker-dealers in an apparent attempt to disrupt securities lending which supports short selling. This strategy appeared to work initially as the share price increased by nearly 50% in the subsequent three weeks. The issuer also hired private investigators to determine who was behind the short selling and filed suit against a well-known short seller. The issuer, however, entered bankruptcy less than a year later. The bankruptcy courts ruled that the issuer defrauded

number of reporters potentially risks shining a spotlight on the few Managers with large short positions.[606] However, due to the delay before publicly releasing the data, public Form SHO information will not be as up-to-date and thus may not as accurately reflect current short positions.[607] Thus, efforts to orchestrate a short squeeze based on the public Form SHO data could result in losses to the initiators of the short squeeze if the short positions they target no longer exist.[608] Based on analysis using Form SH data, the Commission expects that most, but not all, of the short positions leading to reporting on Form SHO will be closed by the time that the aggregated Form SHO data are released.[609] An additional factor that may help mitigate the risk of a short squeeze due to the public release of Form SHO data is the fact that non-public Form SHO data, in coordination with CAT data, will improve the SEC's ability to detect short squeeze activity, which may deter some market participants from seeking to orchestrate a short squeeze.

Having detailed confidential information about which Managers currently hold large positions might also help the Commission observe potential systemic risk concerns regarding short selling. Large and concentrated short positions have the potential to increase systemic risk. As discussed previously, unlike long transactions, short selling places an investor at risk of losing significantly more than the investor's initial investment, should the value of the underlying asset increase significantly. Even temporary spikes in asset value can lead to significant losses—by triggering margin calls or even position liquidations if capital requirements cannot be met.[610] If the value of an underlying asset increases, a short seller may be required to post additional collateral to meet margin requirements. If the investor is unable to do so, then the investor's broker-dealer may liquidate the investor's position with existing collateral leading to steep losses for the short seller. Consequently, it may be more difficult for a short seller to ride out periods of turbulence than a long seller.

One commenter stated they were unaware of cases of short selling causing systemic harm.[611] However, the potential instability that the Commission wishes to detect includes spillovers from events in one asset, such as a particular equity security, to the market for another asset.

Manager level short position data of individuals with large short positions might allow the Commission to better observe these positions, study, and more appropriately respond to any market events that arise. For example, if the Commission had Form SHO data during the meme stock events of January 2021 then it would have had a clearer view as to which Managers held large short positions prior to the volatility event and thus which Managers could have been at greatest risk of suffering significant harm from a short squeeze. However, the ability of the Commission to respond to market events is likely impacted by the timeliness of the short sale data that it receives. One commenter stated that due to the delay in reporting of Form SHO, the data would not be useful to the Commission to respond to market events.[612] While the delay will not aid the Commission in responding in real-time to market events, it does aid the Commission in developing responses to events over a longer time horizon. Regulatory changes rarely happen in real time and involve careful analysis prior to implementation. The Commission has chosen a reporting regime which balances the benefits of more frequent and timely data with the costs incurred by Managers having to report more quickly, including higher explicit reporting costs as well as heightened risks of short squeezes and copycat trading.

All the effects, positive and negative, associated with the data collected by Rule 13f–2 discussed in this section will be limited by data accuracy. Upon filing, Form SHO will be checked for technical errors but not for the accuracy of the position and activity data in the Form. If Managers make mistakes in their calculations, such mistakes will reduce the utility of the data. However, the amendment process will require Managers to amend filings when they discover errors, thus promoting the accuracy of the information.

2. Effects on Stock Price Efficiency

The Commission believes that Rule 13f–2 and Form SHO may have uncertain effects on stock price efficiency.[613] The uncertain effects on price efficiency stems from increased transparency of short sales generally increasing efficiency, whereas increased transparency might also discourage potential short sellers from gathering information—which harms price efficiency. This section discusses both the concept of price efficiency and the positive and negative impacts that adopted Rule13f–2 and the CAT amendment may have on price efficiency.

a. Comparisons to Other Public Short Selling Data

The publicly released aggregated data from Form SHO will provide information to market participants about the aggregate activities of large short sellers—with a planned lag of approximately fourteen days from the end of the filing deadline, which is fourteen days after the last day of the month.[614] Existing short selling data, such as the FINRA short interest data, is timelier than the data that will be

investors. *See* G. Weiss, The Secret World of Short-Sellers, Business Week, 62a (Aug. 5, 1996). *See also* Owen A. Lamont, *Go Down Fighting: Short Sellers vs. Firms,* 2 (1) The Rev. of Asset Pricing Studies 1–30 (2012).

[606] Though the count of Managers filing Form SHO in any particular equity security may sometimes be able to be estimated with some accuracy, the identities of Managers will not be disclosed by Form SHO data.

[607] Analysis of Form SH data found that short positions were held at or above the $10 million or 2.5% thresholds only for an average of 9.85 days after the end of each month. *See* Proposing Release, at 14963 for information on the methodology and caveats of using Form SH data. Commenters questioned the use of Form SH data in this and other contexts. *See infra Box 1: Use of Form SH Data* for responses to comments on the use of these data.

[608] That is because the short position has already been closed and the organizers of the short squeeze are incorrectly assuming the Manager still has an open short position. Depending on the Manager's desired length of time of the short position, the public version of Form SHO data may still accurately portray the *aggregated* short position in a given equity security. However, those basing their decisions on public Form SHO data will not know whether the Managers underlying the aggregated short positions in Form SHO data have closed out their positions within the two weeks publication delay. Other data sources, combined with Form SHO data, can be used in an attempt to discover if the position is closed out, but those are also on a delayed basis.

[609] *See infra* note 622 for a discussion on the Commission's estimates on how long Managers hold short positions. *See also infra* note 629 for more information on short sellers that do hold their positions for longer periods of time. Commenters questioned the use of Form SH data in this and other contexts. *See infra Box 1: Use of Form SH Data* for responses to comments on the use of these data.

[610] Due to imperfect information and market frictions, a short seller who ''does not have access to additional capital when security prices diverge . . . may be forced to prematurely unwind the position and incur a loss[.]'' *See, e.g.,* Mark Mitchell, Todd Pulvino, and Erik Stafford, *Limited Arbitrage in Equity Markets,* 57 J. of Fin. 551–584 (2002). *See also, e.g.,* Andrei Shleifer and Robert W. Vishny, *The Limits of Arbitrage,* 52 J. of Fin. 35–55 (1997) and Denis Gromb and Dimitri Vayanos, *Limits of Arbitrage,* 2 Annu. Rev. Fin. Econ. 251–275 (2010) (citations therein).

[611] *See* SBAI Letter at 4.

[612] *See* SBAI Letter at 2.

[613] *See infra* Part VIII.D.1 for additional discussion of the effect of adopted Rule 13f–2 and the CAT amendment on efficiency.

[614] Thus, it will be a one-month delay after the last day of the month of data being reported. *See supra* Part II.B.3 for more information on the delay of public dissemination of Form SHO data.

filed pursuant to Rule 13f–2 and Form SHO. Forthcoming information from Rule 10c–1a data, which could be used to estimate short interest, is also expected to be timelier than Rule 13f–2 and Form SHO data.[615] Nevertheless, Rule 13f–2 and Form SHO data will provide information on short sale behavior that is not available from other short sale data sources. For example, while FINRA short interest data includes short interest for all short sales known to clearing broker-dealers, it does not provide the Commission or the public with daily information on short sellers' activities. In contrast, Form SHO data will provide daily information on gross short positions of Managers that exceed Reporting Thresholds.[616] Moreover, while Rule 10c–1a data will disseminate to the public anonymized transactions-by-transaction securities lending data by all market participants, it does not allow for an accounting of the timing of aggregate short sales conducted by Managers, nor does it reveal aggregate short positions of Managers with large short positions, as will the data from publicly available Form SHO.[617] Thus with the adoption of Rule 13f–2 and Form SHO, market participants, who will only see anonymized data, will have increased awareness into the activity of Managers with large short sale positions.[618] These benefits are afforded by the adoption of Rule 13f–2 and the required reporting of Form SHO.

There is overlap between the information about stock fundamentals contained in FINRA short interest data, forthcoming Rule 10c–1a data, and the data that will be aggregated from Form SHO filings. However, the information in Form SHO filings provides data on Managers, including their aggregated daily net changes in positions.[619] Thus, Form SHO will increase the information available to investors about past bearish sentiment in the market on a specific time frame. For example, Form SHO data could be combined with FINRA short interest data to calculate the proportion of short interest comprised of Managers with substantial positions. Furthermore, the accompanying activity information of Form SHO will provide market participants with an enhanced view of short interest and securities lending as well as increased insight on how the short sale activity measured by these data series change over time. Further, the use of the last day of the month as the reference month for the Form SHO reports will allow for a direct comparison of the Form SHO data to the FINRA short interest data. For example, market participants might search for correlations between significant increases or decreases in short positions found in Form SHO data with corporate events or announcements to gather a more precise view of how the market views corporate actions or events and which events contributed to the FINRA final short interest tally at the end of the month. While Rule 10c–1a data could also be used with FINRA short interest data for such analysis, Form SHO data will more clearly reveal how Managers with large gross short positions view these actions or events. Thus, market participants and regulators will be able to use Form SHO data along with FINRA short interest data to assess the degree to which short interest is concentrated among Managers with large positions. It will also allow regulators to better assess which securities face the greatest risk of short squeezes and other manipulative strategies.

Form SHO data could also be combined with forthcoming Rule 10c–1a data in order to assess the degree to which securities lending is widely dispersed among market participants or concentrated among Managers who filed Form SHO.

b. Potential Improvements to Price Efficiency

Rule 13f–2 and Form SHO may also improve price efficiency if they mitigate fraud as discussed in Part VIII.C.1. Fraud is inherently non-efficient trading and harms price efficiency because a fraudster's motive is to create a deviation of a firm's value from fundamentals and to profit from this deviation. Thus, to the extent that fraudulent trading, such as short and distort campaigns, are limited by regulator's access to the data provided by Form SHO, Rule 13f–2 will result in improved price efficiency.

More generally, the impact of Form SHO on price efficiency will be commensurate with the degree to which aggregated Form SHO data are newer or more timely than other publicly available short selling information and useful for valuing stocks. Price efficiency (also known as market efficiency) refers to how accurately prices reflect available information relevant to the value of the asset.[620] This information may allow market participants to more effectively make trading decisions and manage risk—increasing price efficiency. For example, if aggregate Manager short positions provide better info on bearish sentiment, then prices could react to updated Form SHO information on bearish sentiment.[621] Although the majority of Managers' short positions may be closed by the time the aggregated data from Form SHO will be made public due to the lag in reporting and public dissemination, a portion of the short positions may still be open.[622] Information on the aggregate size and activity of positions that remain open could be combined with FINRA short interest and forthcoming Rule 10c–1a data to estimate the proportion of short positions held by large short sellers. If this proportion is not yet reflected in prices, prices will adjust upon publication.

[615] We expect that the reporting and publication of Rule 13f–2 information will occur before the reporting and publication of Rule 10c–1 information. *See supra* note 531. Reporting and disclosure under Rule 13f–2 will provide more information over current short selling data until reporting and disclosure under Rule 10c–1a are fully implemented. This could temporarily magnify the benefits and costs of many of the effects discussed in this section and elsewhere in the Economic Analysis.

[616] The Commission will anonymize these data before they are publicly disseminated.

[617] For example, a Manager could accumulate a large short position in a particular security using securities loans from multiple prime brokers. Each of these loans will be reported as a distinct Rule 10c–1a securities loan, and observers may not be able to ascertain whether they are part of a single Manager's short position. As a result, a large securities loan in Rule 10c–1a data may not represent a single large position reportable under Rule 13f–2.

[618] The Commission will have enhanced data regarding Managers and trading activity of stocks in which thresholds are triggered. *See supra* Part VIII.C.1 for discussion.

[619] This is in contrast to other data sources, which only provide data on securities such as the short interest in a particular security (*i.e.,* FINRA short interest) or the volume of securities lent (*i.e.,* Rule 10c–1a data).

[620] *See, e.g.,* Eugene Fama, *Efficient Capital Markets II,* 46(5) J. Fin. 1575–1617 (1991).

[621] *See, e.g.,* A. Senchack and L. Starks, *Short-Sale Restrictions and Market Reaction to Short-Interest Announcements,* 28 J. of Fin. and Quantitative Analysis 177–194 (1993).

[622] The Commission estimates that the median number of days that the short position is held above the threshold after the end of the month is 0, while the average number of days that a short position is held above the threshold is 9.68. This suggests that the majority of positions will be closed while some are held longer than the delay in reporting.

Even if many positions are closed by the time the information is disseminated, Tables 1 and 2 will still promote price efficiency if the prices do not yet reflect the historical short position and activity information. Table 2, for example, will provide information on the variability of large short positions in a security and how large short positions changed around corporate events. Such information will improve the precision of signals from Table 1 information and corporate events.

c. Potential Harms to Price Efficiency

Rule 13f–2 may harm price efficiency by increasing the cost of short selling.[623] Academic studies, both theoretical and empirical, have shown that when short selling becomes more costly, stock prices are less reflective of fundamental information both because costly short selling makes trading on information more difficult, and because costly short selling dissuades investors from collecting information in the first place.[624] Short sellers fill the role of incorporating negative information by making short sales that reflect the short sellers' beliefs about the true value of the company.[625]

i. Costs That Impact Price Efficiency

Rule 13f–2 increases the costs of short selling in at least four ways: (1) Compliance costs, (2) potentially revealing short sellers' information that may have been acquired through fundamental research, (3) potentially revealing short sellers' trading strategies, and (4) increasing the threat of retaliation against Managers by other market participants.

(a) Compliance Cost Effects

The compliance costs associated with reporting large short positions will result in an increase in the cost of short selling.[626] As many Managers have underlying investors, these costs will likely be passed on to end consumers in the form of lower returns due to limiting the strategies that Managers could profitably employ and reducing the profitability of strategies still employed. On net, an increase in the cost of short selling will reduce short selling, harming price efficiency.[627]

(b) Potentially Revealing Information of Short Sellers

Publicly releasing aggregated Form SHO data has the potential to reveal some of the information that short sellers may have acquired through fundamental research.[628] Revealing this information to the market may cause prices to adjust to the information that the short seller uncovered before the short seller is able to acquire their full desired position—decreasing the profits to acquiring this information and providing less incentive to produce fundamental research. Thus, the publication of Form SHO data represents an additional cost to short selling in the form of potentially lower profitability for trading on negative information. Relative to the proposed rule, the Commission has modified the final rule's requirements for publication of Form SHO data (from the proposed rule) to decrease the risks of revealing this information by requiring much less granular information in Table 2 of Form SHO. In addition, adopted Rule 13f–2 will mitigate revealing information by delaying publication at least 14 days from the last day of a month and only publishing aggregated data.

To avoid price impacts, a short seller seeking to build a sizeable position in a firm generally does so by building up small positions over time until the desired position is accumulated.[629] Because short positions can take a long time to accumulate, even with a lag, the information motivating the trades being reported may not be stale. While aggregation limits the precision with which markets can estimate an individual short seller's motivation, it does not eliminate it.[630] Additionally, the threshold may protect short sellers with smaller short positions from having the information in their trades revealed. In contrast, Rule 13f–2 may highlight large positions, potentially increasing the likelihood that some of the information contained in the trades of large short sellers will be acted on by other market participants before the short seller could acquire their optimal position. Thus, the Commission expects that publication of aggregated Form

[623] Adopted Rule 13f–2 will have direct impacts on establishing large short positions which may trigger reporting obligations. Additionally, there may be lesser effects which dissuade market participants from short selling in fear of triggering reporting of Form SHO.

[624] *See supra* note 597. *See* Edward Miller, *Risk, Uncertainty, and Divergence of Opinion,* 32 J. of Fin. (1977). See Robert F. Stambaugh, Jianfeng Yu, and Yu Yuan, *The Short of It: Investor Sentiment and Anomalies,* 104 J. of Fin. Econ. 288–302 (2012).

[625] Several commenters made statements and cited research on how short selling improves price efficiency. *See, e.g,* NASDAQ Letter at 1, AIMA Letter at 5, which state that short selling promotes efficient price formation, enhances liquidity, and facilitates risk management. Furthermore, one comment letter, ''. . . urge(d) the Commission to consider the widely-cited academic law and finance literature as part of its analysis of the Proposed Short Reporting Rules,'' and cited multiple studies that provide evidence that short selling contributes to price efficiency. *See also* ''Law and Finance Professors letter'' at 2. Cited studies include Jonathan M. Karpoff and Xiaoxia Lou, *Short Sellers and Financial Misconduct,* 65 J. of Fin. 1879–1913 (2010) and Ekkehart Boehmer, Charles Jones, and Xiaoyan Zhang, *Which Shorts Are Informed?* 63 J. of Fin. 491–527 (2008), and Lauren Cohen, Karl Diether, and Christopher Malloy, *Supply and Demand Shifts in the Shorting Market,* 62 J. of Fin. 62, 2061–2096 (2007). Other cited studies find evidence that constraints on short selling reduce market efficiency, including Joseph E. Engelberg, Adam V. Reed, and Matthew C. Ringgenberg, *Short Selling Risk,* 73 J. of Fin. 755–786 (2018), Ekkehart Boehmer, Charles Jones, and Xiaoyan Zhang, 2013, *Shackling the Short Sellers: The 2008 Shorting Ban,* Review of Financial Studies 26, 1363–1400, Pedro Saffi and Kari Sigurdsson, *Price Efficiency and Short Selling,* Review of Financial Studies 24, 821–852 (2011). One cited paper favors reduced regulation of short selling in order to avoid undermining the market quality improvements provided by short selling. *See* Peter Molk and Frank Partnoy, *The Long-Term Effects of Negative Activism, Univ. of Illinois L. Rev.,* 1–70 (2022). Another cited paper favors less regulation of short selling that enhances price efficiency but increased regulation of short selling that is aimed at disabling the fundamental value of targeted firms. *See* Barbara Bliss, Peter Molk, and Frank Partnoy, *Negative Activism,* 97 Wash. Univ. L. Rev. 1333–1395 (2020)). The comment letter's suggestion to delay public release of Form SHO data for one year and receive additional input on which Form SHO thresholds to apply stem from a concern that Rule 13f–2 could undermine the market quality benefits of short selling, of which the above cited studies find evidence. However, the Commission is also cognizant of the of the benefits provided by short selling, as noted in *supra* Part VIII.B.2. Furthermore, the Commission discusses in detail below the potential costs to price efficiency stemming from Rule 13f–2 and Form SHO. *See infra* Part VIII.C.2.c.ii.

[626] *See infra* Part VIII.D.2 for a discussion of how these direct costs may affect investors in funds that employ short selling.

[627] *See supra* note 624 and accompanying text.

[628] Several commenters agreed. *See, e.g.,* SBAI Letter at 2–3, Two Sigma Letter at 1–2, SIFMA Letter at 2.

[629] *See* Albert S. Kyle, *Continuous Auctions and Insider Trading,* Econometrica: J. of the Econometric Society 1315–1335 (1985). See Kirilenko, Andrei, Albert S. Kyle, Mehrdad Samadi, and Tugkan Tuzun, The Flash Crash: High-Frequency Trading in an Electronic Market, 72 (3) The J. of Fin. 967–998 (2017) (for a discussion of this type of trading); Amir E. Khandani and Andrew W. Lo., What Happened to the Quants in August 2007? Evidence from Factors and Transactions Data, 14 (1) J. of Fin. Markets, 1–46 (2011) (for a discussion of what happens when investors build large positions without properly smoothing their trading). Well-known short seller Gabe Plotkin testified that his firm had built and maintained a short position in GameStop for over 5 years prior to the significant volatility experienced in January 2021. See Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide (Hearing), U.S. House of Representatives Committee Repository (''Game Stopped Hearing''), *https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=111207;* See also Juliet Chung and Melvin Capital Says It Was Short GameStop Since 2014, Wall Street Journal (Feb 17, 2021). In the Form SH data, 17.9% of positions were held above the proposed Threshold A for at least a month. Commenters questioned the use of Form SH data in this and other contexts. *See infra Box 1: Use of Form SH Data* for responses to comments on the use of these data.

[630] *See supra* Part VIII.C.1 for a discussion of how market participants may attempt to uncover individual identities.

SHO data will still represent a cost to short selling.[631]

Relatedly, Managers who wish to build large short positions may choose to execute their transactions at a pace that is faster than what they would have done otherwise to attempt to profit from their research before information is disclosed and copycat investors are able to trade based on the reported data. Executing transactions at a faster speed than would be optimal imposes increased transaction costs on Managers than they would have incurred otherwise.[632] Additionally, trading faster than is optimal may harm price efficiency by leading prices to over-react to the aggressive trading.[633]

(c) Potentially Revealing Trading Strategies of Short Sellers

If Form SHO data provides information about the specific trading strategies or identities of certain short sellers, those short sellers could be harmed by actions such as others profiting from predicting their trading or copycat trading.[634] This harm could result in less short selling, reducing the price efficiency benefits of short selling.

While Rule 13f–2 was designed to minimize the possibility of identifying Managers or their proprietary information, there are conditions that may arise that would be conducive to revealing proprietary trading strategies. For example, in cases where market participants may be able to discern that there is only one Form SHO filer,[635] then market participants might attempt to use the activity data to extract information about the specific trading strategies that short sellers use to implement their trades. Market participants might then try to identify similar patterns in the real time market trading and quote data and alter their trading strategies to attempt to profit from any predictability in the short seller's trading strategy. This behavior would further limit the benefit to short selling as it may allow other market participants to game the short seller's trading behavior—increasing the cost of implementing short selling trading strategies. The Commission received several comment letters that addressed the risk of copycat trading due to public disclosure of Form SHO data.[636] While the Commission acknowledges this risk, it believes that the design of the published activity data will significantly limit this risk. In particular, the netting of short selling activity across short sellers will mask much of the trading behavior of individual short sellers while still providing information about changes in bearish sentiment in the market. By netting trading activity in the aggregations across Form SHO filers, market participants viewing the publicly reported Form SHO data will still get a view of changes in bearish sentiment while keeping Manager specific trading strategies hidden.

(d) Retaliation Against Short Sellers

The public disclosure requirements might also increase short selling costs by exposing Managers to the risk of retaliation by other market participants, but the risk may be low.[637] An issuer's directors or shareholders may have the incentive to retaliate if they believe short sellers are inappropriately reducing the value of the stock.[638]

Although aggregating the data before releasing it to the public on a delay will provide some protection to Managers from having their identities uncovered, in certain cases motivated market participants may still be able to identify individual investors. For instance, in the case that the aggregated short position reported to the public is just above the threshold, market participants might reasonably assume that only one Manager has a short position large enough to report, which may facilitate identifying who that manager is. The Commission believes that even if the probability of identifying individual short sellers is low, the threat of this additional exposure to retaliation may disincentivize short selling.

In the event that Managers can be identified from Form SHO disclosures, issuers might take retaliatory action against individual short sellers through lawsuits and by forwarding information to regulators in attempts to precipitate regulatory investigations, through claims in the media, or by applying pressure on the shorting firm through business relationships that may exist outside of trading.[639] One commenter provided further examples of retaliatory behavior that short sellers may face the threat of, including short squeezes, nuisance lawsuits, intimidation, and physical violence.[640] There is also evidence that when short sellers' positions become public, market participants strive to orchestrate short squeezes and are successful a significant fraction of the time.[641] Short sellers often face lawsuits when they take their information public or their identities otherwise become known—regardless of whether the information the short sellers brought forth was legitimate.[642] Some issuers have even been known to hire private investigators in an attempt to uncover the identities of individuals short selling their stock.[643] Some short sellers have also expressed that they have experienced threats to their personal safety after their short positions were revealed.[644]

[631] Consistent with this expectation, research on similar regulations in Europe has documented a similar effect there. *See Market Impact of Short Sale Position Disclosures,* Copenhagen Economics: Office of Global Research and Markets at the MFA, *available at https://www.copenhageneconomics.com/publications/publication/market-impact-of-short-sale-position-disclosures.*

[632] *See* Kyle (1985) at *supra* note 630.

[633] *See e.g.,* Albert S. Kyle and Anna A. Obizhaeva, *Large Bets and Stock Market Crashes* (Mar. 22, 2019), *available at https://ssrn.com/abstract=2023776* or *https://dx.doi.org/10.2139/ssrn.2023776.*

[634] If the identity of the short seller is exposed, then this may also incentivize retaliation against them. *See infra* Part VIII.C.2.i.(d).

[635] This could partially be achieved through the use of Rule 10c–1a data, depending on the timing of the securities loan, among other factors. However, such risk is mitigated by the fact that securities lending transaction sizes in Rule 10c–1a data are not publicly disseminated for 20 business days and counterparties identities are not publicly disseminated.

[636] *See, e.g.,* SBAI letter at 2, Two Sigma letter at 1, David Kwon letter at 3. Furthermore, supporting commenters' views, there is empirical evidence that copycat trading in response to media reports may harm price efficiency. *See* Jiang, George and Strong, Cuyler, *Unusual Option Activity: Is it Smart to Follow 'Smart Money'?* (Aug. 29, 2022). *available at https://ssrn.com/abstract=3618427.*

[637] *See* 2011 MFA Letter; Owen A. Lamont, *Go Down Fighting: Short Sellers vs. Firms,* 2(1) The Rev. of Asset Pricing Studies 1–30 (2012); Lorien Stice-Lawrence, Yu Ting Wong, Yu Ting Forester Wong, and Wuyang Zhao, Short Squeezes After Short-Selling Attacks (Nov. 2021), *available at https://ssrn.com/abstract=3849581* or *https://dx.doi.org/10.2139/ssrn.3849581.*

[638] The motivation behind such retaliation may be strengthened by the belief that the short seller's aim is to profit from reducing the value of the stock rather than uncovering mismanagement or other negative information about the firm to shareholders. *See generally* Barbara Bliss, B., Peter Molk, and Frank Partnoy (2020), Negative Activism, Wash. U. Law Review 97:1333–1395 (2020), which distinguishes between ''informational negative activism,'' which serves to uncover, ''. . . the truth about companies whose shares the activists believe are overvalued,'' and ''operational negative activism,'' which, ''. . . involves dismantling or disabling sources of value at companies.''

[639] *See* 2011 letter from Security Traders Association of New York on the Short Sale Reporting Study Required by Dodd-Frank Act section 417(a)(2), *available at https://www.sec.gov/comments/4-627/4627-155.pdf.*

[640] *See* MFA Letter at 9.

[641] *See infra* note 645.

[642] *See* Owen A. Lamont, *Go Down Fighting: Short Sellers vs. Firms,* 2 (1) The Rev. of Asset Pricing Studies 1–30 (2012).

[643] *Id.*

[644] *See Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide: Hearing Before the H. Comm. on Fin. Serv.,* 117th Cong. (2021) (statement of Gabriel Plotkin, Founder and CEO, Melvin Capital Management), *available at https://www.congress.gov/117/meeting/house/111207/witnesses/HHRG-117-BA00-Wstate-PlotkinG-20210218.pdf* (stating that after company's short positions were made known, Reddit users made

In addition, publicly disclosing that Managers, in aggregate, have amassed large aggregate short positions may expose the Managers to increased risk of being the target of predatory strategies such as short squeezes. The risk of short squeeze increases if market participants are able to identify the individuals with large short positions, as discussed in Part VIII.C.1.[645] In this case, they may be able to better estimate the capital constraints of the short seller to identify the likelihood of a squeeze being successful.

ii. Impact of the Costs

Because reporting information on Form SHO increases the costs of short selling, the adopted rules could have several negative effects on price efficiency. In particular, negative price efficiency effects could derive from a reduction in fundamental research,[646] strategic trading to avoid exceeding the thresholds, and reduced liquidity in options markets. Reduced short selling could also take place from the effect of negative price efficiency. Rule 13f–2 and Form SHO have been designed to reduce the likelihood of these risks occurring to the extent possible while still providing market participants and regulators with enhanced transparency of short sale behavior. To the extent that fundamental research decreases, price efficiency might be harmed as prices will not necessarily reflect all available relevant information, only that portion that had been discovered by investors continuing to perform fundamental research.

It is possible that short sellers may strategically select average short position just below the threshold in order to avoid reporting. The size of a short position is often related to the expected magnitude of the short seller's negative information, with revelations of larger negative information being associated with larger short positions.[647] Consequently, to the extent that Managers may choose to select otherwise sub-optimal short positions to avoid reaching the reporting threshold, Rule 13f–2 and Form SHO might result in a sub-optimal allocation of capital and may harm price efficiency. To this end, some have argued that stock prices can be viewed as a weighted average of investor sentiment. If short sellers limit their positions to avoid disclosure requirements, then stock prices may skew towards being overvalued.[648]

Additionally, Rule 13f–2 might dissuade options market makers from holding large short positions and providing liquidity in options markets and, thus, might harm price efficiency in equity markets. Research has found that options play an important informational role in stock price discovery, therefore reductions in liquidity in the options market can reduce the price efficiency in the equity market.[649]

d. Limitations on Price Efficiency Effects

As with the discussion in Part VIII.C.1, many of the economic effects articulated in this section relating to the reporting of Form SHO might be limited to the extent that the data reported in Form SHO contains factual errors. The EDGAR system will check the data for technical errors but not the accuracy of the data entry by filers. Thus, the data reported in Form SHO might contain errors. To the extent that these errors exist and meaningfully affect the usability of the data, the value of the data and the economic benefits and costs associated with collecting the data would be limited. Additionally, the benefits and costs are lessened by the delay in the publication of the data. Furthermore, the data will only be available for those securities with Managers who have short positions over the threshold, which may not be representative of all short positions, and the number of reporting Managers may change from month to month.

3. Effect on Market Liquidity

The effect of the adopted Rule 13f–2 and CAT amendment on liquidity is uncertain. Part VIII.C.2.c discusses the possibility that Rule 13f–2 and Form SHO may harm price efficiency by dissuading investors from pursuing fundamental research. Alternatively, Rule 13f–2 and Form SHO may help price efficiency by increasing transparency with respect to the actions of large short sellers. To the extent that the adopted rule and amendment improve price efficiency, this might also indirectly improve liquidity because market makers would be subject to less mispricing risk. Mispricing risk leads to lower liquidity because market makers must be compensated in the form of wider bid ask spreads for the potential that there is information relevant to the firm that has not yet been discovered and may affect prices. Thus, to the extent that the Rule 13f–2 enhances price efficiency, it may also enhance liquidity by mitigating mispricing risk. Conversely, if the Rule harms price efficiency, it may also harm liquidity.

Equity market makers generally do not carry large gross short positions overnight. However, adopted Rule 13f–2 and Form SHO may make market makers more concerned that a particularly volatile trading day may cross the Reporting Thresholds requiring the filing of Form SHO. One commenter described the concern for unintentionally crossing the threshold while market making.[650] While the Commission believes the adopted Reporting Thresholds will generally be very difficult for market makers to trigger,[651] market makers could still choose to reduce market making activities during periods of volatility due to concerns over having to report Form SHO. To the extent market makers believe high volatility may necessitate a large short position, the adopted rule may reduce market liquidity.

posts and others sent personal text messages that were laced with anti-Semitic slurs and threats of physical harm to him and others).

[645] As noted in Part VIII.C.1, the Commission will also be better able to detect short squeezes.

[646] Several commenters also stated there could be a possible reduction in fundamental research. *See, e.g.,* MFA Letter at 10.

[647] *See, e.g., supra* note 629.

[648] *See, e.g., supra* note 625. In contrast, some argue that short selling itself increases the value of assets as it provides demand for securities lending and allows owners to collect securities lending fees. From this perspective, restricting short selling may decrease stock prices by restricting the demand for securities loans. *See* Darrell Duffie, Nicolae Garleanu, and Lasse Heje Pedersen, *Securities Lending, Shorting, and Pricing,* 66 (2–3) J. of Fin. Econ. 307–339 (2002). Consistent with statements in the Proposing Release, the Commission continues to believe that this effect is the not predominate effect of short selling on asset prices, because the average fee earned from securities lending is usually very small relative to the average long term stock returns. Thus, it appears that other economic effects tend to dominate the relationship between short selling and stock prices and that on net short selling restrictions lead to stock overvaluation. Proposing Release at 14996 n. 281. *See also* letters from OTC Markets, Provable Markets, SIFMA, and Chester Spatt responding to FINRA's regulatory notice 21–19 (arguing that short selling is vital to price efficiency), *available at https://www.finra.org/rules-guidance/notices/21-19#.* In contrast, others have argued markets adjust to short selling constraints as to not overvalue stocks. *See* Douglas Diamond and Robert E. Verrecchia, Constraints on Short-Selling and Asset Price Adjustment to Private Information, 18 J. of Fin. Econ. 277–311 (1987).

[649] *See infra* Part VIII.C.3. *See also* David Easley, Maureen O'Hara, and Pulle Subrahmanya Srinivas, *Option Volume and Stock Prices: Evidence on Where Informed Traders Trade,* 52 J. of Fin. 431–465 (1998).

[650] *See* HSBC Letter at 15.

[651] Market makers typically use short selling to maintain two sided quotes in the absence of inventory and other high frequency traders. While market makers trade in large volumes, they tend to end trading sessions fairly flat on inventory in larger stocks. Therefore, while it is possible that market makers may end a single trading day holding a gross short position of $10 million, it is highly unlikely that this will occur frequently enough for them to end the month with an average daily position of $10 million.

Additionally, in the event that an options market maker might have short equity position close to the Reporting Thresholds, Rule 13f–2 might dissuade these option market makers from increasing their short position, which may harm their willingness to provide liquidity in options markets. Alternatively, Rule 13f–2 might not cause option market makers that exceed the Reporting Thresholds to reduce their positions in order to avoid filing Form SHO, in which case the additional associated spending on filing Form SHO (and other compliance costs) might result in wider spreads if the compliance costs are large enough.

4. Effect on Corporate Decision Making

The Commission believes that Rule 13f–2 and Form SHO might have mixed effects on corporate decision making. On one hand, research suggests that corporate managers learn from market reactions to announcements.[652] Consequently, Rule 13f–2 and Form SHO may provide corporate managers with additional feedback on their decisions, albeit with a delay. Projects often take some time to design and implement after announcement, and consequently, even with the lag in the reporting time of Form SHO data, a corporate manager might review the data around significant announcements to better understand how some Managers viewed a particular project or announcement. For example, if large short positions were built shortly after a corporate project announcement, then this may help signal to a corporate manager that the market viewed that project announcement negatively, and this information could enhance the corporate manager's decision-making on the project.

In another aspect, short sellers, and particularly large short sellers with the resources to perform fundamental research, serve as valuable external monitors of management. If a corporate manager knows that short sellers are monitoring their actions and financial statements and are willing to expose wrongdoing, then they are less likely to engage in fraud or do other things that may hurt the value of the company. Historically, short sellers have, at times, through doing research, uncovered fraudulent behavior.[653] Academic research has also shown that even the threat of short selling serves to discipline managers.[654] As discussed in Parts VI.C.1 and VI.C.2, Rule 13f–2 may discourage Managers from performing fundamental research. If less fundamental research is performed by short sellers,[655] then their role as monitors of the firm diminishes. Less monitoring might lead to higher incidences of fraud as managers feel that the likelihood of being caught declines.[656] Thus, to the extent that Rule 13f–2 and Form SHO discourage fundamental research it may lead to both an increase in the total amount of corporate fraud in the economy as well as decrease the fraction of fraudulent actors that are discovered by investors.

5. Effect on the Securities Lending Market

As discussed in Parts VIII.C.1 and VIII.C.2, the adopted rule and related Form SHO will increase the cost of short selling, particularly large short positions—potentially leading to less overall short selling. As discussed in Part VIII.C.2, short sellers must borrow shares for their short position. When short sellers borrow shares, they pay a borrowing fee to the owner of the share. These fees can represent a significant source of revenue for pension funds, mutual funds, and others who engage in securities lending.[657] Consequently, to the extent that the adoptions discourage short selling, they may also lower overall portfolio returns, including for institutional investors that engage in securities lending.[658]

6. Compliance Costs

The Commission believes that there will be direct costs associated with adopted Rule 13f–2, Form SHO, and the CAT amendment. These costs include Managers reporting position and activity data, broker-dealers updating CAT reporting processes, and the Commission processing and releasing the Manager reports through EDGAR. Rule 13f–2, related Form SHO, and the amendment to CAT in aggregate, will result in an estimated maximum of $119,975,800 in initial costs and $72,026,064 in annual costs.[659]

The Commission received several comments from industry groups concerned about the cost of implementing Rule 13f–2, Form SHO, and the CAT amendment. One commenter stated that Managers currently do not have systems in place to comply with Rule 13f–2, Form SHO, and the CAT amendment. Multiple commenters stated that there would be high costs associated with tracking positions for the purpose of seeing if they had crossed the Reporting Thresholds.[660] Another commenter stated that the Commission's estimated costs in the proposing release, in general, were ''materially understated''.[661] However, the Commission has attempted to use the applicable resources available to it to estimate the costs of implementing adopted Rule 13f–2, Form SHO, and the CAT amendment. The Commission did not receive any information from commenters that might otherwise have been used to refine or adjust its estimates of the implementation costs of adopted Rule 13f–2, Form SHO, and the CAT amendment. Thus, the Commission believes its estimates to be reasonable given the information it has

[652] *See, e.g.,* James B Kau, James S. Linck, and Paul H. Rubin, *Do Managers Listen to the Market?*,14 (4) J. of Corporate Fin. 347–362 (2008).

[653] *See, e.g.,* A. Dyck, A. Morse, and L Zingales, *Who Blows the Whistle on Corporate Fraud?,* 65(6) The J. of Fin. 2213–2253 (2010) (using a large sample of fraud cases between 1996 and 2004, the authors find that short sellers uncovered the fraud in nearly 15% of cases.). *See also* Cassell Bryan-Low and Suzanne McGee, *Enron Short Seller Detected Red Flags in Regulatory Filings,* The Wall Street J. (Nov. 5, 2001) (discussing an Enron short seller that detected red flags reviewing, among other things, the company's SEC filings) (retrieved from Factiva database). *Cf.* Nessim Mezrahi et al., *More Securities Class Actions May Rely on Short-Seller Data,* Law360 (Jan. 10, 2022, 7:07 p.m.) *available at https://www.law360.com/articles/1453499/* more-securities-class-actions-may-rely-on-short-seller-data (authors' ''analysis of 131 Rule 10b–5 securities class actions indicates that plaintiffs continue to rely on short-seller research to substantiate fraud-on-the-market claims'').

[654] *See, e.g.,* Massimo Massa, Bohui Zhang and Hong Zhang, *The Invisible Hand of Short Selling: Does Short Selling Discipline Earnings Management?* 28 (6) The Rev. of Fin. Studies 1701–1736 (2015).

[655] *See supra* Part VIII.C.2 for a discussion of the potential for the final rule to reduce the incentives for short sellers to conduct fundamental research.

[656] *See, e.g.,* Paul Povel, Rajdeep Singh, and Andrew Winton, *Booms, Busts, and Fraud,* 20 (4) The Rev. of Fin. Studies 1219–1254 (2007) (linking variations in monitoring intensity to the incidence rate of financial fraud.).

[657] *See supra* note 563.

[658] Commenters on the Short Sale Reporting Study Required by Dodd-Frank Act section 417(a)(2) argue that increased public short selling disclosure may result in reduced short selling, thereby lowering revenues to institutions that maintain long positions in equities for extended periods (such as pension funds). *See, e.g.,* 2011 Letter from Alternative Investment Management Association, *available at https://www.sec.gov/comments/4-627/4627-138.pdf.*

[659] *See supra* Table 1, Table 2, and Table 3 in Part VII. These costs assume 1,000 Managers would file Form SHO annually and 35 Managers would file amendments each month. The initial costs are calculated by adding the Form SHO Initial Technology Projects cost, the CAT: Central Repository—Short Sale Data cost, CAT: Reporting of Bona Fide Market Making Exception—Insourcers cost, and the CAT: Reporting of Bona Fide Market Making Exception—Outsourcers cost. ($118,950,000 + $113,800 + $870,000 + $42,000 = $119,975,800). The annual costs are calculated by adding the Form SHO Filings cost, the Use of Structured XML-Based Data Language cost, the Amended Form SHO Filings cost, and the amending Use of Structured XML-Based Data Language cost. ($60,326,400 + $9,264,000 + $2,111,424 + $324,240 = $72,026,064). *See also infra* Part VIII.C.6.a and Part VIII.C.6.c for further explanations of these costs.

[660] *See infra* note 679.

[661] *See* MFA Letter, at 19.

available. Furthermore, the Commission has adjusted estimates in response to policy choices that differ from the Proposing Release, some of which will lower compliance costs, including the exclusion of the ''buy to cover'' proposals (proposed Rule 205 and the related CAT amendment) and a change to one of the reporting thresholds that will likely result in fewer Managers having to report Form SHO. As discussed in Part II.B, these policy changes, to the extent possible, address or are in response to statements from commenters regarding costs stemming from the Proposing Release.

a. Form SHO Compliance Costs

The Commission believes that Managers will incur an initial technology-related burden to update their current systems to capture the required information and automate and facilitate the completion and filing of Form SHO.[662] While Managers likely have other existing reporting obligations that are similar to Form SHO filing obligations, Managers will need to update their systems to ensure timely and accurate filing of the specific information required under Form SHO.[663] The estimated aggregate cost of Form SHO initial technology projects across all Managers ranges from $29,975,400 to $118,950,000. The Commission estimates that between 252 [664] and 1,000 Managers will be required to file Form SHO. The lower estimate is based on the number of Form SH filers above Threshold A. The actual number of reporting Managers will likely be higher than our low estimate, because Managers that exercise investment discretion with respect to accounts holding section 13(f) securities having an aggregate fair market value of less than $100 million were not required to file Form SH.[665] However, the actual number of reporting Managers will likely be lower than the Commission's high estimate, since this estimate is also based on an initial analysis of Form SH filings, which were filed weekly and therefore more likely to trigger reporting thresholds, as compared to adopted Form SHO, which will involve monthly assessment and therefore require a longer-held large short position to trigger a reporting threshold.[666] The Commission discusses the use of Form SH Data, including commenter concerns about the use of the data in this and other contexts, in Box 1: Use of Form SH Data.

Box 1: Use of Form SH Data:

The Commission's estimation of the minimum number of Managers likely to report Form SHO draws on an analysis of data collected under Form SH, the only existing data source of individual Manager-level short sale positions. In addition to estimating the minimum number of reporting Managers, the Economic Analysis also uses Form SH data for comparisons of alternative thresholds and to estimate the share and number of potential reported securities with only one reporting Manager, the potential share of gross short sale dollar volume covered by reporting Managers, and statistics on potential holding periods after hitting a threshold.

The Commission received several comment letters questioning the applicability of Form SH data to the current time period.[a] One commenter stated that the period surrounding the filing of Form SH was an abnormal period for financial markets, and also stated that many prominent short sellers have left the industry.[b] While there are various limitations to be considered when using Form SH data,[c] Form SH data are the most relevant and applicable source of data available for the purposes of estimating the costs of the design and analysis of Rule 13f–2. There are no other data sources, public or regulatory, which specifically track Managers' short position activities in the U.S. While the Commission agrees that having more current data would be useful for the purposes of Rule 13f–2's design and analysis, no commenters provided such data, and the Commission believes Form SH data are sufficiently informative to analyze the predicted impact of the amendments.[d]

Further, in response to these comments, the Commission analyzed FINRA short interest data over the period of 2008 to present with the goal of seeing if short interest was comparable between the current period and the period surrounding Form SH filings.[e] Specifically, we compared the trend of average short interest to the trend of the number of equities counted from each FINRA short interest files covered 2009 to 2023. The analysis revealed that the average short interest per equity symbol has increased over time by approximately 46 percent, while the number of symbols has increased at a much slower rate of 17 percent. Thus, we observe that the average short interest per equity symbol has increased from 2009 to present. However, the Commission cannot assess whether the size of Manager positions has changed over time.[f] Without this piece of knowledge, it is indeterminate whether the average amount of short interest generated by a manager has changed over time. If there are currently more Managers relative to 2008, it is possible that the average short position per manager is smaller than during the period Form SH was used. Conversely, if there are fewer Managers, it is likely the average short position per manager has increased relative to 2008.

[a] *See, e.g.,* Law and Finance Professors Letter, at 3; AIMA Letter at 11–12; Two Sigma Letter at 5–6.

[b] *See* Law and Finance Professors Letter, at 3.

[c] *See supra* Part VIII.B.4.e and note 670 for a discussion of limitations in the use of Form SH data. *See also* Part VII.B.1 for a discussion of other ways Form SH data differ from Form SHO data.

[d] *See supra* Part II.A.3 for additional discussion of comments regarding the Reporting Thresholds and note 177 for further discussion of the time period of the data.

[e] FINRA Short Interest data are available at *https://www.finra.org/finra-data/browse-catalog/equity-short-interest/data. See also* Part VIII.B.4 a for further information about FINRA Short Interest Data.

[f] *See supra* Part VII.B.1 for a discussion of estimates of the number of affected Managers using Form SH, which most closely mirrors the criteria of Rule 13f–2 and Form SHO and how the number may have changed over time.

The Commission estimates that the annual cost to Managers for filing Form SHO ranges from $15,202,252 to $60,326,400.[667] The Commission estimates that Managers will collectively spend an additional $2,334,528 to $9,264,000 per year to structure Form SHO directly in Form SHO-specific XML.[668] The Commission estimates that the Managers that will file amended Form SHOs will collectively spend $542,938 to $2,111,424 per year to file amended Form SHOs.[669] Further,

[662] *See supra* Part VII.4.

[663] *See infra* Part VIII.C.6.c.

[664] In the Proposing Release, the Commission estimated 346 Managers would be required (on the low end of the estimate). The Commission changed the parameters for this estimate to match the scenario of a $10 million daily average over the month or 2.5% daily average over the month of shares outstanding thresholds that are being adopted as Threshold A.

[665] *See* Proposing Release, at Table I. *See also* Proposing Release, at 14963 for more information on the methodology and caveats of using Form SH data.

[666] *See Disclosure of Short Sales and Short Positions by Institutional Investment Managers,* 73 FR 61679. Form SH filers filed weekly reports. As a result, each reporting manager would file fewer reports under Rule 13f–2, because Form SHO would be filed monthly. *See also* 73 FR 61686 (estimating 1,000 weekly Form SH filings by reporting Managers).

[667] *See supra* PRA Table 2 and note 450. The lower estimate was calculated using 252 Managers. 20 hours per filing × 252 filings by Managers each month × 12 months × $251.36 = $15,202,252. The

Continued

the Commission estimates that Managers filing amended Form SHO will collectively spend an additional $83,376 to $324,240 per year to structure Form SHO directly in Form SHO-specific XML.[670] The Commission thus estimates that the aggregate cost of structuring and filing Form SHO across all Managers ranges from $18,163,094 to $72,026,064.[671] Costs might be underestimated to the extent that wages are higher than those used in the estimation. The initial costs are likely higher than the lower bound estimates as Managers who may not file Form SHO on a monthly basis will likely still incur the initial costs. Furthermore, because Manager short positions are fluid, some Managers will not be required to file a report every month when they do not cross the reporting threshold. As a result of this fluidity, ongoing costs could be lower than our estimates. Moreover, to the extent that the number of reportable short positions varies across Managers, the costs to track and report those positions will also vary by Manager. Initial costs might also be higher for some Managers who do not currently have systems built to report to EDGAR.[672] By contrast, because we expect Managers will have a financial incentive to automate the reporting process by leveraging Form SHO-specific XML reporting, the aggregate costs associated with Form SHO-specific reporting may be meaningfully lower going forward.[673]

For some Managers, there may be additional considerations, which may increase costs. For example, rules for filing Form SHO require Managers to prevent duplicative reporting.[674] The burden to ensure that duplicative reporting doesn't occur will vary by Manager and will depend on whether two or more Managers exercise investment discretion over the same reportable securities position. Also, Managers managing multiple accounts with short positions requiring aggregation may have additional costs associated with the aggregation when modifying systems to track the Reporting Thresholds and report positions on Form SHO.

The Commission believes the need to amend Form SHO may vary by familiarity with filing Form SHO. These costs may be more common for Managers who do not hold short positions often and are likely to decrease with time as Managers become more experienced with filing Form SHO. As part of updating systems to comply with the reporting requirements of Rule 13f–2, Managers must calculate the market value of their position using the official closing price as of the close of regular trading hours for the trade settlement date in question at the end of the month, which may not be the fair market value at the time in which the trade occurred.[675] However, the Commission believes that in most cases this will be a small burden on Managers as the data needed for the calculation will be publicly available and that Managers may already track the end of day fair market value of short positions. Even in cases that the reportable equity security is not traded on an exchange, the Commission believes that Managers may be able to calculate the value of their short positions by using publicly available closing prices from the OTC Reporting Facility. In circumstances where closing prices of non-reporting company issuers are not available, the Commission believes the tracking such information will still not impose a large burden as a Manager can use the price at which they last purchased or sold any share of that security, which will be readily available to the Manager.

b. Costs of Tracking Threshold Status

There will be costs associated with tracking short positions in relation to the threshold.[676] Particularly, after the last day of each calendar month, Managers must calculate their average short positions over the month to be aware if their average daily gross short position exceeds $10 million[677] or 2.5 percent of shares outstanding; or in the case of equity securities of non-reporting company issuers, if Managers meet or exceed a gross short position of $500,000 at the close of regular trading hours on any settlement date. However, the Commission believes that the Reporting Thresholds will generally limit the burden on Managers, in aggregate, as fewer Managers will be required to report than if the Commission did not adopt an amended reporting threshold. For example, the Commission believes that certain types of Managers that carry short positions will not meet a Reporting Threshold.[678] Additionally, certain types of Managers may be less likely to meet the threshold, resulting in lower overall costs for these Managers.[679] Using Form SH data, the Commission estimates that an average of 442 Managers were required to file Form SH each month under the threshold in place during temporary Rule 10a–3T. However, only 252 eligible Managers would have been required to file had Threshold A of adopted Form SHO been in place instead of the threshold in temporary Rule 10a–3T.[680]

Commission estimates that 252 Managers would have been required to file Form SH had Form SH been subject to the same $10 million and 2.5% threshold.

[668] *See infra* Part VIII.C.6.c and *infra* note 686. The lower estimate was calculated as follows: 2 hours per filing × $386 per hour for a programmer × 252 filings by Managers each month × 12 months = $2,334,528.

[669] *See supra* PRA Table 1 and accompanying text discussing amended Form SHO estimates. We maintain the assumption of 3.5% of Managers amending monthly in all of our estimated costs for amending Form SHO. Using the lower estimate of 252 Managers, this would result in 9 Managers filing amendments monthly. 20 hours per filing × 9 filings by Managers each month × 12 months × $251.36 per hour = $542,938.

[670] Using the lower estimate of 9 Managers filing amendments monthly would result in $83,376 to structure amended Form SHO filings in Form SHO-specific XML. 2 hours per filing × 9 filings by Managers each month × 12 months × $386 per hour = $83,376.

[671] *See supra* PRA Table 2. These costs are calculated by adding the costs for Form SHO Filings, Use of Structured XML-Based Data Language, Amended Form SHO Filings, and the amending Use of Structured XML-Based Data Language together. For the lower estimate, we calculate using 252 Managers filing each month annually and 9 Managers filing amendments monthly. ($15,202,252 + $2,334,528 + $542,938 + $83,376 = $18,163,094).

[672] Most Managers will be familiar with EDGAR filing requirements through other reporting obligations, such as Form 13F. *See supra* notes 193 and 452. *See also infra* Part VIII.C.6.c.

[673] *See supra* note 451 and *infra* note 711.

[674] *See* Form SHO, General Instructions at *Rules to Prevent Duplicative Reporting.*

[675] *See* Form SHO, General Instructions at INSTRUCTIONS FOR CALCULATING REPORTING THRESHOLD. *See also* PRA Table 2 in Part VII for an estimate of these burden hour.

[676] As stated in the proposing release, based on the number of registered investment companies reporting short positions and the number of hedge funds engaged in a strategy including short selling, we continue to anticipate that only a small fraction of Managers is likely to have monitoring responsibilities pursuant to the rule and, given the Reporting Thresholds and the modification of Threshold A, an even smaller fraction is likely to have reporting obligations. Proposing Release at 14998 n. 298.

[677] Under Proposed Form SHO, the threshold was triggered if a gross short position exceeded $10 million on a single day. Adopted Form SHO requires a daily average gross short position of $10 million over the month.

[678] *See supra* Part VIII.B.1 for a discussion on why certain types of Managers are more likely to have reporting requirements. For example, market makers and algorithmic technical traders are not likely to meet the thresholds because they generally close their positions by the end of the day.

[679] However, Managers that trigger a threshold(s) but do not currently report to EDGAR may face additional compliance costs associated with Rule 13f–2.

[680] The lower number of estimated reporting Managers in Form SHO compared to Form SH is due to the fact that the Reporting Thresholds are higher for Form SHO than Form SH in Threshold A (average daily gross position of $10 million vs. a single day threshold of $10 million, and 2.5% of shares outstanding vs. 0.25% of shares outstanding). This estimate differs from the Proposing Release due to modification of the part of the threshold from $10 million daily to $10

The Commission received several comment letters that described what they believed were the high cost of monitoring with respect to the thresholds to file Form SHO under Rule 13f–2.[681] One commenter stated that the cost of daily monitoring would be high, although no specific estimated cost is provided.[682] While the costs would likely be higher if firms choose to monitor daily, Rule 13f–2 does not require daily monitoring, either for reporting or non-reporting stocks.

For Managers engaged in shorting selling, the rule necessitates that Managers calculate their average daily gross short position in equity securities for which they have conducted short sales during that calendar month in order to know if they are required to file Form SHO within 14 days of the end of that month.[683] Managers may choose to do this calculation on a rolling basis, or to do the calculation after the month has ended. While some Managers may choose to incur the higher costs of daily tracking and calculation for purposes of compliance with Rule 13f–2, the final rule's reporting threshold is not based on a Manager's gross short position on a single trading date, reducing the need for daily tracking.

The Commission understands that the cost of tracking short positions might be higher for certain types of equity securities. For example, tracking the short position in an ETF as a percent of shares outstanding will be more difficult as the number of shares outstanding changes frequently. Additionally, Managers who hold short positions in non-reporting company issuers may have difficulty calculating the value of their position, however Managers may use the last price at which the Manager traded even though the price may be stale.[684]

c. Cost of Reporting Form SHO to EDGAR

Requiring Form SHO to be filed on EDGAR in Form SHO-specific XML will not impose significant incremental costs on Managers. The Commission expects most Managers who will be required to file Form SHO will likely have experience filing EDGAR forms that use similar EDGAR Form-specific XML data languages, such as Form 13F. In that regard, the process for filing Form SHO, as well as the XML-based data language used for Form SHO, will be similar to the filing process and data language used for Form 13F.[685] We expect that Managers with such experience that choose to file Form SHO directly in Form SHO-specific XML will incur some compliance costs associated with doing so.[686]

In addition, Managers will be given the alternate option of filing Form SHO using a fillable web form that will render into Form SHO-specific XML in EDGAR, rather than filing directly in Form SHO-specific XML using the technical specifications published on the Commission's website. We expect Managers who do not have experience filing Form 13F or other EDGAR Form-specific XML filings will likely choose this option. In that regard, Managers are only required to file Form 13F if they exercise investment discretion with respect to accounts holding section 13(f) securities having an aggregate fair market value on the last trading day of any month of any calendar year of at least $100 million.[687] Of Managers that do not have experience filing Form 13F, only a subset are subject to other EDGAR Form-specific XML filing requirements.[688] For any Managers that choose to file Form SHO using a fillable web form, whether or not they have prior experience with filing forms in EDGAR Form-specific XML, the Form SHO-specific XML requirement (*i.e.,* the requirement to place the collected information in a fillable web form provided by EDGAR, rather than in an HTML or ASCII document to be filed on EDGAR as is required for most other EDGAR forms) will not impose any additional compliance costs.[689]

d. Costs Associated With Reporting Bona Fide Market Making Locate Exception to CAT

The 25 Plan Participants will face costs associated with the CAT amendment, as they will be required to engage the Plan Processor to modify the Central Repository to accept and process new short sale data elements on order receipt and origination reports. Additionally, the Commission estimates an external cost of $4,522 per participant or $113,800 total to compensate the Plan Processor for staff time required to make the initial necessary programming and systems changes.[690] However, these initial costs might be higher if the Commission underestimated the time and wages necessary for programming and systems changes for the plan processor to accept and process new data elements. Furthermore, the Commission believes that CAT amendment will not impose additional ongoing cost to Participants beyond those costs already accounted for in existing Paperwork Reduction Act

million average daily over the month. Commenters questioned the use of Form SH data in this and other contexts. *See supra Box 1: Use of Form SH Data* for responses to comments on the use of these data.

[681] *See, e.g.,* MFA Letter, at 13; AIMA Letter, at 12–14; ICI Letter, at 5; Ropes & Gray Letter, at 2 and 5–7; SBAI Letter, at 4; SIFMA Letter, at 4, 7–8, and 13–19; T. Rowe Price Letter, at 3–4, Two Sigma Letter, at 6–7 and 10.

[682] *See* ICI Letter, at 11.

[683] As discussed in *supra* Part II.A.3, Managers with gross short sale positions that exceed a daily average during the previous month of $10 million or a daily average of 2.5% of a reporting firm's shares outstanding will have to file Form SHO. With regard to short sale positions of non-reporting firms, Managers will have to file Form SHO if their short sale position exceeded $500,000 on any single day during the previous month.

[684] *See supra* Part II.A.3.b for discussion of comments received related to tracking non-reporting company short positions.

[685] *See* EDGAR Filer Manual (Volume II) version 67 (September 2023), at 9–1 (''EDGAR Filer Manual Volume II'') (describing process for submitting Form-specific XML filings directly to EDGAR); see also Form 13F XML Technical Specification, *available at https://www.sec.gov/edgar/filer-information/current-edgar-technical-specifications.*

[686] *See supra* PRA Table 2 (estimating the ongoing burden for the Form SHO-specific XML requirement at two hours per Manager per filing and two hours per amended filing). These estimates conservatively assume that Managers will structure their filings in Form SHO-specific XML, incurring $772 (2 hours × $386 per hour for a programmer = $772) per filing or amended filing, rather than use a fillable form. Assuming 1,000 Managers filing 12 Form SHO filings per year would equal 12,000 filings per year, resulting in 24,000 total annual industry burden hours (12 filings x 1,000 Managers × 2 hours = 24,000) and $9,264,000 in industry costs for filings per year (24,000 hours * $386 per hour = $9,264,000) attributable to the Form SHO-specific XML requirement. In addition, based on an estimate of 420 amended filings per year, the total industry cost for the Form SHO-specific XML would be $324,240 for amended filings (420 amended filings × 2 hours per amended filing × $386 per hour = $324,240). As such, the total annual industry cost attributable to the Form SHO-specific XML requirement (including amended filings) is $9,588,240 ($9,264,000 for filings + $324,240 for amended filings = $9,588,240). Using a lower estimate of 252 Managers would result in $2,417,904 in total annual industry costs to structure initial and amended filings in Form SHO-specific XML. *See supra* note 517.

[687] *See* 17 CFR 240.13f–1(a).

[688] For example, registered brokers or dealers that are subject to the reporting requirements set forth in 17 CFR 240.17h–2T must file Form 17–H either electronically or in paper. Those that choose to file electronically must file Form 17–H partially in EDGAR Form-specific XML. Insurance companies may offer variable contracts that are registered under the Investment Company Act of 1940, and would thus be required to file annual reports on Form N–CEN in EDGAR Form-specific XML as well as, in some cases, monthly portfolio information on Form N–PORT in EDGAR Form-specific XML. Corporations may make exempt offerings and be required to file Form 1–A, Form C, or Form D in EDGAR Form-specific XML either in part or in full, depending on the nature of the offering.

[689] *See* 17 CFR 232.101(a)(1)(iv); 17 CFR 232.301; EDGAR Filer Manual Volume II at 5–1 (requiring EDGAR filers generally to use ASCII or HTML for their filed documents, subject to certain exceptions).

[690] *See supra* note 475.

estimates that apply for Rule 613 and the CAT NMS Plan approval order.[691]

The Commission believes that the CAT amendment involving the bona fide market making exception from the locate requirement will impose a one-time cost to Industry Members.[692] These costs will involve creating an additional field in the order origination report. Some broker-dealers will incur ongoing costs related to the recording of the use of the BFMM locate exception.[693] To the extent that broker-dealers are not already recording the use of the exception, broker-dealers may have costs to inputting the use of the exception into their current systems.[694]

The Commission recognizes that costs will vary broadly across Industry Members, particularly depending on whether the Industry Member outsources the provision of an order handling system and regulatory data reporting to a service provider. In the CAT NMS Plan Approval Order,[695] the Commission identified 126 Industry Members that do not outsource these activities. For these Industry Members, implementation is likely to require changes both to their order handling systems as well as their regulatory data reporting systems that produce their CAT reporting data. Additionally, 58 insourcing Industry Members will incur an aggregate initial cost of $870,000 or $15,000 individually to update systems to facilitate reporting the new bona fide market making exception elements to CAT.[696] However, this cost might be lower if the Commission is overestimating the number of insourcing industry members, in particular, the additional cost might drive some insourcing industry members to begin to outsource. The Commission believes that ongoing costs associated with reporting the newly required information to CAT will already be covered by ongoing cost estimates included in its cost estimates for the CAT NMS Plan. The Commission further believes that similar implementation and ongoing costs will be borne by each of the service providers that provide order handling systems and regulatory data reporting services to Industry Members that outsource these systems.

For Industry Members that outsource, the Commission believes that implementation costs will be far lower because the service bureaus that provide them with order handling systems and regulatory data reporting services will adapt those systems on their customers' behalf.[697] Additionally, 42 outsourcing industry members will incur an aggregate one-time cost of $42,000 or $1,000 individually to update systems to facilitate reporting the new bona fide market making exception elements to CAT.[698] However, these costs might be higher if some current insourcing industry members begin to outsource as a result of the increased costs, which will lead to an overall reduced cost for the rule as outsourcing is less costly than insourcing. The Commission believes that the costs of service bureaus adapting those systems will be passed to their Industry Member customers.

e. Comparison to Rule 10a–3T Costs

The Commission is cognizant of the burdens Managers experienced of filing Form SH in compliance with temporary Rule 10a–3T and has designed Rule 13f–2 and Form SHO to attempt to reduce those burdens. First, commenters on the temporary Rule 10a–3T stated that the 0.25 percent threshold was too low.[699] The two-pronged threshold in Rule 13f–2 is higher than the threshold in Rule 10a–3T, reducing the number of Managers likely to have a reporting obligation. For example, the Commission estimates that only 28 percent of positions reported under Rule 10a–3T will be required to report given the higher threshold in Rule 13f–2 and Form SHO, while still collecting 78 percent of the dollar value.[700] Additionally the threshold might be less burdensome to assess than the one in Rule 10a–3T because it requires the Manager to assess whether it is above the threshold on a monthly basis rather than on each individual day.[701] Second, many commenters believed that weekly reporting was overly burdensome.[702] The short selling information required by Rule 13f–2 and Form SHO will be reported less frequently (monthly rather than weekly) and will involve reporting end of month positions rather than daily positions. Third, Managers will have more time to compile and file the Form SHO reports than they had to compile Form SH.

Notwithstanding these cost-reducing differences, the Commission does recognize that other differences might offset some or all of these cost reductions. In particular, Rule 13f–2 and Form SHO will require that the information on activity include daily records if the Manager exceeds a position threshold that month rather than include daily records if the Manager exceeds an activity threshold that week.[703] Also, unlike the Form SH required under Rule 10a–3T, the Form SHO that will be required by Rule 13f–2 will feature an XML schema that will incorporate technical validations of certain data fields on the Form, and will flag technical errors and require the filer to correct the technical errors before successful submission on EDGAR. However, because the field validations implemented by Rule 13f–2 and Form SHO will be limited to technical errors (*e.g.,* letters instead of numbers in a field requiring only numbers) that will be straightforward to resolve, such resubmission costs will not be

[691] *See supra* Part VII.C.4 for more information on costs for CAT Plan Participants.

[692] *Id.*

[693] The Commission believes these costs will be comparable to those estimated in the Proposing Release in connection to the burden of marking an order. The Commission estimates that recording (marking) this information will take between 0.42 and 0.5 seconds per trade, with an annual time burden per Manager equal to 592–7,104 hours. *See* Table 3 from Proposing Release at 14975, *available at https://www.sec.gov/files/rules/proposed/2022/34-94313.pdf.*

[694] *See supra* Part IV.B for description of Industry Members' use of BFMM.

[695] *See* CAT NMS Plan Approval Order, 81 FR 84860.

[696] *See supra* Part VII.C.4.

[697] One commenter stated that support from third-party data service providers could make Form SHO reporting less burdensome. *See* S3 Letter, at 5.

[698] *See supra* Part VII.C.4.

[699] *See* Temporary Rule 10a–3T Comment letters (including Seward & Kissel LLP Letter), *available at https://www.sec.gov/comments/s7-31-08/s73108-43.pdf*; MFA Letter, *available at https://www.sec.gov/comments/s7-31-08/s73108-41.pdf*; IAA Letter, *available at https://www.sec.gov/comments/s7-31-08/s73108-38.pdf*; ICI Letter, *available at https://www.sec.gov/comments/s7-31-08/s73108-47.pdf*; SIFMA Letter, *available at https://www.sec.gov/comments/s7-31-08/s73108-52.pdf. See also supra* Part III.D.2. (for more information on Threshold A using Form SH data).

[700] *See* Proposing Release at Economic Analysis Table I: Various Threshold Levels for Monthly Average Positions and Monthly Maximum Dollar Value. However, the Commission recognizes that temporary Rule 10a–3T was in effect in 2008–2009 and the market may be different, particularly the average short position may be larger. Only Managers that exercise investment discretion with respect to accounts holding section 13(f) securities having an aggregate fair market value of at least $100 million were required to file Form SH. Additionally, the data lacked data validation according to the needs of the end user when filed, making the data hard to work with.

[701] This example assumes the equity is from a reporting company. Thresholds for non-reporting companies are triggered following a single day in which the short sale position exceeds $500,000. *See supra* Part II.A.3

[702] *See supra* note 697 for the comment letters in note, as well Coalition of Private Investment Companies letter, *available at https://www.sec.gov/comments/s7-31-08/s73108-46.pdf.*

[703] Rule 10a–3T required institutional investment managers to report beginning and end of day short position, number of securities sold short each day if the particular data item exceeded the threshold. *See* P 3 final Rule 10a–3T, 73 FR 61678 (Oct. 17, 2008), *available at https://www.sec.gov/rules/final/2008/34-58785fr.pdf.* However, in analysis of Form SH data intraday short selling volume could not be examined for Form SH because the data field for ''Number of Securities Sold Short'' was populated in only 7% of observations after filters were applied. *See* Proposing Release note 80 at 14963 for more information on short volume in Form SH data.

significant. Finally, the rule might impose costs on Managers who were not required to report Form SH because Rule 10a–3T and Form SH did not apply to Managers that exercise investment discretion with respect to accounts holding section 13(f) securities with an aggregate fair market value of less than $100 million.

f. Other Compliance Costs

One commenter stated that the Commission should consider that ''the sheer number and complexity of the Proposals, when considered in their totality, if adopted, would impose staggering aggregate costs, as well as unprecedented operational and other practical challenges.'' [704] But, consistent with its long-standing practice, the Commission's economic analysis in each adopting release considers the incremental benefits and costs for the specific rule—that is the benefits and costs stemming from that rule compared to the baseline. In doing so, the Commission acknowledges that in some cases resource limitations can lead to higher compliance costs when the compliance period of the rule being considered overlaps with the compliance period of other rules. In determining compliance periods, the Commission considers the benefits of the rules as well as the costs of delayed compliance periods and potential overlapping compliance periods.

In this regard, some commenters mentioned the proposals which culminated in the recent adoptions of Rule 10c–1a, Beneficial Ownership Reporting, Private Fund Advisers, Settlement Cycle Adopting Release, and May 2023 SEC Form PF Amending Release.[705] The Commission acknowledges that there are compliance dates for certain requirements of these rules that overlap in time with the final rule, which may impose costs on resource constrained entities affected by multiple rules.[706]

However, we do not think these increased costs from overlapping compliance periods will be significant for several reasons. First, the number of Managers who will also be subject to one or more of these recently adopted rules could be limited; we estimate that 252 to 1000 Managers may be required under the final rules to report on new Form SHO, and of those, depending on their activities, only a portion may also be required to comply with one or more of the recently adopted rules raised by commenters (and even fewer may need to comply with more than one of those other rules).[707] In addition, commenters' concerns about the costs of overlapping compliance periods were raised in response to the proposal and as discussed above, we have taken steps to reduce costs of the final rule.[708] Finally, although the compliance periods for these rules overlap in part, the compliance dates adopted by the Commission are generally spread out over more than a two-year period from 2023 to 2026.[709]

7. Effect of Certain Electronic Filing and Dissemination Requirements

Rule 13f–2 and Form SHO will require the short position and activity disclosures to be filed on the Commission's EDGAR system using a structured, machine-readable data language. In particular, the rule and Form will require Form SHO to be filed on EDGAR in a custom XML-based data language specific to that Form (''custom XML,'' here ''Form SHO-specific XML''). The XML schema for Form SHO-specific XML will incorporate validations of certain data fields on the Form to help ensure consistent formatting and completeness.[710] While the field validations will act as an automated form completeness check when a Manager files a Form SHO, the field validations will not be designed to verify the accuracy of the information filed in Form SHO filings. EDGAR will subsequently aggregate the reported information at the equity security level and release the aggregated data to the public on EDGAR. These requirements will incrementally augment the various effects of the short position and activity disclosures discussed herein by enhancing the accessibility, usability, and quality of the Form SHO disclosures (for use by the Commission) and the aggregate security-level disclosures (for use by the public). By requiring a structured machine-readable data language and a centralized filing location (EDGAR) for the disclosures on Form SHO, the Commission will be able to access and download large volumes of Form SHO disclosures in an efficient manner. To the extent that the efficiencies derived from the centralized filing of the Form SHO disclosures facilitate more rapid Commission response to potential market manipulation, investors could indirectly benefit from the fact that such practices are detected, and possibly addressed, earlier than might otherwise be the case.

One commenter agreed with the Commission's proposal to require Managers to provide Form SHO in EDGAR in a Form SHO-specific XML.[711] Another commenter stated that ''XML is a widely used language and therefore implementation and maintenance would keep costs low and efficiency high.'' [712]

Similarly, the provision of the aggregated security-level information at a centralized, publicly accessible location in a structured, machine-readable data language, will enable investors and other public data users to download the aggregated information

[704] NAPFM Letter 3.

[705] *See supra* note 499. As stated above, commenters also specifically suggested the Commission consider potential overlapping compliance costs between the final rule and certain proposing releases. *See supra* note 505. These proposals have not been adopted and thus have not been considered as part of the baseline here. To the extent those proposals are adopted in the future, the baseline in those subsequent rulemakings will reflect the regulatory landscape that is current at that time.

[706] *See supra* notes 500–504 (summarizing compliance dates).

[707] For example, broker-dealers who need to report on Form SHO under Rule 13f–2 will also need to comply with Settlement Cycle Adopting Release but may not need to comply with the requirements of any of the other recently adopted rules.

[708] The final rule mitigates costs relative to the proposal in three ways. First, the reporting threshold for the U.S. dollar value-based prong for reporting company issuer securities is being adopted as a monthly average, rather than the daily end-of-day calculation that was proposed. *See supra* Part II.A.3.b. Second, Form SHO is being adopted without the proposed requirement to report hedging classifications in Information Table 1, and includes a streamlined Information Table 2, which reduces the form's complexity and the granularity of the information reported. *See supra* Parts II.A.4.d.iii, II.A.4.d.iv. Third, proposed Rule 205 and related CAT reporting requirements are not adopted. *See supra* Part III.B.

[709] For example, compliance periods for the May 2023 SEC Form PF Amending Release and the Settlement Cycle conclude by mid-2024 while reporting under the final rule will be required by the end of 2024 at the earliest. Similarly, certain compliance deadlines for Rule 10c–1a extend into early 2026. *See supra* notes 500–504.

[710] *See supra* Part II.A.4.b. Field validations are restrictions placed on each data element which would not allow a filer to file a form if there are certain technical errors in critical fields. If a Form SHO were to include, for example, letters instead of numbers in a field requiring only numbers, it would be flagged as a technical error, at which point the filer would either be unable to file the Form (if completed using the fillable web form provided by EDGAR) or the filing would be rejected (if directly filed in EDGAR in Form SHO-specific XML). To complete the filing, the filer would need to correct the error and re-file.

[711] *See* Comment Letter from Aaron Franz, *available at https://www.sec.gov/comments/s7-18-21/s71821-20120685-272855.pdf* (''This form and forum are ideal for reporting purposes. Further, since the Form SHO is proposed to be published in XML format it should be easy for Managers to automate the process of filling and filing the Form SHO.'').

[712] ''[XML] would also allow for easy parsing and review of the data. The costs shouldn't vary very much between managers as the SHO form should be uniform for all managers, which means they will all use similar implementations to conform to its usage.'' Anonymous Comment Letter (Apr. 4, 2022), *available at https://www.sec.gov/comments/s7-08-22/s70822-20122297-278355.htm.*

directly, and the data might then be analyzed using various tools and applications. Placing the security-level information someplace other than a centralized location in a structured, machine-readable language would mean that data users seeking to analyze the information using tools and applications would need to search for, extract, and structure the security-level short position and activity information or pay a third-party vendor to do so.

Requiring the short position and activity disclosures to be filed in Form SHO-specific XML will facilitate more thorough review and analysis of the reported short sale disclosures by the Commission, which will increase the efficiency and effectiveness with which the Commission could identify manipulative short selling strategies—which may also serve as a deterrent to would be manipulators and thus may help prevent manipulation.

The requirement for short sale disclosures to be filed on EDGAR in Form SHO-specific XML will result in additional incremental compliance costs on filing Managers. These direct compliance costs are detailed in a subsequent section.[713] Moreover, to the extent these incremental compliance costs further chill the incidence of short-selling, the EDGAR and Form SHO-specific XML requirements will increase the likelihood of the indirect costs that are discussed elsewhere in Parts VII.C.2, VII.C.3, VII.C.4, and VII.C.6.

Some commenters expressed concerns with regard to the risks of cyber criminals accessing non-public Form SHO data.[714] Although the SEC is not exempt from cyberattacks, the Commission is pursuing several actions to protect SEC data and strengthen the EDGAR system as described above. The Commission recently deployed security and modernization enhancements focusing on technology upgrades to the EDGAR system.[715] The Commission recognizes that the Rule collects sensitive information and that, while the likelihood of a data breach is low, the costs of a data breach could be substantial. These costs include but are not limited to the following: trading losses that could occur due to the revelation of private trading strategies or economic positions which may enable identifying and trading opportunistically around such strategies, such as facilitating a short squeeze; business disruptions that could occur if the data breach results in temporary system down time; data breach response costs as market participants must devote resources to determining how to respond to the data breach; and reputational harm to individual Managers and the broker-dealers that employ them. While the potential costs of a breach, to the extent that one occurs, could be severe, RNSAs, ATSs, and SROs, are currently subject to existing requirements designed to improve the resiliency and oversight of securities market technology infrastructure, such as Regulation Systems Compliance and Integrity (''Regulation SCI'') (17 CFR 242.1000 through 242.1007). Adherence to such regulations can reduce the probability of a data breach and mitigate the costs associated with a breach, should it occur.

As stated previously, one commenter stated that the LEI and the FIGI of issuers is ''not commonly provided'' in other holding reports and would therefore cause Managers to incur additional costs.[716] While LEIs are widely used in the global financial markets (for example, the Commission currently requires funds to identify themselves with LEIs in portfolio holding reports on Form N–PORT),[717] we agree that there are costs associated with obtaining and maintaining LEIs. Currently, U.S. entities may obtain an LEI for a one-time fee of $60 and an annual renewal fee of $40.[718]

FIGIs also are widely used in the financial markets, and the Commission recently added FIGI as an optional securities identifier on Form 13F.[719] Further, FIGIs, which are automatically assigned and are retrievable and redistributable without licensing restrictions and at no cost,[720] are not expected to result in compliance costs for reporting persons. Lastly, firms can use identifier mapping tables, and thus likely would not need new technology systems to accept LEIs and FIGIs.[721] However, the Commission recognizes that Managers who do not currently use those identifiers and who do not already have identifier mapping capabilities in their data systems would incur one-time costs to build such functionality.

8. Potential Increased Use of Derivatives

The Commission recognizes the risk that the benefits of Form SHO data could be diminished to the extent that Managers avail themselves of economically similar arrangements. For example, Managers might consider trading derivatives in place of engaging in short selling, particularly for stocks with liquid options.[722] Benefits might similarly be diminished if a robust single-stock futures market develops over time.[723] Indeed, Rule 13f–2 and its accompanying Form SHO might be a catalyst for growth in derivatives markets if short sellers were to look for avenues to take the economic equivalent of short positions that did not require similar disclosures.

The Reporting Thresholds in Rule 13f–2 are based on a Manager's gross short position in the equity security itself, and do not consider derivative

[713] *See supra* Part VIII.C.6.

[714] *See* MFA Letter, at 8 and Two Sigma Letter, at 5.

[715] *See* Annual Report on SEC website Modernization Pursuant to Section 3(d) of the 21st Century Integrated Digital Experience Act (Dec. 2022), *available at https://www.sec.gov/files/21st-century-idea-act-report-2022-12.pdf.*

[716] MFA Letter, at 9.

[717] Item A.1.d and Item A.2.c of Form N–PORT. *See also* Item B.1.d of Form N–CEN (requiring funds to disclose their LEIs on annual reports); 17 CFR 242.903(a) (requiring security-based swap participants to report LEIs to swap data repositories). Additionally, other U.S. and foreign regulators require firms to identify themselves with LEIs. For example, Commodity Futures Trading Commission (CFTC) regulations require counterparties to swaps, including interest-rate swaps, to report their LEIs. *See* 17 CFR 45.6 (CFTC LEI requirement for parties to swap transactions).

[718] A U.S. entity can currently obtain and renew an LEI from one of eleven LEI operating units. *See Get an LEI: Find LEI Issuing Organizations,* Glob. Legal Entity Identifiner Found., *available at https://www/gleif.org/en/about-lei/get-an-lei-find-lei-issuing-organizations* (2003). One LEI operating unit currently discloses an initial fee of $60 and a renewal fee of $40. *See Frequently Asked Questions, Fees, Payments & Taxes*, Bloomberg LEI, *available at https://lei.bloomberg.com/docs/faq#what-fees-are-involved* (2023).

[719] Special Instruction 11.b.iii of Form 13F. Based on Commission staff analysis of Form 13F filings in EDGAR, at least 500 unique filers have included FIGIs on their Form 13F filings since the amendments to Form 13F became effective on January 3, 2023. As of the second quarter of 2022, 1 billion FIGIs had been assigned to financial instruments. *Financial Instrument Global Identifier Newsletter Q2 2022,* OpenFIGI (June 30, 2022), *available at https://www.openfigi.com/about/news/2022/6/30/financial-instrument-global-identifier-newsletter-q-2-2022.*

[720] Allocation Rules for the Fin. Instrument Glob. Identifier (FIGI) Standard (Object Mgmt. Grp. & Am. Nat'l Comm. X9, amended 2022) section 1.2.1, *available at https://www.openfigi.com/assets/local/figi-allocation-rules.pdf* (''FIGI Allocation Rules''); *Symbology, OpenFIGI, available at https://www.openfigi.com/about/symbology.* FIGI is an open-source, non-proprietary data standard for the identification of financial instruments across asset classes. FIGI Allocation Rules sections 1.1.1, 1.2.1, 1.4.1. The Share Class level FIGI is assigned to equities and funds, and enables users to link multiple FIGIs for the same instrument to obtain an aggregated view for that instrument across all countries globally. *Id.* section 1.4.3.

[721] FIGI allows users to link various identifiers for the same security to each other, which includes mapping the FIGI of a security to its corresponding CUSIP number. *See Financial Instrument Global Identifier,* OMG Standards Dev. Org. (2023), *available at https://www.omg.org/figi/.*

[722] *See supra* note 527, R. Battalio, and P. Schultz (2011), Grundy, Lim, and Verwijmeren (2012). One commenter agreed that this is a likely outcome. *See* Better Markets Letter at 9–10.

[723] *See supra* note 527, Jiang, Shimizu, and Strong (2019).

positions. Consequently, a Manager seeking to build a large short position without incurring a reporting obligation might hold a short position just below a Reporting Threshold and use derivatives to take positions that effectively rise above that threshold.[724] One commenter stated that this may be viewed as regulatory arbitrage.[725]

Using derivatives to establish an economically equivalent short position that does not include a reporting obligation may be costly. Options tend to be more expensive than equity transactions, particularly for less liquid securities. Additionally, some equities do not have listed options. Consequently, the Managers' desire to avoid the costs associated with reporting Form SHO information articulated in Parts VIII.C.1 and VII.C.2 is balanced against the increased cost of using derivatives such as options to execute a short position. Thus, for some stocks, *i.e.,* those with illiquid or non-existent options, the likelihood that Managers will seek to employ alternative arrangements through options may be minimal. However, academic research has shown that investors have used options as an alternative means to obtain short-like economic exposure when short selling is restricted, thus there is a significant risk that there will be some attempt to employ alternative arrangements using derivatives, particularly in stocks with liquid options markets.[726]

D. Efficiency, Competition and Capital Formation

1. Efficiency

Markets function best and are most efficient when all relevant information regarding a security is known and is incorporated into prices.[727] This includes negative information. When negative information is not tradable, stocks tend to be overpriced, leading to an inefficient allocation of capital across the economy.[728] More efficient prices lead to better economic outcomes for the macro economy as capital flows into high value projects and out of low value projects. Short sellers have incentive to uncover negative information and to trade in order to profit from that information.[729] As discussed in Part VIII.D.2, more transparency in short selling will improve the amount of information that investors have to value a stock—increasing price efficiency. However, it might also disincentivize fundamental research which may harm price efficiency by limiting the amount of total information has been discovered, and thus, limiting the amount of information incorporated into stock prices. Overall, the impact of the adopted rule and CAT amendment on price efficiency is uncertain.[730]

Additionally, the CAT amendment will improve the efficiency of the Commission's oversight and enforcement of regulations relating to the bona fide market making exception by providing more efficient access to data on how individual market makers are using the exception. Currently, the Commission must request information about the use of the market maker exception from specific broker-dealers.[731]

2. Competition

Investors compete with one another to gather information that they use to enact trading strategies. Academic research indicates that when short selling is costly, investors owning the asset have an advantage in gathering information due to the reduced cost of acting on whatever information that they gather.[732] The final rule may increase this advantage since it will increase the cost of short selling for Managers above the Reporting Thresholds, as discussed in Parts VIII.C.1 and VIII.C.2. Relatedly, fund performance is a key determinate of drawing investor flows. The Commission believes that Rule 13f–2 and Form SHO might harm competition for fund flows between Managers who do and do not use short selling strategies. For instance, Managers that are skilled at uncovering negative information may face additional costs when transacting on this information, potentially leading to lower returns.

The Commission believes that the CAT amendment will not alter significantly the competitive landscape for broker-dealer services. Because small broker-dealers are likely to use a service bureau to report their CAT data,[733] the Commission believes that implementation costs will be borne by service bureaus and are likely to be recovered across many service bureau-client broker-dealers. Individual small broker-dealers may face expenses in configuring service bureau software packages, but these expenses are likely to be one-time and modest because the bulk of implementation activities will have been performed by the service bureau.[734] Because larger broker-dealers that self-report CAT Data enjoy economies of scale, they should be able to absorb the costs associated with compliance more easily, and they may choose to contract with a service bureau if implementation is unusually burdensome due to the operation of multiple legacy order-handling systems.

In addition, as stated above, some commenters requested the Commission consider interactions between the economic effects of the proposed rule and other recent Commission rules, as well as practical realities such as implementation timelines.[735] As discussed above, the Commission acknowledges that overlapping compliance periods may in some cases increase costs.[736] This may be particularly true for smaller entities with more limited compliance resources.[737] This effect can negatively impact some competitors because these entities may be less able to absorb or pass on these additional costs, making it more difficult for them to remain in business or compete. However, the final rule mitigates overall costs relative to the proposal,[738] and we do not believe these increased compliance costs will be significant for most Managers.[739] We therefore do not expect the risk of negative competitive effects from increased compliance costs due to simultaneous compliance periods to be significant.

3. Capital Formation

One of the primary roles of the securities markets is to allocate capital

[724] While combining short positions with derivatives may allow a Manager not to trigger the Reporting Thresholds, using options may trigger a report to FINRA's LOPR. *See supra* note 78.

[725] *See* Law and Finance Professors Letter, at 3.

[726] *See supra* note 527.

[727] *See* Eugene F. Fama, Efficient Capital Markets a Review of Theory and Empirical Work, *The Fama Portfolio* 76–121 (2021).

[728] *See supra* note 624.

[729] *See supra* Part VIII.C.2 for discussion of short selling motivation.

[730] *See supra* Part VIII.C.2 for discussion of price efficiency effects.

[731] *See supra* Part VIII.B.3 for a further discussion of the inefficiencies of existing data with regards to oversight and enforcement of rules relating to bona fide market making. In examinations and enforcement matters, the Commission has used broker-dealer trade blotters in combination with other regulatory data to consider whether conditions were met for the use of BFMM locate exemptions.

[732] *See* Dixon (2022), *supra* note 581.

[733] *See* Rule 613 Adopting Release for the Commission discussion of CAT costs to broker-dealers.

[734] *See supra* Part VIII.C.6 for a discussion of compliance costs.

[735] *See supra* Part VIII.C.6.

[736] *See id.*

[737] *But see supra* Part VII.B.2 and *infra* Part IX (the Commission anticipates that the type of Manager that will trigger a reporting threshold likely already has sophisticated information technology and the ability to automate reporting; and that the reporting thresholds will not apply to a significant number of small Managers).

[738] *See supra* note 706 and accompanying text.

[739] *See supra* Part VIII.C.6.f.

(money) across the economy. If investors believe that a company is undervalued then, all else being equal, they will buy that stock; if many investors buy the stock, the price for that stock will increase—lowering the cost of equity financing and making funding projects easier for the firm. On the other hand, if investors believe that a company is overvalued then, all else being equal, they will sell or short sell the stock to invest in other more profitable ventures. If enough investors sell or short the stock, then the stock price will decline. A lower stock price implies more expensive equity financing and thus a higher weighted average cost of capital. When stocks are overpriced, they are inherently allocated too much capital, which deprives more productive ventures from receiving optimal capital and hinders economic progress. Consequently, short sellers contribute to capital formation by enhancing price efficiency which helps to ensures an optimal allocation of capital across firms. Thus, to the extent that the adopted rule and CAT amendment discourage short selling, as discussed in Parts VIII.C.1 and VIII.C.2, it may lead to the overpricing of some stocks and the underpricing of others.[740] This mispricing distorts optimal capital formation as it implies that some firms may have a cost of capital that is relatively too high or too low with respect to that firm's fundamentals and risk profile.

Additionally, academic research suggests that managers learn from stock price changes, using them as a way to tap into the 'wisdom of crowds' phenomena to improve decisions.[741] For instance, if a firm announces a capital investment or other project, and the stock price moves up or down, then managers may use this information as a signal about the market's perception of the value of that project. Thus, stock price reactions may be an input into manager decisions in terms of when and how to invest capital. To the extent that the rule discourages short selling, it may make it more difficult for managers to extract signals from stock prices about the value of capital investments—particularly low value projects as the rule may attenuate the market's ability to respond to negative information.

The costs associated with Managers monitoring their short positions for compliance with reporting Form SHO along with the negative economic effects detailed in Parts VIII.C.1, VIII.C.2, and VIII.C.7 may harm capital formation, specifically capital formation using convertible debt, if it increases the cost of short selling. Investors may be less inclined to purchase convertible debt if the cost of hedging that purchase by short selling the security becomes more expensive—through both the direct and indirect costs associated with Form SHO.[742] Thus, to the extent that the costs associated with Form SHO increase the cost of short selling they may also increase the cost of hedging convertible debt and may make that form of financing more expensive. This effectively increases the weighted cost of capital for firms that use convertible debt and may hinder their ability to fund operations, including new investments.

In contrast, adopted Rule 13f–2, Form SHO, and the CAT amendment may have a positive influence on capital formation if they disincentivize short selling that takes place in connection with securities fraud. For example, in one type of fraud, investors holding convertible debt would engage in a manipulation including short sales of a stock in an attempt to drive down the price artificially in order to convert their debt to equity and cover their short positions at a lower price. To the extent that the rule facilitates better oversight and prosecution of this sort of fraud, it may facilitate capital formation by lowering the risk that convertible debt holders will engage in this sort of fraud. More generally, to the extent that enhanced oversight of short sale activity deters manipulative activity such as short squeezes and associated price bubbles stemming from short squeezes, price efficiency may be enhanced, which in turn, could further promote capital formation.

Rule 13f–2 may also affect capital formation through investor confidence. Some commenters on FINRA's short interest proposal suggested that short selling, and in particular a lack of short selling disclosure, leads some investors to have less confidence in financial markets.[743] One commenter, however, stated that, "Rule 13f–2 will not promote greater risk management among market participants, and hence, not bolster confidence in the markets by providing greater transparency," because investors already use aggregate short interest data from FINRA, the exchanges, and data vendors for risk management purposes.[744] As discussed throughout this release, the Commission, however, believes that the data from Form SHO and the amendment to CAT will provide information that is additive to these and other data sources and will therefore improve short selling transparency and strengthen investor confidence, which might increase investment activity and, in turn, promote capital formation.

E. Reasonable Alternatives

1. Alternative Approaches

a. Releasing Aggregated CAT Data

As an alternative to collecting, aggregating, and publishing Form SHO, the Commission considered amending the CAT NMS Plan to collect additional information so that the Commission or the Plan Processor could aggregate and publish CAT Data. This alternative would effectively eliminate the thresholds for reporting.[745]

CAT data currently contains a short sale mark and, as part of the implementation of the Customer Account Information System (CAIS), will also provide the identities of those transacting. Consequently, the Commission or the Plan Processor could aggregate information on the number of short sales that Managers engage in from CAT, assuming that the Commission or the Plan Processor could determine that a transaction is by or on behalf of a Manager, and disseminate aggregated information to the public at monthly intervals—or more frequently. The Commission or Plan Processor could publish daily statistics on the number of short sales engaged in by Managers each day in the prior month as reported in CAT. Additionally, the reports could include information on options transactions that lead to short exposure, such as purchasing a put option, or writing a call option.[746] Furthermore, a longer time series (for example, a rolling year) to estimate a Manager's position could be aggregated using CAT data. These could be aggregated to create a market-wide short position estimate. However, this estimate would be inaccurate because the alternative does not consider collecting in CAT information on changes in positions that come from activity other than secondary market transactions, such as secondary offering purchases, conversions, creations and redemptions, and option

[740] *See supra* note 624, Miller (1977).

[741] *See* I. Goldstein and A. Guembel, *Manipulation and the Allocational Role of Prices,* 75 (1) The Rev. of Econ. Studies 133–164 (2008).

[742] *See, e.g.,* Stephen J. Brown, Bruce D. Grundy, Craig M. Lewis and Patrick Verwijmeren, *Convertibles and Hedge Funds as Distributors of Equity Exposure,* 25 (10) Rev. Fin. Stud 3077–3112 (Oct. 2012).

[743] *See* letters from NASDAQ, OTC Markets, and CFA Institute in response to FINRA's short interest proposal) *available at https://www.finra.org/rules-guidance/notices/21-19#comments.*

[744] *See* SBAI Letter, at 3.

[745] *See* Proposing Release, at 15003.

[746] In this alternative, however, CAT would not contain the information on option expirations or assignments.

exercises and assignments. This inaccuracy could also result in the market-wide short position estimate being less accurate than current short interest data.[747]

The alternative would result in lower benefits than those from Rule 13f–2 and the disclosures Form SHO requires. The data published under this alternative would have significant overlap with the data that would be published under Rule 13f–2 and Form SHO. However, again assuming that the Commission or the Plan Processor could determine that a transaction is by or on behalf of a Manager, the data in this alternative could be more comprehensive in terms of the breadth of Managers whose short selling information could be aggregated and published,[748] because the Commission could publish aggregated data on short selling transactions from all Managers instead of just those that meet the threshold. However, the published data would be less accurate in terms of estimating positions and changes in positions as they would not include certain activity, such as options assignments, that are not collected in CAT but that may affect a short position. As a result of these differences, this alternative would result in less clarity about bearish sentiment among Managers. Thus, in terms of price efficiency, this approach would not have many of the same benefits as adopted Rule 13f–2 and Form SHO.

The alternative would also reduce the benefits of comparing the published data to short interest because the alternative would focus on transaction dates rather than settlement dates and the alternative would not be restricted to large positions.[749] Short interest measures short positions as of two settlement dates per month. A comparison of the data in the alternative to the short interest data would require either publishing the position data as of the transaction dates that correspond to the short interest settlement dates or users would have to use the activity data to offset the dates themselves. Further, the inclusion of more than just Managers with large short positions means that the information conveyed by the alternative relative to short interest data would be less additive than the data provided that will be provided by adopted Rule 13f–2 and Form SHO.

This alternative would mitigate some of the concerns associated with Managers being exposed to increased risk of short squeezes or other retaliation as discussed in Parts VIII.C.1 and VIII.C.2. This reduced risk stems from the fact that it would be more difficult to determine whether the short selling activity reported was due to many Managers short selling small amounts, or just a few Managers short selling large amounts. It would also be more difficult to identify individual short sellers based on the data. A lower risk of retaliation or short squeezes may also mitigate some of the negative effects of Rule 13f–2 and Form SHO with regard to less overall short selling or fundamental research that are described in Part VIII.C.2, depending on the delay in publication under the alternative.

Additionally, this approach would have lower compliance costs for Managers than the current proposal, as it would not require Managers to file Proposed Form SHO. One commenter agreed that releasing CAT data with short sale information would be less costly for Managers than Proposed Form SHO.[750] While it would result in the same costs for Industry Member reporting as those associated with the CAT amendment, it would increase costs associated with the Plan Processor improving processing power for the aggregation of CAT data if such computations could not be performed with existing resources (without reducing other functionality). Any costs incurred by the Plan Processor would be passed along to Plan Participants and Industry Members.

There are several drawbacks to this alternative relative to the existing proposal. First, it would take some time before CAT data could be used to develop an estimate of the size of short positions. Thus, the data would not immediately provide the Commission or market participants with information about the size of individual large short positions. Consequently, to the extent that knowing the total size of short positions held by Managers with large positions conveys fundamental information to the market, then this fundamental information would not be immediately available if the Commission were to adopt a version of this alternative. Additionally, the data provided by this alternative would exclude transactions outside of the purview of CAT that may affect short positions. Thus, the data provided under this alternative would always be estimates of total short positions, which could be inaccurate for some Managers. Another drawback to this alternative is that releasing CAT data to the public could increase security risks. CAT contains highly sensitive information and creating a process that would release portions of the data, even if aggregated, could present risks.

A larger expansion of CAT could achieve at least the same data value as in Rule 13f–2 and Form SHO.[751] For example, CAT could expand to require the reporting of all the information that will be collected in adopted Form SHO. Specifically, the Commission could expand CAT to include data on account positions, including short selling positions associated with those positions. In addition, CAT could be expanded to capture information on changes in those positions. Under this approach, regulators would have access to the same data as if Managers filed Form SHO but for all short sellers, not only the subset of Managers reporting on Form SHO. This approach would also result in additional information available to regulators not collected in Form SHO that could improve investor protections. In addition, this alternative would reduce costs for Managers who are not Industry Members because they would not be required to report new information. However, costs would increase for Industry Members, who would have to report a significant amount of new information on CAT report types that do not exist today and for Participants who would have to work out technical specifications and implement changes for new types of CAT reports. Further, more Industry Members would report this information to CAT than Managers who, under the final rule, would be required to report information on Form SHO. It would be a major undertaking for both the Plan Processor and industry participants to build out and adapt systems to collect, process, and publish this information. This implementation would likely be very complex and take a significant amount of time to compile. Overall, the cost of this alternative is likely to exceed the costs of adopted Rule 13f–2 and Form SHO.

Further, if the Commission were to expand CAT to collect additional information beyond what would be captured by the amendment to CAT, such as position information, then these additional expansions would impose significant direct costs to CAT-reporting firms.

[747] FINRA's process of gathering and validating short interest data takes approximately two weeks. *See supra* note 561.

[748] This assumes the Managers that could be identified in CAT could include all those that would be responsible for reporting under Proposed Rule 13f–2 and Proposed Form SHO.

[749] Adopted Rule 13f–2 requires reporting based on the settlement date, which is normally two business days after the transaction day.

[750] *See* SBAI Letter, at 2.

[751] *See* Proposing Release, at 15004.

a. FINRA Reporting

As discussed in Part VIII.C.4.i, FINRA already collects and, together with the listing exchanges, disseminates aggregate short interest that it collects from member broker-dealers. Consequently, the Commission could codify FINRA's existing process to ensure that it continues in perpetuity.[752] This alternative would have no additional costs to market participants but would substitute a Commission mandate for the publication of the short interest data. Several commenters expressed support for the use of FINRA to satisfy DFA requirements in lieu of Rule 13f–2 and Form SHO.[753] The commenters' support is motivated by familiarity with current FINRA short reporting requirements and costs that would not be incurred to comply with Rule 13f–2 and Form SHO.

Similarly, the Commission could require FINRA to publish a version of its short interest information that specifically identifies the aggregate short interest of Managers—separate from other short interest.[754] To accomplish this, reporting broker-dealers would separately include in their reports to FINRA the short positions that originate from Managers. FINRA would then compile both total short interest, as it currently does, as well as a Manager specific short interest. Because broker-dealers already have experience reporting short interest data to FINRA and would thus not need to build out new systems to report the data, this alternative might have been less expensive than the existing proposal as it would have only required a modification of an existing process. Since this alternative would not have provided the Commission with the positions of any identified Managers or any Manager-specific activity data, the benefits and risks associated with these data articulated throughout Part VIII.D would decline. In addition, it would not have distinguished Managers with large positions from other Managers. Therefore, neither market participants nor regulators would know what share of short interest was concentrated among Managers with large positions. As discussed above in Part VIII.C.1, Managers often accumulate large short sale positions based on fundamental market research or other factors that differ from investors with smaller positions, the latter of which are more likely shorting for hedging or smaller-scale speculative purposes. Therefore, this alternative would have provided less transparency into the short sale market relative to the Rule 13f–2 and Form SHO because it would not have revealed the degree to which short interest was concentrated among Managers with large positions.

The Commission also expects that data on Manager short interest in addition to total short interest would have likely not provided much incremental value over the existing short interest data due to the likely significant overlap of the short positions of Managers and total short interest, and the absence of activity information to better understand changes in short interest.[755] Thus, while the alternative that requires FINRA to produce separate short interest data for Managers would have reduced costs to market participants relative to the existing proposal, it also might not have provided the market or regulators a significant incremental benefit relative to existing short selling data.

b. Broker-Dealer Reporting to EDGAR on Behalf of Managers

The Commission could adopt a modified rule that allows broker-dealers to file Form SHO reports with the Commission on behalf of Managers.[756] This alternative might reduce costs as it could concentrate reporting with broker-dealers that have significant experience collecting and providing such information—increasing operational efficiency. On the other hand, Managers may use multiple prime brokers and thus the reporting prime broker may not have easy access to information about all such Manager's positions and activity in a security. Consequently, the reporting prime broker may not know whether the sum of the manager's positions exceeds either of the thresholds and thus whether reporting is necessary. Thus, the reporting broker would need to gather additional information from the Manager about activity associated with other prime broker(s).[757] In the absence of such information gathering, the reporting broker may mistakenly not report Form SHO for a Manager whose position with that particular reporting broker is under the threshold, but over the threshold when positions across brokers are combined. Requiring additional data collection of a Manager's short positions by the reporting broker might increase complexity and costs as Managers and broker-dealers would need to develop systems by which a Manager provides information to its reporting broker about its activity with other prime brokers. Alternatively, the Commission could permit broker-dealers to report on behalf of Managers only if the broker-dealer could report full information. Thus, Managers using multiple prime brokers would have the option of providing comprehensive information to their reporting prime broker, or they could report Proposed Form SHO data themselves.

c. Harmonization With European Disclosure Requirements

The Commission could also craft Rule 13f–2 and Form SHO to be consistent with European disclosure requirements.[758] In 2012, the European Parliament and the Council of the European Union adopted regulations on short selling (the ''SSR'') that standardized the reporting threshold for all EU member states.[759] Under the SSR, a natural or legal person holding a short position is required to report to the relevant regulator when its short position (''net short position''), computed by taking into account relevant derivative positions such as options, if any, reaches the initial threshold of 0.2 percent of the issued share capital of the company, and in 0.1 percent up and down increments thereafter.[760] The threshold for reporting to a regulator recently was lowered to 0.1 percent.[761] If the net short position reaches 0.5 percent of the share capital of the company, then the relevant market regulator reports the net short position to the public with the identity of the short seller revealed.

[752] *See* Proposing Release, at 15004.

[753] *See, e.g.,* AIMA Letter, at 8; ICI Letter, at 51; Ropes & Gray Letter, at 4; Two Sigma Letter, at 9.

[754] *See* Proposing Release, at 15004.

[755] Analysis of Form SH data indicates that these data, which would be a subset of the data collected in this alternative, amounted to a high percentage of short interest. Commenters questioned the use of Form SH data in this and other contexts. *See supra Box 1: Use of Form SH Data* for responses to comments on the use of these data.

[756] *See* Proposing Release, at 15004.

[757] The latter could result in the additional complication of double reporting or prime brokers having to coordinate on who reports a position. Likely, the least costly solution could involve Managers being responsible for informing their prime brokers of their threshold status.

[758] *See* Proposing Release, at 15005.

[759] *See* European Parliament and Council Regulation 236/2012, 2012 O.J. (L 86) 1, *available at https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:086:0001:0024:en:PDF.* The SSR was adopted on Mar. 14, 2012 and its provisions had applicability dates of Mar. 25 and Nov. 1, 2012.

[760] *Id.* at Article 5(2).

[761] The threshold was temporarily lowered in Mar. 2020 in response to the COVID–19 pandemic. *See* ESMA Decision of 16 Mar. 2020, ESMA 70–155–9546, *available at https://www.esma.europa.eu/sites/default/files/library/esma70-155-9546_esma_decision_-_article_28_ssr_reporting_threshold.pdf.* In September 2021, the change was adopted on a permanent basis. *See* European Union, Commission Delegated Regulation 2022/27, art. 1, 2022 O.J. (L 6) 9, *available at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R0027.*

New filings are required to be made whenever the net short position increases or decreases by 0.1 percent of the share capital of the company. In the EU, trading entities must submit their data to the relevant regulator by 3:30 p.m. on the following trading day.[762] Trading entities accomplish public disclosure via a central website operated or supervised by the relevant competent authority.[763]

Consequently, the Commission could structure the rule to require Manager short selling reports that are consistent with the European regulations in terms of the thresholds for reporting, the computation of the threshold, the items reported, the timing for when short sale information is made public, and the timing for when new reports have to be issued. This alternative would provide directional information about short positions because only net short positions are required to be reported; would likely impose lower compliance costs to Managers; [764] would likely raise the risk of abusive practices towards short sellers; would likely increase Managers' ability to evade the threshold; and would lower the detail of the data the Commission receives relative to the data from adopted Form SHO.

One advantage of this alternative would be likely lower compliance costs for Managers that engage in short selling in both the EU and US.[765] By only needing one set of compliance systems in place to satisfy both rules, Managers might enjoy lower costs to comply in both systems. Additionally, Managers might face lower costs to track and report net short positions. Moreover, in connection with Regulation SHO compliance, some Managers already track net positions on an aggregation unit basis.[766] Thus, the computation of net positions for such Managers might be less costly than that of gross short positions as required by Rule 13f–2. However, for other Managers who are not currently aggregating positions on a net basis, costs of tracking may be higher under this alternative than under Rule 13f–2.

This alternative also could have some negative consequences. The EU data are timelier than data available under adopted Rule 13f–2, since the forms are posted publicly immediately after receipt by the regulator, which potentially facilitates greater price discovery. However, this comes at the cost of increasing the possibility of revealing short sellers' proprietary information and its associated risks, including short squeezes and copycat trading. Additionally, the EU structure, whereby individual short sellers' names are made public, might raise the risk of retaliation towards short individual sellers, as well as the ability for market participants to engage in copycat strategies that decrease the profitability of gathering information. As a result of these costs to short sellers, investors may not be able to gather as much fundamental information as under the final rule.[767] One commenter,[768] however, stated that a recent study has found that the EU's regulation finds no evidence that the disclosure requirements have resulted in increased coordination or have resulted in short sellers being targeted for short squeezes.[769]

Another potential consequence of this alternative would be adjusting position sizes to evade the Reporting Threshold. Multiple studies found evidence that short sales in the EU are clustered below the threshold, suggesting that investors are trying to conceal their positions to protect their underlying investment strategies.[770] Thus, short sellers may adjust their positions to either increase their long exposure or reduce their short exposure, leading to loss of price efficiency. The Commission believes that since there are benefits to short sale activity, including increased price efficiency, then there would likely be increased costs to disclosing manager identities, since this would reduce short sale activity.

By reporting net short positions, rather than gross short position, the Commission and the public would not receive information about large, but hedged, short positions. For instance, the alternative would allow [771] a comparison of total short interest with reported large hedged short positions, which might provide additional information to the market about the activities of large, though perhaps non-information based, traders. While hedged short positions are less likely to be manipulative in nature, or to pose systemic risk, large short positions are still potential sources of systemic risk. One commenter stated that using thresholds based on net short positions would allow market makers that carry large gross short positions for market making purposes rather than directional trading strategies to avoid having to submit Form SHO and incur its associated costs. According to the commenter, since net positions of market makers tend to be close to zero, including market maker gross positions in the public release of Rule 13f–2 data could be misleading to market participants (assuming that those market participants did not understand what data Rule 13f–2 will and will not provide).[772] The Commission believes, however, that market makers will rarely if ever be required to report their short positions because the dollar-value threshold of Rule 13f–2 was increased from the proposal's $10 million on a single trading day to a $10 million daily average over the course of a month. It is the Commission's understanding that markets makers are highly unlikely to hold a gross short position averaging $10 million over the course of trading month.

A reporting requirement for only net short positions would reduce the value of Rule 13f–2 data for use in reconstructing market events. For instance, during the recent meme stock phenomenon, for certain stocks it became difficult to hedge options transactions using the underlying security due to the significant price changes in the spot market. Consequently, positions that were previously judged to have been hedged, and thus low risk, may no longer have been hedged. In addition, large short positions with hedges that have been significantly weakened or broken due to unforeseen extreme market events, may have become systemically important. In such cases, it would be useful for the Commission to have information on large short positions, regardless of perceived net short position, in order to

---

[762] *Id.* at Article 9(2).

[763] *Id.* at Article 9(4).

[764] For Managers operating in both the EU and the US, these costs may be lower.

[765] Due to uncertainties regarding the EU short selling data regarding the identities of short sellers and the ability to map those IDs to US Managers, the Commission cannot identify the number of US Managers that currently comply with EU regulations.

[766] *See supra* note 263.

[767] For analyses of how the SSR lead to increased copycat trading, lower price efficiency, and increased volatility, *see* Stephan Jank, Christoph Roling, and Esad Smajlbegovic, *Flying Under the Radar: The Effects of Short-Sale Disclosure Rules on Investor Behavior and Stock Prices,* 139 (1) J. of Fin. Econ. 209–233 (2021); Charles M. Jones, Adam V. Reed, and William Waller, *Revealing Shorts an Examination of Large Short Position Disclosures,* 29 (12) The Rev. of Fin. Studies 3278–3320 (2016).

[768] *See* Better Markets Letter, at 13.

[769] *See Charles M. Jones, Adam V. Reed, and William Waller, Revealing Shorts an Examination of Large Short. Position Disclosures,* 29 *Rev. of Fin. Studies 3278, 3282 (2016).*

[770] *See* Stephan Jank, Christoph Roling, and Esad Smajlbegovic, *Flying Under the Radar: The Effects of Short-Sale Disclosure Rules on Investor Behavior and Stock Prices,* 139 (1) J. of Fin. Econ. 209–233 (2021); Mazzacurati, Julien, *The* Public Disclosure of Net Short Positions, European Securities and Markets Authority (ESMA), Trends, Risks, Vulnerabilities (TRV) Report No. 1, 2018.

[771] This comparison, however, would be different than that of comparing Form SHO data to short interest data.

[772] *See* HSBC Letter 2, at 3.

aid in the reconstruction of market events. This is a loss of value compared to adopted Rule 13f–2 and Form SHO, which are triggered by large gross short positions.

Further, the EU regulations provide activity data if positions change by 0.1 percent or more. Thus, market participants could only learn about measured positions changes, rather than position changes of all sizes. As an example, there may be times where the public may be interested in seeing the reaction to a corporate announcement, but this may be limited if Managers do not adjust short positions above the 0.1 percent threshold to trigger reporting.

2. Data Modifications

a. Release Proposed Form SHO Data in Alternative Formats

The Commission could release the information included in Form SHO in a different manner. This alternative could take one of several forms.[773] For example, the Commission could release each Form SHO report to the public exactly as it is filed, identifying the Managers. The Commission could also release the Forms as filed, but with the identities of the filers removed. The Commission could also release the aggregated data as in the current proposal, but it could publish the data in different ways in the aggregated Form SHO report, such as publishing the number of entities underlying the aggregated data or publishing increases in short positions separate from decreases.

In the first alternative, the Commission could release Form SHO as filed, allowing all market participants to see the identities of short sellers—similar to the EU regulation discussed above. This would increase the information that market participants have to evaluate sentiment on particular equities in the market. In particular, for some market participants, this information would also allow market participants to better manage risk by allowing them to manage their exposure to Managers with large short positions. There are also potential costs to this alternative. One potential result from this alternative is that if a short seller is viewed as sophisticated and informed, then releasing identifying information would likely spur copy-cat trading strategies. This outcome has been documented with respect to the EU regulation and suggests that revealing the identities of the short sellers may diminish the value of becoming informed.[774] In addition, the detailed information on daily short activity could reveal not just market sentiment, but trading strategies of individual Managers. Additionally, releasing the names of large short sellers would further increase the likelihood that the short seller would be the victim of a short squeeze or other retaliatory actions as described in Part VIII.C.1.

Similarly, the Commission could publicly release individual Form SHO filings with identification information removed from the released data. This alternative would provide market participants a clearer view into the activities of large short sellers, potentially improving their ability to learn from the actions of large short sellers relative to the current proposal. For instance, the data would allow market participants to know whether short sentiment was broadly held—as would be indicated by many filings—or concentrated—as would be indicated by few filings. This information could potentially improve the market assessment of bearish sentiment relative to Rule 13f–2, improving price efficiency.

However, the indirect costs of this alternative would be greater than for Rule 13f–2 and Form SHO. Releasing all the information from Proposed Form SHO could reveal trading strategies that would be costly even if the identities of the short sellers remained anonymous. For example, releasing this information, even without naming the short sellers, might increase the risk of copycat trading which reduces the profits of acquiring information. It might also provide information about how vulnerable short sellers may be to a short squeeze as it could give a signal about whether a short seller has a large and potentially vulnerable short position. In this case, the negative effects of the rule on the value of collecting information and of short selling in general would be greater than under the final rule, leading to less price efficiency and potentially more volatility. Additionally, even though the data could be released anonymously, it is not clear that in all cases the identities of the individual short sellers would remain anonymous.[775] If market participants were able to uncover the identities of individual short sellers, then the risk of retaliation or short squeezes would increase relative to Rule 13f–2 and Form SHO.

Alternatively, the Commission could release the data as specified in the current proposal but also include the number of entities whose Form SHO reports were collected. This information would provide the market with additional detail about whether short sentiment was broadly held by multiple Managers, or narrowly held by just one or a few. This information could be useful as market participants assess bearish sentiment in the market and adjust their actions accordingly. However, adding this information might also increase the risk of short squeezes or other retaliatory actions in the case where there are very few reporters of Form SHO. In the Form SH data collected under temporary Rule 10a–3T, 32 percent of stocks had only one Manager reporting a position per month.[776] Such a situation could signal to market participants that one, or a few, short sellers have large short positions that could potentially be vulnerable to a short squeeze.

Similarly, the Commission could collect Form SHO data but publicly release the daily aggregate increases separately from the daily aggregate decreases in short positions as opposed to daily net changes to short positions as adopted in Form SHO. This approach would provide the public more detailed information and understanding on what drives changes to short positions. However, separating daily aggregate increase from decreases in short positions could increase the risk of revealing trading strategies, which could disincentivize short selling and harm market quality.

b. Collect Data on Derivatives Positions

Investors can use derivatives to take an economically short position in a security. For example, an investor with a bearish view of a stock can purchase a put option in that stock. Consequently, for a more complete view of the total economic short position that a Manager has taken, the Commission could require Managers who report adopted Form SHO to also disclose their derivatives positions on underlying equity securities such as options and

[773] *See* Proposing Release, at 15005.

[774] *See supra* Part VIII.F.1.iv.

[775] Issuers have been known to hire private investigators to try and uncover the identities of short sellers when they learn that their stock is being targeted by short sellers. *See supra* note 622. Additionally, researchers have used algorithms to unmask the identities of individuals from masked data released to the public by the SEC. *See* Huaizhi Chen, Lauren Cohen, Umit Gurun, Dong Lou, and Christopher Malloy, *IQ from IP: Simplifying Search in Portfolio Choice,* 138 (1) J. of Fin. Econ. 118–137 (2020). While the Commission could design this alternative to avoid the specific vulnerabilities exploited by Chen et al (2020) it is possible that motivated researchers and market participants could find some other unforeseen way to link the public data to individual short sellers.

[776] *See* Proposing Release, at 14963 for more information on methodologies and caveats for using Form SH data. *See also supra Box 1: Use of Form SH Data* for responses to comments on the use of these data.

total-return swaps as an alternative to Form SHO as adopted, which does not directly collect information on derivatives.[777] This alternative refers only to options and other derivative securities for which their transactions do not fit the definition of a short sale under Rule 200(a) of Reg SHO.

Requiring this data would provide a more complete view of the economic short position that a Manager engaging in a large short sale has taken.[778] Consequently, the information would aid market participants in gauging bearish sentiment in a security relative to Rule 13f–2 and Form SHO, as adopted. This information may also help the Commission to better evaluate potentially risky short positions and respond more quickly in the case of a market event. The Commission could also better reconstruct market events, such as the recent meme stock events in January 2021, with options positions data.

Requiring options data to be reported on Form SHO would increase the compliance costs to Managers of reporting on Proposed Form SHO. One commenter stated that the inclusion of derivatives, warrants, convertible debt, and ETFs would be costly.[779] Adopted Rule 13f–2 will compel Managers to track their gross short positions in individual equities in a month. Tracking of ETFs for the purposes of adopted Rule 13f–2 is the same as tracking any equity security with the exception of tracking shares outstanding, which might be marginally more costly. Additionally, securities that may be used to change a gross short position, such as options or convertible debt, are unaffected by Rule 13f–2 unless they are used in a manner that changes gross short position in an equity security.[780] The alternative discussed here would require explicit tracking and reporting of such securities.

While Managers generally track their options exposure carefully, it is frequently different trading desks that execute options trades and equity transactions. Thus, it is possible that Managers use separate systems to track their options and equity positions. For these Managers, collecting options and equity transactions to report the data required for Proposed Form SHO would require building a process to pull data from two separate systems—increasing the cost of complying with the rule. Requiring derivative position information might also be duplicative of other derivatives reporting requirements.

3. Threshold Modifications

As an alternative to the adopted Form SHO Thresholds, the Commission could require reporting Form SHO at either higher or lower thresholds—or no threshold.[781] Commenters to the Proposal Release expressed a range of opinions on the thresholds, some of whom supported increasing the thresholds and others decreasing the thresholds relative to Proposed Form SHO.[782] When selecting thresholds, the fundamental economic tradeoff is the value of the data versus the cost of collecting the data. Alternative thresholds that are lower than Threshold A or Threshold B specified in Rule 13f–2 or an alternative that would not contain a threshold would produce more data as more entities would be required to report.

Commission analysis of Form SH data collected under temporary Rule 10a–3T indicates that the gross short position thresholds in adopted Form SHO for Threshold A, equal to daily averages of $10 million or 2.5 percent of shares outstanding, would have collected more than three-quarters (78.5 percent) of the dollar value of short positions.[783] Therefore, an alternative that lowers the threshold might lead to only a minor increase in coverage relative to the adopted thresholds in Form SHO. Nevertheless, the Commission recognizes that even a relatively small increase in coverage could increase benefits. For example, such an alternative would provide market participants with a clearer view of Manager bearish sentiment compared to adopted rule and form, as more Managers would be required to report the data, making the data more comprehensive.

A lower threshold would also enhance Commission oversight of short selling and allow the Commission to more easily reconstruct significant market events involving short selling—again because the data would be more comprehensive. One commenter stated that reducing or eliminating the reporting thresholds to Form SHO would provide additional benefits, since unknown, hidden short positions pose risks to investors and the markets. Reducing or eliminating reporting thresholds would reveal the identity of all holders of short sale positions, thereby reducing these risks.[784]

However, a lower or no threshold would increase the cost of reporting Form SHO data in terms of compliance costs associated with Managers compiling and filing the required data thorough EDGAR and in the indirect costs associated with revealing short sellers' information. Evidence of this increase in aggregate reporting costs can be seen through an analysis of Form SH data. For example, if the reporting thresholds of adopted Form SHO were reduced from average daily gross position of 10 million or 2.5 percent of shares outstanding to $5 million or 1 percent of shares outstanding, the number of reporting Managers would rise from 252 to 314. Furthermore, the increase in the share of gross short sale dollar volume covered by reporting Managers would rise from 78.5 percent to 88.6 percent. In addition, Managers would likely be required to file reports for more securities, which would further increase compliance costs. Indirect costs include increased risk of copycat short selling strategies, which can lead to herding and increased volatility, and short sellers engaging in strategic behavior to build short positions just underneath the threshold, which would lead to lower price efficiency.[785]

In some cases, a lower threshold would decrease the indirect costs associated with adopted rule because it would be harder to identify individual short positions from aggregate reporting if there are many entities reporting.[786] This effect may not be universally true, however. In particular, at thresholds just below Threshold A, the number of securities in which only one entity reported Form SH increases.[787] This result implies that there are a number of securities for which only one short seller held a short position at a level lower than the current cutoff. In these

[777] *See* Proposing Release, at 15006.

[778] One commenter argued including derivatives for Rule 13f–2 would give a more complete picture of Managers' positions. *See* NASDAQ Letter, at 3.

[779] *See* MFA Letter, at 12.

[780] Such as a Manager exercising a call option to buy equity, and thus decreasing the Manager's gross short position, if any.

[781] *See* Proposing Release, at 15007.

[782] Furthermore, in response to a solicitation of comments on Temporary Rule 10a–3T, commenters suggested thresholds generally ranging from 1% to 5%. *See* Proposing Release, at 14963 n.79 for links to specific comment letters.

[783] Commenters questioned the use of Form SH data in this and other contexts. *See supra Box 1: Use of Form SH Data* for responses to comments on the use of these data.

[784] *See* Better Markets Letter, at 12.

[785] *See supra* Part VIII.F.1.iv for discussion of this behavior in Europe.

[786] *See supra* Part VIII.C.1 and Part VIII.E.1 with accompanying text for more information on risks of identifying individual short sellers.

[787] According to Form SH data, 39% of securities would have only one Manager reporting at or above the threshold of $10 million average daily and 2.5% average daily of shares outstanding. If the percent threshold was reduced to 1% average daily of shares outstanding along with the $10 million average daily threshold the number of securities with only one Manager reporting would increase to 41%.

cases, lowering the threshold might increase the risk of identifying individual short sellers.

In contrast, alternatives that would raise the reporting threshold would lower many of the costs associated with providing Form SHO data, since fewer entities would be required to report. It would also limit somewhat the value of the data—again as the reported data would reflect a smaller portion of overall short positions. One means of increasing the threshold would be to require that both thresholds in Threshold A (*i.e.,* both daily averages of $10 million and 2.5 percent of shares outstanding) be reached before a Manager is required to file, instead of either threshold. Another alternative would be to increase one or both of thresholds in Threshold A but continue to require only one of them be reached before a Manager is required to file Form SHO. This decline in aggregate reporting costs can be seen with an analysis of Form SH data, which show that increasing the Form SHO daily average thresholds from 2.5 percent and $10 million to 5 percent and $25 million would reduce the number of reporting Managers from 252 to 165. In addition, it would reduce the percentage of short sale dollar volume covered by reporting Managers from 78.5 percent to 58.4 percent.

Higher thresholds, however, might also come with increased risk of identification and retaliation towards short sellers because at some point the likelihood that more than one investor holds a very large short position diminishes. For example, according to analysis of Form SH data, if the Form SHO thresholds rose from an average daily position of $10 million or 2.5 percent of share outstanding to $25 million or 5 percent of shares outstanding, the share of reported securities with only one Manager would rise from 39.3 percent to 48.4 percent.[788]

Another alternative would be to raise the percent threshold from 2.5 percent to 5 percent, as suggested by one commenter,[789] without altering the $10 million threshold. Commission analysis of Form SH data indicates that this would only reduce the number of reporting Managers from 252 to 247. However, further analysis reveals that there could be a substantial loss of transparency into stocks with less than a $400 million market capitalization. Since stocks with market caps exceeding $400 million will always trigger the $10 million threshold before the 2.5 percent trigger (2.5 percent of $400 million = $10 million), raising the 2.5 percent to 5 percent will not impact the number of large positions reported in stocks with market caps exceeding $400 million. However, stocks with market caps under $400 million will always trigger the 2.5 percent threshold before the $10 million threshold. Thus, raising the 2.5 percent threshold to 5 percent without altering the $10 million threshold would result in fewer smaller stock positions being reported. Furthermore, analysis of Form SH data indicates that for stocks that are specifically sensitive to the 2.5 percent threshold (*i.e.,* stocks in which all reportable short sale positions are under $10 million and therefore only trigger the 2.5 percent threshold), raising the threshold to 5 percent would reduce the number of reportable stocks from 131 to 30, a decline of about 77 percent. Thus, Form SH data analysis indicates that while raising the threshold from 2.5 percent to 5 percent might only result in a small reduction in the number of reporting Managers, it could nevertheless lead to a significant loss of transparency in small stocks (stocks with market capitalizations under $400 million).

For securities subject to Threshold B, the economic impact of either raising or lowering the dollar threshold would be similar. Raising the threshold would lower compliance costs but also the quality of the data, while lowering the threshold would do the opposite. For example, if the Commission raised Threshold B from $500,000 to $10 million, then under the assumption of one manager short selling each Threshold B security, the total number of short positions captured for Threshold B securities would decrease from 23.72 percent to 8.76 percent.[790] Similarly, under the same assumptions, lowering the threshold to $50,000 would increase the number of short positions captured to 48.08 percent.

As another alternative to the proposed Threshold A, the Commission could establish a threshold based on one rather than both of the thresholds in Rule 13f–2, *i.e.,* either the average daily dollar short position or the percent of shares outstanding.[791] The advantage of this alternative is that it might reduce compliance costs by simplifying reporting requirements. One commenter stated that the two-prong threshold for reporting companies was, ''overly and unnecessarily complex.''[792] In addition, the commenter said that using a percentage-based threshold was more costly to Managers, in part because it can be burdensome to obtain data on shares outstanding, which serves as the denominator in the calculation of the percentage-based threshold.[793] Another commenter, however, stated that, relative to percentage-based threshold, ''compliance with a dollar value threshold typically requires significant manual processes and more difficult system buildouts.''[794] The Commission acknowledges that a dollar-value threshold might be somewhat less complicated for some Managers, but nevertheless believes that data tracking the number of shares outstanding are generally readily available, and that it is straightforward to calculate an average daily gross short position as a percentage of outstanding shares.

The Commission also acknowledges that using a single threshold for Threshold A would lower compliance costs, primarily because fewer entities would be required to report. However, choosing which of the two thresholds to drop would impact which positions are more likely to trigger the remaining threshold. For example, an alternative that retained only the $10 million daily average threshold would decrease the likelihood of small cap positions being reported, since these firms reach the 2.5 percent threshold before the $10 million threshold.[795] Smaller market capitalization stocks tend to be easier to manipulate and less stable. Thus, an alternative that excludes the 2.5 percent threshold would result in less visibility into the actions of short sellers among smaller market capitalization stocks and may undermine the ability of Rule 13f–2 to reduce manipulative behavior among these stocks, as articulated in Part VIII.C.1.

Commission analysis of Form SH data suggest that an alternative that includes only the 2.5 percent threshold would result in a substantial reduction in the number of reporting Managers relative to the two-prong threshold in adopted Rule 13f–2. More specifically, switching from the adopted Form SHO thresholds of $10 million daily average or 2.5 percent of shares outstanding to a single prong threshold of 2.5 percent would cause the number of reporting Managers

[788] *See* Proposing Release, at 14963 for more information on methodologies and caveats for using Form SH data.

[789] *See supra* note 120 and associated discussion.

[790] *See* Proposing Release, at Table II (analysis within table).

[791] *See* Proposing Release, at 15008 for discussion of this alternative with the $10 million threshold as proposed, not as adopted.

[792] *See* MFA Letter, at 13

[793] *See* Proposing Release, at 15008.

[794] *See* ICI Letter, at 9.

[795] Short positions in stocks with market capitalizations below $400 million will trigger the 2.5% threshold before they trigger the $10 million threshold.

under Form SH to fall from 252 to 115. Furthermore, it would drastically reduce the share of covered short sale volume of reporting Managers from 78.5 percent to 16 percent. One commenter stated that excluding the dollar-based threshold and solely using a threshold of 5 percent or more, ''. . . would allow the Commission to achieve its objectives without imposing unnecessary complexity on advisers and other reporting Managers.'' [796] Form SH data, however, indicate that this would reduce the number of reporting Managers from 252 to 55 and the share of covered short sale volume from 78.5 percent to 9 percent.

More generally, the alternative of requiring a threshold based only on short positions as a percent of shares outstanding would largely eliminate reporting in larger securities. Note that for stocks with market capitalization above $400 million, short sellers reach the $10 million threshold before the 2.5 percent threshold. Furthermore, for large cap stocks, generally defined as having a market capitalization exceeding $10 billion, short position would have to be more than $250 million in order to trigger the 2.5 percent threshold. Consequently, an alternative in which the Commission required reporting based only on the percent of shares outstanding would result in fewer Form SHO reports for stocks with larger market capitalizations. Less visibility into the actions of short sellers in larger market capitalization stocks would provide less information about bearish sentiment in the economy. This is because larger market capitalization stocks, which are more well-established than small cap stocks, are more likely to be shorted due to general pessimism about the macroeconomy and less likely to be targeted as part of manipulative strategy in comparison to small cap stocks.[797]

As another alternative, the Commission could structure the Reporting Thresholds to include the nominal economic value of short derivative positions. Specifically, reporting on Form SHO would be required if a Manager's total short position in the stock and in derivatives such as options and security-based swaps exceeded the relevant Reporting Thresholds.[798] This alternative would decrease the likelihood that Managers seek to avoid the Reporting Thresholds by transacting in derivatives and thus, may increase the benefits of the data from Form SHO.[799] Making it more difficult to circumvent the reporting requirements using derivatives might also decrease strategic, and sub-optimal, trading around the Reporting Thresholds which leads to lower price efficiency.[800] However, increasing the amount of information that was disclosed on publicly released Form SHO may increase copycat activity that leads to herding and increased volatility. Conversely, incorporating derivatives in Form SHO reports may dilute the information filed by Managers relative to the case where only equity gross short positions are included, thereby reducing the amount of herding. This alternative could also result in situations in which Managers would have a reporting obligation despite having large long positions in the equity over the entire month, which would increase costs for the Managers and would provide less relevant information. Additionally, including derivatives in the Reporting Threshold computations would increase the complexity of the rule and the cost of implementing the rule. For instance, Managers may need to pull information from multiple systems to determine the total value of their short position for reporting. Pulling information from multiple systems can be costly. Additionally, while valuing short positions in most equities is fairly straightforward, this is not true for derivatives. There are often multiple methodologies used by different market participants to value derivative contracts such as options. Thus, an alternative including a threshold for a Manager's short exposure in derivatives would be significantly more complicated than Adopted Rule 13f–2 and Form SHO.

An additional alternative could also involve requiring reporting thresholds to be based on activity and not just positions.[801] This alternative would increase the amount of information available to the Commission regarding the activities of entities engaging in a high volume of short selling. This alternative might provide additional insight into Managers that sell short but do not hold short positions. Specifically, entities with high volumes of short selling are likely to be market makers who use short selling to maintain two sided quotes in the absence of inventory and other high frequency traders. These entities trade in large volumes but tend to end trading sessions fairly flat on inventory in larger stocks. Consequently, requiring reporting based on activity might not significantly improve the market's ability to assess of bearish sentiment. However, one area where reporting based on activity may be beneficial would be in identifying short selling attacks that are relatively short lived. For example, an investor with a convertible bond may seek to distort the stock price right around the exercise date of their bond as such contracts stipulate that the holder of the convertible bond receives more shares if the stock price is lower. In this case, an attempted manipulator may seek to aggressively short sell right around a convertible bond exercise date. Activity that is concentrated enough in time might not trigger a reporting threshold based on average position over the prior month under the final rule. While this activity information may be helpful in flagging unusual short selling activity, the Commission could conceivably build reports based on existing CAT data [802] that would be more effective at detecting such behavior and Rule 13f–2 would identify these activities if the market participant exceeds the Reporting Thresholds.

As an alternative, the Commission could measure the thresholds as of the last settlement day of the month rather than using the $10 million average daily prong or 2.5 percent average daily prong for Threshold A and the $500,000 threshold over any single day for Threshold B.[803] This alternative would have the advantage of simplifying compliance with Rule 13f–2 and Form SHO and thus may reduce compliance costs. Form SH data analysis indicates that using last settlement day of the month instead of average daily thresholds for Threshold A would only result in a marginal increase in the number of reporting Managers, from 252 to 256. However, the Commission is concerned that this alternative might also invite more strategic trading around the end of the month than adopted Form SHO, which is structured to prevent trading around the threshold. For

[796] *See* ICI Letter at 9.

[797] *See, e.g.,* Carole Comerton-Forde & Tālis J. Putniņš, *Stock Price Manipulation: Prevalence and Determinants,* 18:1 Rev. of Fin. 23–66 (2014), *available at https://doi.org/10.1093/rof/rfs040* (for evidence on small and less liquid stocks higher exposure to manipulative behavior by investors). *See also* discussion in *supra* Part VIII.C.1.

[798] *See* Proposing Release, at 15008 (discussing this alternative with the $10 million threshold as proposed, not as adopted).

[799] *See supra* Part VIII.C.8.

[800] *See supra* Part VIII.C.1 for further discussion on strategic trading around the threshold and how the rule is designed to reduce it.

[801] *See* Proposing Release, at 15009.

[802] In particular, because such an analysis would not involve estimating a position for the Manager, the limitations of CAT are less important.

[803] *See* Proposing Release, at 15009 (discussing this alternative with the $10 million threshold as proposed, not as adopted).

instance, Managers with short positions near the threshold may temporarily reduce their positions to below a Reporting Threshold on exactly the days that short positions are measured for compliance with the threshold to avoid reporting. This inefficient trading may reduce price efficiency right around the reporting days as trading to avoid holding a position that would trigger reporting is not trading based on economic considerations but rather trading based on regulatory considerations and thus is inefficient and may harm price efficiency on these days.

Instead of Threshold B, the Commission could require the same two prong, $10 million or 2.5 percent daily average gross position reporting threshold for short positions in equity securities of non-reporting company issuers, as well as for equity securities of reporting company issuers.[804] This approach might be less complex as all short positions would be subject to the same reporting threshold. Further, it would retain a threshold that relates to the size of the short position and to the size of the issuance to ensure capturing positions that are relatively large whereas the Threshold B imposes a flat threshold that could result in some relatively large positions, in terms of daily average gross position of percentage of shares outstanding, not being filed on Form SHO.

However, this alternative would increase the burden for Managers as information for non-reporting company issuers can be hard to find, making threshold calculations difficult. In particular, information on the number of shares outstanding can be difficult to obtain for non-reporting company issuers and when it is available it is often stale and inaccurate. This could lead to problems with the calculations for the 2.5 percent threshold. One commenter stated that a single percentage-based threshold level applied to both reporting and non-reporting company issuers, ''. . . would mitigate unnecessary operational and cost burdens on managers, including complexities from monitoring and reporting with up to three separate thresholds.'' [805] However, this alternative would require Managers to know the number of shares outstanding in non-reporting companies for each trading day for their short positions, and would therefore effectively impose new recordkeeping costs on Managers. Further, there are multiple sources from which Managers can obtain shares outstanding for securities of non-reporting company issuers. At times these sources may report different numbers for total shares outstanding. Consequently, Managers could also feel the need to track the sources used to identify shares outstanding each day and would incur costs to determine which sources to trust for compliance. One concern is that Managers would try to game different data sources in order to avoid having to report Form SHO.

The Commission could enhance record keeping requirements associated with this alternative by requiring Managers to record and report on Form SHO the source of data used to calculate shares outstanding.[806] This could improve the quality of the information reported in Form SHO for securities of issuers who do not report with the Commission by improving the quality of the data that Managers use when calculating their positions. It might also help mitigate concerns that Managers may try to game different data sources to avoid complying with the regulation. For securities of reporting issuers, accurate shares outstanding information is readily available, thus concerns about gaming data sources or using low quality information is not as relevant. However enhanced record keeping requirements would increase the costs to Managers. While the Commission believes that most Managers have ready access to this information, requiring that Managers record and report the information would require Managers to further build out systems, in conjunction with the systems already required to report Form SHO, to also capture the source of information used.

4. Other Alternatives

a. Alternative Reporting Frequency or Additional Reporting Delay

As alternatives, the Commission could require reporting at different frequencies than the monthly reporting mandated by the rule. Specifically, the Commission could require gross short position assessment and reporting (assuming at least one of the thresholds had been crossed) at frequencies that are shorter than a month.[807] For example, the Commission could require reporting daily, weekly,[808] biweekly, or whenever there is a significant change in short position (as is currently the standard in the European Union), but at least monthly. These alternatives could require reporting if the average short position surpasses the threshold for the month prior to the reporting period or if average positions surpass the threshold for the prior period (*e.g.,* one week, or two weeks). This could result in an increase in the number of Managers that report, since it is likely that some Managers hold short positions that cross a Form SHO threshold for the alternative time frequencies (*e.g.,* one week) but not for the entire month. These Managers may be required to report with more frequent disclosures relative to Adopted Form SHO.

The fundamental tradeoff with such thresholds compares the simplicity of the rule with the potential to game the threshold by strategic trading. Such alternative frequencies face the fundamental tradeoff of increased cost and increased transparency of the data. Put simply, increasing the reporting frequency increases the number of reports and thus increases the cost associated with reporting by a similar factor.

Increased reporting frequency could also result in collecting more information than the current proposal. The difference between the information collected in the current proposal and this alternative would mainly come from the frequency and timeliness of the reports. The improved timeliness could increase the risk of copycat strategies and short squeezes, but also improve price efficiency. One commenter stated that a study of the EU's short sale disclosure policy, which requires, ''immediate public disclosure of large short positions,'' finds no evidence of increased manipulation or short squeezes.[809] However, multiple studies have found evidence that the EU's policy has result in short sellers seeking to avoid disclosure by accumulating positions slightly under the threshold, which could result in a loss price efficiency.[810] Furthermore, one commenter stated that increasing the disclosure delay to 45 days would help prevent copycat trading and short squeezes.[811] The Commission

[804] *See Id.*

[805] *See* ICI Letter, at 9.

[806] *See* Proposing Release, at 15009.

[807] *See* Proposing Release, at 15009. In this alternative, the thresholds would conform to the reporting period, such that the 2.5% and $10 million daily average thresholds would be calculated over the alternative shortened time period.

[808] Many commenters on temporary Rule 10a–3T stated that weekly reporting was overly burdensome. *See, e.g.,* Seward Kissel LLP, *available at https://www.sec.gov/comments/s7-31-08/s73108-43.pdf;* Investment Adviser Association, *available at https://www.sec.gov/comments/s7-31-08/s73108-38.pdf;* and Securities Industry and Financial Markets Association, *available at https://www.sec.gov/comments/s7-31-08/s73108-52.pdf.*

[809] *See* Better Markets Letter, at 13 and *Charles M. Jones, Adam V. Reed, and William Waller, Revealing Shorts an Examination of Large Short. Position Disclosures, 29 Rev. of Fin. Studies 3278, 3282 (2016).*

[810] *See supra* note 770.

[811] *See* MFA Letter at 4.

recognizes that there are benefits and costs to more timely disclosure, and believes that the two week delay incorporated in adopted Form SHO effectively balances these costs and benefits.

The Commission could also consider different reporting windows for Managers who meet the threshold short positions to report on Form SHO.[812] The current proposal requires Managers to report on Form SHO within 14 calendar days of the end of each month. Shorter time horizons may increase the cost of reporting as Managers would have less time to gather and file the data on Form SHO and may need to build costlier procedures to ensure compliance with the reporting requirement.[813] A mitigating factor would be that most of this reporting is likely to be done electronically, consequently it may not take the full 14 calendar days for Managers to gather and file the required data to the Commission.

Additionally, the Commission could adopt different horizons for releasing the aggregated data after the reporting deadline.[814] The fundamental tradeoff in terms of the delay between reporting and when the Commission releases the aggregated data is that a shorter delay increases the relevance of the data, in terms of the bearish sentiment it contains, which may improve managerial decision making, as well as providing more timely information about bearish sentiment in the market.[815] At the same time a shorter delay increases the likelihood of copycat behavior, which decreases the incentive that short sellers have to gather information potentially leading to lower price efficiency and greater volatility.[816] The converse is true for longer delays. Additionally, a shorter delay provides less time for the Commission to aggregate the data and run checks on the aggregated data to ensure the Commission's aggregation is error-free, and also provides less time for amendments to be filed, both of which could harm the quality of the data.

b. Report Form SHO in Inline XBRL

The adopted rule would require Form SHO to be filed in Form SHO-specific XML, a structured, machine-readable data language. As an alternative, the Commission might require Form SHO to be filed in Inline eXtensible Business Reporting Language (''Inline XBRL''), a separate data language that is designed for business reporting information and is both machine-readable and human-readable.[817] Compared to the adopted Form SHO, the Inline XBRL alternative for Form SHO would provide more sophisticated validation, presentation, and reference features for filers and data users. However, given the fixed and constrained nature of the disclosures to be reported on Form SHO (*e.g.,* the information would be as of a single reporting date rather than multiple reporting dates, and Managers would not be able to customize the content or presentation of their reported data), the benefits of these additional features would be muted. Compared to the adopted Form SHO, this alternative would impose greater initial implementation costs (*e.g.,* licensing Inline XBRL filing preparation software) upon reporting persons that have no prior experience structuring data in Inline XBRL.[818] By contrast, because many Managers that would be Form SHO filers would likely have experience structuring filings in a similar EDGAR Form-specific XML data language, such as in the context of filing Form 13F, the Form SHO-specific XML requirement will likely impose lower implementation compliance costs on Form SHO filers than an Inline XBRL requirement would impose.

IX. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') [819] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small businesses. Section 603(a) of the Administrative Procedure Act, as amended by the RFA, generally requires the Commission to undertake a final regulatory flexibility analysis of rules it is adopting, to determine the impact of such rulemaking on ''small businesses'' unless the Commission certifies that the rule would not have a significant economic impact on a substantial number of ''small entities.'' [820]

Certification for Rule 13f–2 and Form SHO. Although section 601(b) of the RFA defines the term ''small business,'' the statute permits agencies to formulate their own definitions. The explanation of the term ''small entities'' and the definition of the term ''small business'' in 17 CFR 240.0–10 [821] of the Exchange Act do not explicitly reference Managers. Rule 0–10 does provide, however, that the Commission may ''otherwise define'' small entities for purposes of a particular rulemaking proceeding. For purposes of Rule 13f–2 and related Form SHO, therefore, the Commission has determined that the definition of the term ''small business'' found in 17 CFR 275.0–7(a) [822] under the Investment Advisers Act of 1940 [823] is more appropriate to the functions of institutional managers such as the Managers with reporting obligations under Rule 13f–2. The definition will help ensure that all persons or entities that might be Managers subject to reporting requirements under Rule 13f–2 will be included within a category addressed by the Rule 0–7(a) definition.

Therefore, for purposes of this rule and the RFA, a Manager is a small entity if it: (i) has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[824] The Commission did not

[812] *See* Proposing Release, at 15010.

[813] *See* Seward & Kissel LLP Letter (discussing Temporary Rule 10a–3T) at 5, *available at https://www.sec.gov/comments/s7-31-08/s73108-43.pdf.*

[814] *See* Proposing Release, at 15010.

[815] One commenter stated that the ''. . . proposed data framework will not provide timely insight for the SEC to act given that it is monthly data with 14 days delay after month end.'' *See* SBAI Letter, at 2. The Commission recognizes that removing the 14-day delay would increase its ability to monitor and respond more rapidly to market events stemming from short sale activity. However, as discussed elsewhere in this release, the delay is in part necessary to review and validate the data, and may also serve to reduce the likelihood of short squeeze and copycat behavior.

[816] One commenter stated that the public dissemination of Rule 13f–2 data should be increased from 14 days to 45 days in order to provide additional protection against exposure of trading strategies, which could be used as part of a replication strategy or to facilitate a short squeeze. *See* MFA Letter, at 4. More generally, the commenter believes that since the amendments would provide only ''limited marginal benefits,'' reducing the cost of compliance, including the risk of exposing the identities of investment managers and their proprietary trading strategies, is warranted.

[817] *See* Proposing Release, at 15010.

[818] *See* Inline XBRL Filing of Tagged Data, Securities Act Release No. 10514 (June 28, 2018), 83 FR 40846 at 40862, *available at https://www.sec.gov/rules/final/2018/33-10514.pdf* (discussing costs associated with Inline XBRL filing of operating company financial statements and investment company risk/return summaries, including software licensing costs).

[819] 5 U.S.C. 601 *et seq.*

[820] In response to the Commission's request for comment, commenters provided general predictions without empirical data to support their assessments that Proposed Rule 13f–2, Proposed Form SHO, and the Proposed CAT Amendments would have a significant economic impact on a substantial number of ''small entities.'' See *supra* note 324 and accompanying text.

[821] Rule 0–10.

[822] Rule 0–7(a).

[823] 15 U.S.C. 80b–1 *et seq.*

[824] Rule 0–7(a), *supra* note 822. *See generally, Reporting Threshold for Institutional Investment*

Continued

receive any comments on the certification as it related to entities impacted by Rule 13f–2.

Under Rule 13f–2, Managers are not required to report on Form SHO unless they meet or exceed a specified Reporting Threshold. Managers with a gross short interest position in an equity security of a reporting company issuer will be subject to a two-pronged reporting threshold structure: a monthly average gross short position in the equity security with a U.S. dollar value of $10 million or more; or a monthly average gross short position as a percentage of shares outstanding in the equity security of 2.5 percent or more (Threshold A). Managers with a gross short interest position in an equity security of a non-reporting company issuer will be subject to a single-pronged reporting threshold structure: a gross short position in the equity security with a U.S. dollar value of $500,000 or more at the close of regular trading hours on any settlement date during the calendar month (Threshold B). While the parameters of the Reporting Thresholds under Rule 13f–2 relate to the number and dollar value of shares of short positions, rather than assets under management, the Commission nevertheless anticipates that application of the Reporting Thresholds will result in Rule 13f–2 not applying to a significant number of ''small businesses'' as defined under Rule 0–7(a).

With respect to the first prong of Threshold A, a monthly average gross short position in the equity security with a U.S. dollar value of $10 million or more for reporting company issuer securities represents forty percent of the assets of an entity that qualifies as a ''small entity'' under Rule 0–7(a). The Commission believes it is also unlikely that a significant number of small entities would place 40 percent of their respective assets under management in a short position in a single security. Further, many types of Managers that could be small entities, including bank trustees, endowments, and foundations, are subject to fiduciary standards that prohibit them from investing in large, concentrated short positions. Such restrictions deter small entities (with less than $25M of assets under management) from investing over $10M (greater than 40 percent) of their assets in a single short position, and therefore prevent them from triggering the first prong of Threshold A.[825]

With respect to the second prong of Threshold A, smaller Managers (those with under $25M in assets under management) would likely try to leverage their assets through a combination of traditional short sales and derivatives and similar transactions that create economic short exposure to a security. Such entities therefore, would likely engage in strategies that do not lend themselves to a clear determination that the second prong of Threshold A under Rule 13f–2 has been met.[826] Further, the Commission estimates, based on an analysis of US common stocks,[827] that Managers that qualify as small entities under Rule 0–7(a) would not meet the 2.5 percent monthly average reporting threshold for securities representing over ninety-eight percent (98 percent) of the overall market value.[828]

When it comes to meeting the dollar value limits of Threshold B and the first prong of Threshold A, it is important to note that for the subset of Managers that engage in the most short selling activity—hedge funds [829]—less than twenty-five percent have less than $50M in assets under management.[830] Indeed, research shows that most hedge funds have assets under management above the amount that would qualify them as small entities under Rule 0–7(a), *i.e.,* above $25M.[831] Further, the Commission certified in the Proposing Release that Proposed Rule 13f–2 would not have a significant economic impact on a substantial number of small entities, as defined under Rule 0–10, for purposes of the RFA. The Commission requested written comments regarding this certification and did not receive any. Additionally, and as described above, the adopted dollar-value based prong of Threshold A for reporting company issuer securities is based on a monthly average rather than a daily calculation, likely capturing fewer Managers than would have been required to report under the proposed daily dollar-value prong of Threshold A, so it is even less likely that small entities will be required to report on Form SHO as adopted.

For these reasons, the Commission certifies that Rule 13f–2 will not have a significant economic impact on a substantial number of small entities, as defined under Rule 0–10, for purposes of the RFA.

Certification for the Amendment to CAT. The amendment to the CAT NMS Plan will impose requirements on the CAT NMS Plan Participants (the national securities exchanges registered with the Commission under section 6 of the Exchange Act and FINRA), and broker-dealers that effect short sales utilizing the bona fide market making exception pursuant to Rule 203(b)(2)(iii) of Regulation SHO and report use of the exception to CAT.

With respect to the national securities exchanges, the Commission's definition of a small entity is an exchange that has been exempt from the reporting requirements of Rule 601 of Regulation NMS, and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[832] None of the national securities exchanges registered under section 6 of the Exchange Act that will be subject to the amendments are ''small entities'' for purposes of the RFA. In addition, FINRA is not a ''small entity.'' [833] Based on Commission knowledge and experience with broker-dealers that identify as market makers, the Commission does not believe that any broker-dealer that effects short sales utilizing the bona fide market making

Managers, Exchange Act Release No. 89290 (July 10, 2020), 85 FR 46016, 46031 n.90 (July 31, 2020) (stating that ''[r]ecognizing the growth in assets under management at investment advisers since Rule 0–7(a) was adopted, the Commission plans to revisit the definition of a small entity in Rule 0–7(a).'').

[825] *See* Molk and Partnoy, *supra* note 510, describing impediments that have kept different types of institutional investment managers from engaging in short selling.

[826] *Id.* at 839 (positing that ''institutions incorporate short selling into their strategies, not necessarily by taking net-short positions, but instead by combining leveraged long equity index positions with smaller actively managed short portfolios.'').

[827] A small entity, with less than $25M in assets under management, is not able to hold a short position of at least 2.5% in a company with a market capitalization above $1B. Such companies represent over 98.5% of the overall market cap of US equities. *See also* Stock Market Size Categories (2021), *available at https://stockmarketmba.com/sizecategories.php* (calculating approximately three percent (3%) of the US stock market consists of common stocks of companies with less than $2B in market capitalization (*i.e.,* small-cap and micro-cap stocks) and stating that micro-cap companies are generally too small for even most large institutional investment managers to invest in).

[828] An analysis by Commission of the daily dataset of the Center for Research in Security Prices (''CRSP'') showed that for the month of Oct. 2021, on average, the number of companies with less than $1B in market capitalization (2,293) constituted 1.51% of the overall market capitalization.

[829] *See* Molk and Partnoy, *supra* note 510, at 846.

[830] *See* David Goldin, *Elephant in the room? Size and hedge fund performance,* Aurum (June 28, 2019), *available at https://www.aurum.com/insight/elephant-in-the-room-size-and-hedge-fund-performance/.*

[831] *See* Daniel Barth et al., *The Hedge Fund Industry is Bigger (and Has Performed Better) Than You Think* (*Office of Fin. Research,* Working Paper No. 20–01, Feb. 25, 2020, Revised Mar. 8, 2021).

[832] *See* 17 CFR 240.0–10(e) (stating that a broker-dealer is a small entity if it has total net capitalization (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a–5(d), and it is not affiliated with any person (other than a natural person) that is not a small business or small organization).

[833] *See* 13 CFR 121.201.

exception pursuant to Rule 203(b)(2)(iii) of Regulation SHO and reports to the CAT will qualify as a small entity pursuant to Exchange Act Rule 0–10(c), because they either exceed $500,000 in total capital or are affiliated with a person that is not a small entity as defined in Rule 0–10. Given the above estimates it is possible, but unlikely, that in the future a small entity may come within scope of the Amendment to CAT, because such firms are likely to exceed $500,000 in total capital or be affiliated with a person that is not a small entity.

For the foregoing reasons, the Commission certifies that the Amendment to CAT will not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

X. Other Matters

Pursuant to the Congressional Review Act,[834] the Office of Information and Regulatory Affairs has designated these rules as a ''major rule,'' as defined by 5 U.S.C. 804(2).

If any of the provisions of these final rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Statutory Authority

The Commission is adopting the rule and form contained in this document under the authority set forth in the Exchange Act [15 U.S.C. 78a *et seq.*], particularly sections 3, 10(b), 12, 13(f), 15, (d), 23(a), 35A, 36 thereof [15 U.S.C. 78c, 78j(b), 78*l,* 78m(f), 78*o*(d), 78w(a), 78*ll,* and 78mm], and Public Law 111–203, 929X, 124 Stat. 1376 (2010). The Commission is amending the CAT NMS Plan pursuant to the Exchange Act, particularly Sections 2, 3, 5, 6, 11A, 15, 15A, 17(a) and (b), 19, and 23(a) thereof [15 U.S.C. 78b, 78c, 78e, 78f, 78k–1, 78*o,* 78*o*–3, 78q(a) and (b), 78s, and 78w(a)], and Rules 608(a)(2) and (b)(2) thereunder.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, the Commission is amending title 17, chapter II of the Code of the Federal Regulations as follows.

[834] 5 U.S.C. 801 *et seq.*

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 is amended by removing the sectional authority for § 240.13f–2(T) to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78j–4, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 2. Add § 240.13f–2 to read as follows:

§ 240.13f–2 Reporting by institutional investment managers regarding gross short position and activity information.

(a) An institutional investment manager shall file a report on Form SHO (referenced in 17 CFR 249.332), in accordance with the form's instructions, with the Commission within 14 calendar days after the end of each calendar month with regard to:

(1) Each equity security that is of a class of securities that is registered pursuant to section 12 of the Exchange Act or for which the issuer of that class of securities is required to file reports pursuant to section 15(d) of the Exchange Act over which the institutional investment manager and all accounts over which the institutional investment manager (or any person under the institutional investment manager's control) has investment discretion with respect to either:

(i) A monthly average gross short position at the close of regular trading hours in the equity security with a U.S. dollar value of $10 million or more; or

(ii) A monthly average gross short position at the close of regular trading hours as a percentage of shares outstanding in the equity security of 2.5 percent or more; and

(2) Each equity security that is of a class of securities that is not registered pursuant to section 12 of the Exchange Act or for which the issuer of that class of securities is not required to file reports pursuant to section 15(d) of the Exchange Act over which the institutional investment manager and all accounts over which the institutional investment manager (or any person under the institutional investment manager's control) has investment discretion with respect to a gross short position in the equity security with a U.S. dollar value of $500,000 or more at the close of regular trading hours on any settlement date during the calendar month.

(3) Form SHO and any amendments thereto must be filed with the Commission via the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR''), in accordance with 17 CFR part 232 (Regulation S–T). The Commission will publish, on an aggregated basis, certain information regarding each equity security reported by institutional investment managers on Form SHO and filed with the Commission via EDGAR.

(b) For the purposes of this section:

(1) The term *institutional investment manager* has the same meaning as in section 13(f)(6)(A) of the Exchange Act.

(2) The term *equity security* has the same meaning as in section 3(a)(11) of the Exchange Act and § 240.3a11–1 (Rule 3a11–1).

(3) The term *investment discretion* has the same meaning as in § 240.13f–1(b) (Rule 13f–1(b)).

(4) The term *gross short position* means the number of shares of the equity security that are held short as a result of short sales as defined in 17 CFR 242.200(a) (Rule 200(a) of Regulation SHO), without inclusion of any offsetting economic positions such as shares of the equity security or derivatives of such equity security.

(5) The term *regular trading hours* has the same meaning as in 17 CFR 242.600(b)(77) (Rule 600(b)(77)).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The general authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112–106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112–106, 126 Stat. 313 (2012), Sec. 72001 Pub. L. 114–94, 129 Stat. 1312 (2015), and secs. 2 and 3 Pub. L. 116–222, 134 Stat. 1063 (2020), unless otherwise noted.

* * * * *

■ 4. Add § 249.332 to read as follows:

§ 249.332 Form SHO, report of institutional investment managers pursuant to section 13(f)(2) of the Securities Exchange Act of 1934.

This form shall be used by institutional investment managers that are required to furnish reports pursuant to section 13(f)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(2)) and 17 CFR 240.13f–2 (Rule 13f–2).

■ 5. Add Form SHO referenced in § 249.332.

Note: Form SHO is attached as Appendix A to this document. Form SHO will not appear in the Code of Federal Regulations.

By the Commission.

Dated: October 13, 2023.

J. Matthew DeLesDernier,

Deputy Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A—Form SHO

OMB Number: XXXX–XXXX

FORM SHO

Information Required of Institutional Investment Managers Pursuant to Section 13(f)(2) of the Securities Exchange Act of 1934 and Rules Thereunder

General Instructions

Rule as to Use of Form SHO. Institutional investment managers (''Managers'') must use Form SHO for reports to the Commission required by Rule 13f–2 [17 CFR 240.13f–2] promulgated under section 13(f)(2) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(f)(2)] (''Exchange Act''). A Manager shall file a report on Form SHO in accordance with these instructions with the Commission within 14 calendar days after the end of each calendar month with regard to: (1) each equity security that is of a class of securities that is registered pursuant to section 12 of the Exchange Act or for which the issuer of that class of securities is required to file reports pursuant to section 15(d) of the Exchange Act over which the Manager and all accounts over which the Manager (or any person under the Manager's control) has investment discretion with respect to either (A) a monthly average gross short position at the close of regular trading hours in the equity security with a value of $10 million or more, or (B) a monthly average gross short position at the close of regular trading hours as a percentage of shares outstanding in the equity security of 2.5 percent or more; and (2) each equity security that is of a class of securities that is not registered pursuant to section 12 of the Exchange Act or for which the issuer is not required to file reports pursuant to section 15(d) of the Exchange Act over which the Manager and all accounts over which the Manager (or any person under the Manager's control) has investment discretion with respect to a gross short position in the equity security with a U.S. dollar value of $500,000 or more at the close of regular trading hours on any settlement date during the calendar month. For purposes of Rule 13f–2 and Form SHO, ''regular trading hours'' shall have the meaning ascribed in Rule 600(b)(77) under the Exchange Act [17 CFR 242.600(b)(77)].

A Manager that determines that it has filed a Form SHO with errors that affect the accuracy of the short sale data reported must file an amended and restated Form SHO within ten (10) calendar days of discovering the error.

Rules to Prevent Duplicative Reporting. If two or more Managers, each of which is required by Rule 13f–2 to file Form SHO for the reporting period, exercise investment discretion with respect to the same securities, only one such Manager must report the information in its report on Form SHO. If a Manager has information that is required to be reported on Form SHO and such information is reported by another Manager (or Managers), such Manager must identify the Manager(s) reporting on its behalf in the manner described in Special Instruction 5.

Filing of Form SHO. A reporting Manager must file Form SHO with the Commission via the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR''), in accordance with Regulation S–T. The Commission plans to publish certain data from the filings on an aggregated basis.

All information included in a Form SHO report is deemed subject to a confidential treatment request under 17 CFR 200.83. The Commission plans to publish only aggregated data derived from information provided in Form SHO reports.

Technical filing errors may cause delays in the filing of Form SHO. Technical support for making Form SHO reports is available through EDGAR Filer Support.

Instructions for Calculating Reporting Threshold

A Manager shall file a report on Form SHO:

- with regard to each equity security that is of a class of securities that is registered pursuant to section 12 of the Exchange Act or for which the issuer is required to file reports pursuant to section 15(d) of the Exchange Act (a ''reporting company issuer'') in either of the following circumstances: (1) the Manager and all accounts over which the Manager or any person under the Manager's control has investment discretion that are a monthly average gross short position at the close of regular trading hours in the equity security with a U.S. dollar value of $10 million or more, or (2) the Manager and all accounts over which the Manager or any person under the Manager's control has investment discretion that are a monthly average gross short position at the close of regular trading hours as a percentage of shares outstanding in the equity security of 2.5 percent or more (''Threshold A'').
- with regard to each equity security that is of a class of securities of an issuer that is not a reporting company issuer as described above (a ''non-reporting company issuer''), when the Manager and all accounts over which the Manager or any person under the Manager's control has investment discretion that are a gross short position in the equity security with a U.S. dollar value of $500,000 or more at the close of regular trading hours on any settlement date during the calendar month (''Threshold B'').

With respect to each equity security to which the circumstances described in Threshold A or Threshold B applies, the Manager shall report the information, as described in the ''Special Instructions'' below, aggregated across accounts over which the Manager, or any person under the Manager's control, has investment discretion.

To determine whether the dollar value threshold described in (1) of Threshold A above is met, a Manager shall determine its gross short position at the close of regular trading hours in the equity security (as defined in Rule 13f–2) on each settlement date during the calendar month and multiply that figure by the closing price at the close of regular trading hours on the settlement date (''end of day dollar value''). The Manager shall then add all end of day dollar values during the calendar month and divide that sum by the number of settlement dates in the month to arrive at a ''monthly average'' for each equity security the Manager traded during that calendar month reporting period.

To determine whether the dollar value threshold described in Threshold B above is met, a Manager shall determine its gross short position at the close of regular trading hours in the equity security (as defined in Rule 13f–2) on each settlement date during the calendar month and multiply that figure by the closing price at the close of regular trading hours on the settlement date. If such closing price is not available, a Manager shall use the price at which it last purchased or sold any share of that security.

To determine whether the percentage threshold described in (2) of Threshold A above is met, the Manager shall (a) determine its gross short position at the close of regular trading hours in the equity security (as defined in Rule 13f–2) on each settlement date during the calendar month, and divide that figure by the number of shares outstanding in such security at the close of regular trading hours on the settlement date, and (b) add up the daily percentages during the calendar month as determined in (a) and divide that sum by the number of settlement dates in the month to arrive at a ''monthly average'' for each equity security the Manager traded during that calendar month reporting period. The number of shares outstanding of the security for which information is being reported shall be determined by reference to an issuer's most recent annual or quarterly report, and any subsequent update thereto, filed with the Commission.

Special Instructions

1. This form consists of two parts: the Cover Page, and the Information Tables.

Cover Page

2. The period end date used in the report (and in the EDGAR submission header) is the last settlement day of the calendar month. The date shall name the month, and express the day and year in Arabic numerals, with the year being a four-digit numeral (*e.g.,* 2023).

3. Amendments to Form SHO must restate the Form SHO in its entirety. If the Manager is filing the Form SHO report as an amendment, then the Manager must check the ''Amendment and Restatement'' box on the Cover Page; and enter the amendment number. Each Amendment and Restatement must include a complete Cover Page and Information Tables. Amendments must be filed sequentially.

a. In the space designated on the Cover of Page of each Amendment and Restatement, a Manager shall (1) provide a written description of the revision being made; (2) explain the reason for the revision; and (3) indicate whether data from any additional Form SHO reporting period(s) (up to the past

12 calendar months) is/are affected by the Amendment and Restatement.

b. If (3) applies, a Manager shall complete and file a separate Amendment and Restatement for each previous calendar month so affected (up to the past 12 months) and provide a description of the revision being made and explain the reason for the revision.

4. Present the Cover Page information in the format and order provided in the form, including the non-lapsed Legal Entity Identifier (''LEI''), if any, of the Manager filing the Form SHO report. The Cover Page shall include only the required information. Do not include any portions of the Information Tables on the Cover Page.

5. Designate the Report Type for the Form SHO by checking the appropriate box in the Report Type section of the Cover Page, and include, where applicable, the Name and non-lapsed LEI (if available) of each of the Other Managers Reporting for this Manager on the Cover Page, and the Information Tables, as follows:

a. If all of the information that a Manager is required by Rule 13f–2 to report on Form SHO is reported by another Manager (or Managers), check the box for Report Type ''FORM SHO NOTICE,'' include on the Cover Page the Name and non-lapsed LEI (if available) of each of the Other Managers Reporting for this Manager, and omit the Information Tables.

b. If all of the information that a Manager is required by Rule 13f–2 to report on Form SHO is reported in this report, check the box for Report Type ''FORM SHO ENTRIES REPORT,'' omit the ''Name and Non-Lapsed LEI (if available) of each of the Other Managers Reporting for this Manager'' section of the Cover Page, and include the Information Tables.

c. If only a part of the information that a Manager is required by Rule 13f–2 to report on Form SHO is reported in this report, check the box for Report Type ''FORM SHO COMBINATION REPORT,'' include on the Cover Page the name and non-lapsed LEI (if available) of each of the Other Managers Reporting for this Manager, and include the Information Tables.

Information Tables

6. Do not include any additional information in the Information Tables. Do not include any portions of the Information Tables on the Cover Page.

7. In reporting information required on Information Tables 1 and 2, Managers must account for a gross short position in an ETF, and activity that results in the acquisition or sale of shares of the ETF resulting from call options exercises or assignments; put options exercises or assignments; tendered conversions; secondary offering transactions; or other activity, as discussed further below. In determining its gross short position in an equity security, however, a Manager is not required to consider short positions that the ETF holds in individual underlying equity securities that are part of the ETF basket.

8. *Instructions for Information Table 1—Manager's Gross Short Position:*

a. *Column 1. Settlement Date.* Enter in Column 1 the last day of the calendar month of the reporting period on which a trade settles (''settlement date'').

b. *Column 2. Issuer Name.* Enter in Column 2 the name of the issuer of the security for which information is being reported. Reasonable abbreviations are permitted.

c. *Column 3. Issuer LEI.* If the issuer has an LEI, enter the issuer's LEI in Column 3.

d. *Column 4. Title of Class.* Enter in Column 4 the title of the class of the security for which information is being reported. Reasonable abbreviations are permitted.

e. *Column 5. CUSIP Number.* Enter in Column 5 the nine (9) digit CUSIP number of the security for which information is being reported, if applicable.

f. *Column 6. FIGI.* Enter in Column 6 the twelve (12) character, alphanumeric Financial Instrument Global Identifier (''FIGI'') of the security for which information is being reported, if a FIGI has been assigned.

g. *Column 7. End of Month Gross Short Position (Number of Shares).* Enter in Column 7 the number of shares that represent the Manager's gross short position in the security for which information is being reported at the close of regular trading hours on the last settlement date of the calendar month of the reporting period. The term ''gross short position'' means the number of shares of the security for which information is being reported that are held short, without inclusion of any offsetting economic positions—including shares of the reportable equity security or derivatives of such security.

h. *Column 8. End of Month Gross Short Position (rounded to nearest USD).* Enter in Column 8 the U.S. dollar value of the shares reported in Column 7, rounded to the nearest dollar. A Manager shall report the corresponding dollar value of the reported gross short position by multiplying the number of shares of the security for which information is being reported by the closing price at the close of regular trading hours on the last settlement date of the calendar month. In circumstances where such closing price is not available, the Manager shall use the price at which it last purchased or sold any share of that security.

9. *Instructions for Information Table 2—Daily Activity Affecting Manager's Gross Short Position During the Reporting Period:*

a. *Column 1. Settlement Date.* Enter in Column 1 each date during the reporting period on which a trade settles (settlement date). The Manager shall report information for each settlement date during the calendar month reporting period as described in these instructions.

b. *Column 2. Issuer Name.* Enter in Column 2 the name of the issuer of the equity security for which information is being reported. Reasonable abbreviations are permitted.

c. *Column 3. Issuer LEI.* If the issuer has an LEI, enter the issuer's LEI in Column 3.

d. *Column 4. Title of Class.* Enter in Column 4 the title of the class of the security for which information is being reported. Reasonable abbreviations are permitted.

e. *Column 5. CUSIP Number.* Enter in Column 5 the nine (9) digit CUSIP number of the security for which information is being reported, if applicable.

f. *Column 6. FIGI.* Enter in Column 6 the twelve (12) character, alphanumeric FIGI of the security for which information is being reported, if a FIGI has been assigned.

g. *Column 7. Net Change in Short Position (Number of Shares).* For the settlement date set forth in Column 1, enter the net change in short position (represented as a number of shares) reflecting how the reported gross short position in shares of the security for which information is being reported are being closed out—or increased—as a result of the acquisition or sale of shares of that equity security, by taking into account:

(1) Short sales of the security that settled on that date.

(2) Shares of the security that were purchased to cover, in whole or in part, an existing short position and settled on that date.

(3) Shares of the security that were acquired in a call option exercise that reduces or closes a short position on that security and settled on that date.

(4) Shares of the security that were sold in a put option exercise that creates or increases a short position on that security and settled on that date.

(5) Shares of the security that were sold in a call option assignment that creates or increases a short position on that security and settled on that date.

(6) Shares of the security that were acquired in a put option assignment that reduces or closes a short position on that security and settled on that date.

(7) Shares of the security for which information is being reported that were acquired as a result of the tendered conversions that reduces or closes a short position on that security and settled on that date.

(8) Shares of the security that were obtained through a secondary offering transaction that reduces or closes a short position on that security and settled on that date. Such secondary offering purchases must be reported whether they occurred outside or within the restricted period of Rule 105 of Regulation M, 17 CFR 242.105, which prohibits purchasing offering shares within the restricted period after selling short.

(9) Shares of the security that resulted from other activity not previously reported on this form that creates or increases a short position on that security and settled on that date, or that reduces or closes a short position on that security and settled on that date.

(10) Activity other than (1) through (9) above that creates or increases, or reduces or closes, a short position on that security, including, but not limited to, shares resulting from ETF creation or redemption activity.

Paperwork Reduction Act Information

Persons who are to respond to the collection of information contained in this form are not required to respond to the collection of information unless the form displays a currently valid Office of Management and Budget (''OMB'') control number.

OMB Number: XXXX–XXXX

United States

Securities and Exchange Commission

Washington, DC 20549

FORM SHO

Form SHO Cover Page

Report for the Period Ended: [Month/Day/Year]

Check here if Amendment and Restatement [ ]; Amendment Number:

Description of the Amendment and Restatement, Reason for the Amendment and Restatement, and Which Additional Form SHO Reporting Period(s) (up to the past 12 calendar months), if any, is/are affected by the Amendment and Restatement:

Institutional Investment Manager (''Manager'') Filing Report:

Name: ____________
Mailing Address: ____________
Business Telephone Number: ____________
Business Email: ____________
Non-Lapsed Legal Entity Identifier (''LEI''): ____________
Contact Employee: ____________
Name and Title: ____________
Business Telephone Number: ____________
Business Email: ____________
Date Filed: ____________

The Manager filing this report hereby represents that all information contained herein is true, correct and complete, and that it is understood that all required items, statements, schedules, lists, and tables, are considered integral parts of this form.

Report Type (Check only one):

[ ] FORM SHO ENTRIES REPORT. (Check here if all entries of this reporting Manager are reported in this report.)

[ ] FORM SHO NOTICE. (Check here if no entries reported are in this report, and all entries are reported by other reporting Manager(s).)

[ ] FORM SHO COMBINATION REPORT. (Check here if a portion of the entries for this reporting Manager is reported in this report and a portion is reported by other reporting Manager(s).)

Name and Non-Lapsed LEI of each of the Other Manager(s) Reporting for this Manager:

[If there are no entries in this list, omit this section.]

Name: ____________
Non-Lapsed LEI: ____________

[Repeat as necessary.]

INFORMATION TABLE 1—MANAGER'S MONTHLY GROSS SHORT POSITION

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Settlement Date (Month End).	Issuer Name.	Issuer LEI	Title of Class.	CUSIP Number.	FIGI	End of Month Gross Short Position (Number of Shares).	End of Month Gross Short Position (rounded to nearest USD).

(Repeat as Necessary)

INFORMATION TABLE 2—DAILY ACTIVITY AFFECTING MANAGER'S GROSS SHORT POSITION DURING THE REPORTING PERIOD

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Settlement Date	Issuer Name	Issuer LEI	Title of Class	CUSIP Number	FIGI	Net Change in Short Position (Number of Shares).

(Repeat as Necessary)

[FR Doc. 2023–23050 Filed 10–31–23; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 88 Wednesday,
No. 210 November 1, 2023

Part III

The President

Executive Order 14110—Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence

Federal Register
Vol. 88, No. 210
Wednesday, November 1, 2023

Presidential Documents

Title 3—

The President

Executive Order 14110 of October 30, 2023

Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence

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

Section 1. *Purpose.* Artificial intelligence (AI) holds extraordinary potential for both promise and peril. Responsible AI use has the potential to help solve urgent challenges while making our world more prosperous, productive, innovative, and secure. At the same time, irresponsible use could exacerbate societal harms such as fraud, discrimination, bias, and disinformation; displace and disempower workers; stifle competition; and pose risks to national security. Harnessing AI for good and realizing its myriad benefits requires mitigating its substantial risks. This endeavor demands a society-wide effort that includes government, the private sector, academia, and civil society.

My Administration places the highest urgency on governing the development and use of AI safely and responsibly, and is therefore advancing a coordinated, Federal Government-wide approach to doing so. The rapid speed at which AI capabilities are advancing compels the United States to lead in this moment for the sake of our security, economy, and society.

In the end, AI reflects the principles of the people who build it, the people who use it, and the data upon which it is built. I firmly believe that the power of our ideals; the foundations of our society; and the creativity, diversity, and decency of our people are the reasons that America thrived in past eras of rapid change. They are the reasons we will succeed again in this moment. We are more than capable of harnessing AI for justice, security, and opportunity for all.

Sec. 2. *Policy and Principles.* It is the policy of my Administration to advance and govern the development and use of AI in accordance with eight guiding principles and priorities. When undertaking the actions set forth in this order, executive departments and agencies (agencies) shall, as appropriate and consistent with applicable law, adhere to these principles, while, as feasible, taking into account the views of other agencies, industry, members of academia, civil society, labor unions, international allies and partners, and other relevant organizations:

(a) Artificial Intelligence must be safe and secure. Meeting this goal requires robust, reliable, repeatable, and standardized evaluations of AI systems, as well as policies, institutions, and, as appropriate, other mechanisms to test, understand, and mitigate risks from these systems before they are put to use. It also requires addressing AI systems' most pressing security risks—including with respect to biotechnology, cybersecurity, critical infrastructure, and other national security dangers—while navigating AI's opacity and complexity. Testing and evaluations, including post-deployment performance monitoring, will help ensure that AI systems function as intended, are resilient against misuse or dangerous modifications, are ethically developed and operated in a secure manner, and are compliant with applicable Federal laws and policies. Finally, my Administration will help develop effective labeling and content provenance mechanisms, so that Americans are able to determine when content is generated using AI and when it is not. These actions will provide a vital foundation for an approach that addresses AI's risks without unduly reducing its benefits.

(b) Promoting responsible innovation, competition, and collaboration will allow the United States to lead in AI and unlock the technology's potential to solve some of society's most difficult challenges. This effort requires investments in AI-related education, training, development, research, and capacity, while simultaneously tackling novel intellectual property (IP) questions and other problems to protect inventors and creators. Across the Federal Government, my Administration will support programs to provide Americans the skills they need for the age of AI and attract the world's AI talent to our shores—not just to study, but to stay—so that the companies and technologies of the future are made in America. The Federal Government will promote a fair, open, and competitive ecosystem and marketplace for AI and related technologies so that small developers and entrepreneurs can continue to drive innovation. Doing so requires stopping unlawful collusion and addressing risks from dominant firms' use of key assets such as semiconductors, computing power, cloud storage, and data to disadvantage competitors, and it requires supporting a marketplace that harnesses the benefits of AI to provide new opportunities for small businesses, workers, and entrepreneurs.

(c) The responsible development and use of AI require a commitment to supporting American workers. As AI creates new jobs and industries, all workers need a seat at the table, including through collective bargaining, to ensure that they benefit from these opportunities. My Administration will seek to adapt job training and education to support a diverse workforce and help provide access to opportunities that AI creates. In the workplace itself, AI should not be deployed in ways that undermine rights, worsen job quality, encourage undue worker surveillance, lessen market competition, introduce new health and safety risks, or cause harmful labor-force disruptions. The critical next steps in AI development should be built on the views of workers, labor unions, educators, and employers to support responsible uses of AI that improve workers' lives, positively augment human work, and help all people safely enjoy the gains and opportunities from technological innovation.

(d) Artificial Intelligence policies must be consistent with my Administration's dedication to advancing equity and civil rights. My Administration cannot—and will not—tolerate the use of AI to disadvantage those who are already too often denied equal opportunity and justice. From hiring to housing to healthcare, we have seen what happens when AI use deepens discrimination and bias, rather than improving quality of life. Artificial Intelligence systems deployed irresponsibly have reproduced and intensified existing inequities, caused new types of harmful discrimination, and exacerbated online and physical harms. My Administration will build on the important steps that have already been taken—such as issuing the Blueprint for an AI Bill of Rights, the AI Risk Management Framework, and Executive Order 14091 of February 16, 2023 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government)—in seeking to ensure that AI complies with all Federal laws and to promote robust technical evaluations, careful oversight, engagement with affected communities, and rigorous regulation. It is necessary to hold those developing and deploying AI accountable to standards that protect against unlawful discrimination and abuse, including in the justice system and the Federal Government. Only then can Americans trust AI to advance civil rights, civil liberties, equity, and justice for all.

(e) The interests of Americans who increasingly use, interact with, or purchase AI and AI-enabled products in their daily lives must be protected. Use of new technologies, such as AI, does not excuse organizations from their legal obligations, and hard-won consumer protections are more important than ever in moments of technological change. The Federal Government will enforce existing consumer protection laws and principles and enact appropriate safeguards against fraud, unintended bias, discrimination, infringements on privacy, and other harms from AI. Such protections are

especially important in critical fields like healthcare, financial services, education, housing, law, and transportation, where mistakes by or misuse of AI could harm patients, cost consumers or small businesses, or jeopardize safety or rights. At the same time, my Administration will promote responsible uses of AI that protect consumers, raise the quality of goods and services, lower their prices, or expand selection and availability.

(f) Americans' privacy and civil liberties must be protected as AI continues advancing. Artificial Intelligence is making it easier to extract, re-identify, link, infer, and act on sensitive information about people's identities, locations, habits, and desires. Artificial Intelligence's capabilities in these areas can increase the risk that personal data could be exploited and exposed. To combat this risk, the Federal Government will ensure that the collection, use, and retention of data is lawful, is secure, and mitigates privacy and confidentiality risks. Agencies shall use available policy and technical tools, including privacy-enhancing technologies (PETs) where appropriate, to protect privacy and to combat the broader legal and societal risks—including the chilling of First Amendment rights—that result from the improper collection and use of people's data.

(g) It is important to manage the risks from the Federal Government's own use of AI and increase its internal capacity to regulate, govern, and support responsible use of AI to deliver better results for Americans. These efforts start with people, our Nation's greatest asset. My Administration will take steps to attract, retain, and develop public service-oriented AI professionals, including from underserved communities, across disciplines—including technology, policy, managerial, procurement, regulatory, ethical, governance, and legal fields—and ease AI professionals' path into the Federal Government to help harness and govern AI. The Federal Government will work to ensure that all members of its workforce receive adequate training to understand the benefits, risks, and limitations of AI for their job functions, and to modernize Federal Government information technology infrastructure, remove bureaucratic obstacles, and ensure that safe and rights-respecting AI is adopted, deployed, and used.

(h) The Federal Government should lead the way to global societal, economic, and technological progress, as the United States has in previous eras of disruptive innovation and change. This leadership is not measured solely by the technological advancements our country makes. Effective leadership also means pioneering those systems and safeguards needed to deploy technology responsibly—and building and promoting those safeguards with the rest of the world. My Administration will engage with international allies and partners in developing a framework to manage AI's risks, unlock AI's potential for good, and promote common approaches to shared challenges. The Federal Government will seek to promote responsible AI safety and security principles and actions with other nations, including our competitors, while leading key global conversations and collaborations to ensure that AI benefits the whole world, rather than exacerbating inequities, threatening human rights, and causing other harms.

Sec. 3. *Definitions.* For purposes of this order:

(a) The term ''agency'' means each agency described in 44 U.S.C. 3502(1), except for the independent regulatory agencies described in 44 U.S.C. 3502(5).

(b) The term ''artificial intelligence'' or ''AI'' has the meaning set forth in 15 U.S.C. 9401(3): a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. Artificial intelligence systems use machine- and human-based inputs to perceive real and virtual environments; abstract such perceptions into models through analysis in an automated manner; and use model inference to formulate options for information or action.

(c) The term ''AI model'' means a component of an information system that implements AI technology and uses computational, statistical, or machine-learning techniques to produce outputs from a given set of inputs.

(d) The term ''AI red-teaming'' means a structured testing effort to find flaws and vulnerabilities in an AI system, often in a controlled environment and in collaboration with developers of AI. Artificial Intelligence red-teaming is most often performed by dedicated ''red teams'' that adopt adversarial methods to identify flaws and vulnerabilities, such as harmful or discriminatory outputs from an AI system, unforeseen or undesirable system behaviors, limitations, or potential risks associated with the misuse of the system.

(e) The term ''AI system'' means any data system, software, hardware, application, tool, or utility that operates in whole or in part using AI.

(f) The term ''commercially available information'' means any information or data about an individual or group of individuals, including an individual's or group of individuals' device or location, that is made available or obtainable and sold, leased, or licensed to the general public or to governmental or non-governmental entities.

(g) The term ''crime forecasting'' means the use of analytical techniques to attempt to predict future crimes or crime-related information. It can include machine-generated predictions that use algorithms to analyze large volumes of data, as well as other forecasts that are generated without machines and based on statistics, such as historical crime statistics.

(h) The term ''critical and emerging technologies'' means those technologies listed in the February 2022 Critical and Emerging Technologies List Update issued by the National Science and Technology Council (NSTC), as amended by subsequent updates to the list issued by the NSTC.

(i) The term ''critical infrastructure'' has the meaning set forth in section 1016(e) of the USA PATRIOT Act of 2001, 42 U.S.C. 5195c(e).

(j) The term ''differential-privacy guarantee'' means protections that allow information about a group to be shared while provably limiting the improper access, use, or disclosure of personal information about particular entities.

(k) The term ''dual-use foundation model'' means an AI model that is trained on broad data; generally uses self-supervision; contains at least tens of billions of parameters; is applicable across a wide range of contexts; and that exhibits, or could be easily modified to exhibit, high levels of performance at tasks that pose a serious risk to security, national economic security, national public health or safety, or any combination of those matters, such as by:

(i) substantially lowering the barrier of entry for non-experts to design, synthesize, acquire, or use chemical, biological, radiological, or nuclear (CBRN) weapons;

(ii) enabling powerful offensive cyber operations through automated vulnerability discovery and exploitation against a wide range of potential targets of cyber attacks; or

(iii) permitting the evasion of human control or oversight through means of deception or obfuscation.

Models meet this definition even if they are provided to end users with technical safeguards that attempt to prevent users from taking advantage of the relevant unsafe capabilities.

(l) The term ''Federal law enforcement agency'' has the meaning set forth in section 21(a) of Executive Order 14074 of May 25, 2022 (Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety).

(m) The term ''floating-point operation'' means any mathematical operation or assignment involving floating-point numbers, which are a subset of the real numbers typically represented on computers by an integer of fixed precision scaled by an integer exponent of a fixed base.

(n) The term ''foreign person'' has the meaning set forth in section 5(c) of Executive Order 13984 of January 19, 2021 (Taking Additional Steps

To Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities).

(o) The terms ''foreign reseller'' and ''foreign reseller of United States Infrastructure as a Service Products'' mean a foreign person who has established an Infrastructure as a Service Account to provide Infrastructure as a Service Products subsequently, in whole or in part, to a third party.

(p) The term ''generative AI'' means the class of AI models that emulate the structure and characteristics of input data in order to generate derived synthetic content. This can include images, videos, audio, text, and other digital content.

(q) The terms ''Infrastructure as a Service Product,'' ''United States Infrastructure as a Service Product,'' ''United States Infrastructure as a Service Provider,'' and ''Infrastructure as a Service Account'' each have the respective meanings given to those terms in section 5 of Executive Order 13984.

(r) The term ''integer operation'' means any mathematical operation or assignment involving only integers, or whole numbers expressed without a decimal point.

(s) The term ''Intelligence Community'' has the meaning given to that term in section 3.5(h) of Executive Order 12333 of December 4, 1981 (United States Intelligence Activities), as amended.

(t) The term ''machine learning'' means a set of techniques that can be used to train AI algorithms to improve performance at a task based on data.

(u) The term ''model weight'' means a numerical parameter within an AI model that helps determine the model's outputs in response to inputs.

(v) The term ''national security system'' has the meaning set forth in 44 U.S.C. 3552(b)(6).

(w) The term ''omics'' means biomolecules, including nucleic acids, proteins, and metabolites, that make up a cell or cellular system.

(x) The term ''Open RAN'' means the Open Radio Access Network approach to telecommunications-network standardization adopted by the O–RAN Alliance, Third Generation Partnership Project, or any similar set of published open standards for multi-vendor network equipment interoperability.

(y) The term ''personally identifiable information'' has the meaning set forth in Office of Management and Budget (OMB) Circular No. A–130.

(z) The term ''privacy-enhancing technology'' means any software or hardware solution, technical process, technique, or other technological means of mitigating privacy risks arising from data processing, including by enhancing predictability, manageability, disassociability, storage, security, and confidentiality. These technological means may include secure multiparty computation, homomorphic encryption, zero-knowledge proofs, federated learning, secure enclaves, differential privacy, and synthetic-data-generation tools. This is also sometimes referred to as ''privacy-preserving technology.''

(aa) The term ''privacy impact assessment'' has the meaning set forth in OMB Circular No. A–130.

(bb) The term ''Sector Risk Management Agency'' has the meaning set forth in 6 U.S.C. 650(23).

(cc) The term ''self-healing network'' means a telecommunications network that automatically diagnoses and addresses network issues to permit self-restoration.

(dd) The term ''synthetic biology'' means a field of science that involves redesigning organisms, or the biomolecules of organisms, at the genetic level to give them new characteristics. Synthetic nucleic acids are a type of biomolecule redesigned through synthetic-biology methods.

(ee) The term ''synthetic content'' means information, such as images, videos, audio clips, and text, that has been significantly modified or generated by algorithms, including by AI.

(ff) The term ''testbed'' means a facility or mechanism equipped for conducting rigorous, transparent, and replicable testing of tools and technologies, including AI and PETs, to help evaluate the functionality, usability, and performance of those tools or technologies.

(gg) The term ''watermarking'' means the act of embedding information, which is typically difficult to remove, into outputs created by AI—including into outputs such as photos, videos, audio clips, or text—for the purposes of verifying the authenticity of the output or the identity or characteristics of its provenance, modifications, or conveyance.

Sec. 4. *Ensuring the Safety and Security of AI Technology.*

4.1. Developing Guidelines, Standards, and Best Practices for AI Safety and Security. (a) Within 270 days of the date of this order, to help ensure the development of safe, secure, and trustworthy AI systems, the Secretary of Commerce, acting through the Director of the National Institute of Standards and Technology (NIST), in coordination with the Secretary of Energy, the Secretary of Homeland Security, and the heads of other relevant agencies as the Secretary of Commerce may deem appropriate, shall:

(i) Establish guidelines and best practices, with the aim of promoting consensus industry standards, for developing and deploying safe, secure, and trustworthy AI systems, including:

(A) developing a companion resource to the AI Risk Management Framework, NIST AI 100–1, for generative AI;

(B) developing a companion resource to the Secure Software Development Framework to incorporate secure development practices for generative AI and for dual-use foundation models; and

(C) launching an initiative to create guidance and benchmarks for evaluating and auditing AI capabilities, with a focus on capabilities through which AI could cause harm, such as in the areas of cybersecurity and biosecurity.

(ii) Establish appropriate guidelines (except for AI used as a component of a national security system), including appropriate procedures and processes, to enable developers of AI, especially of dual-use foundation models, to conduct AI red-teaming tests to enable deployment of safe, secure, and trustworthy systems. These efforts shall include:

(A) coordinating or developing guidelines related to assessing and managing the safety, security, and trustworthiness of dual-use foundation models; and

(B) in coordination with the Secretary of Energy and the Director of the National Science Foundation (NSF), developing and helping to ensure the availability of testing environments, such as testbeds, to support the development of safe, secure, and trustworthy AI technologies, as well as to support the design, development, and deployment of associated PETs, consistent with section 9(b) of this order.

(b) Within 270 days of the date of this order, to understand and mitigate AI security risks, the Secretary of Energy, in coordination with the heads of other Sector Risk Management Agencies (SRMAs) as the Secretary of Energy may deem appropriate, shall develop and, to the extent permitted by law and available appropriations, implement a plan for developing the Department of Energy's AI model evaluation tools and AI testbeds. The Secretary shall undertake this work using existing solutions where possible, and shall develop these tools and AI testbeds to be capable of assessing near-term extrapolations of AI systems' capabilities. At a minimum, the Secretary shall develop tools to evaluate AI capabilities to generate outputs that may represent nuclear, nonproliferation, biological, chemical, critical infrastructure, and energy-security threats or hazards. The Secretary shall

do this work solely for the purposes of guarding against these threats, and shall also develop model guardrails that reduce such risks. The Secretary shall, as appropriate, consult with private AI laboratories, academia, civil society, and third-party evaluators, and shall use existing solutions.

4.2. Ensuring Safe and Reliable AI. (a) Within 90 days of the date of this order, to ensure and verify the continuous availability of safe, reliable, and effective AI in accordance with the Defense Production Act, as amended, 50 U.S.C. 4501 *et seq.,* including for the national defense and the protection of critical infrastructure, the Secretary of Commerce shall require:

(i) Companies developing or demonstrating an intent to develop potential dual-use foundation models to provide the Federal Government, on an ongoing basis, with information, reports, or records regarding the following:

(A) any ongoing or planned activities related to training, developing, or producing dual-use foundation models, including the physical and cybersecurity protections taken to assure the integrity of that training process against sophisticated threats;

(B) the ownership and possession of the model weights of any dual-use foundation models, and the physical and cybersecurity measures taken to protect those model weights; and

(C) the results of any developed dual-use foundation model's performance in relevant AI red-team testing based on guidance developed by NIST pursuant to subsection 4.1(a)(ii) of this section, and a description of any associated measures the company has taken to meet safety objectives, such as mitigations to improve performance on these red-team tests and strengthen overall model security. Prior to the development of guidance on red-team testing standards by NIST pursuant to subsection 4.1(a)(ii) of this section, this description shall include the results of any red-team testing that the company has conducted relating to lowering the barrier to entry for the development, acquisition, and use of biological weapons by non-state actors; the discovery of software vulnerabilities and development of associated exploits; the use of software or tools to influence real or virtual events; the possibility for self-replication or propagation; and associated measures to meet safety objectives; and

(ii) Companies, individuals, or other organizations or entities that acquire, develop, or possess a potential large-scale computing cluster to report any such acquisition, development, or possession, including the existence and location of these clusters and the amount of total computing power available in each cluster.

(b) The Secretary of Commerce, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Energy, and the Director of National Intelligence, shall define, and thereafter update as needed on a regular basis, the set of technical conditions for models and computing clusters that would be subject to the reporting requirements of subsection 4.2(a) of this section. Until such technical conditions are defined, the Secretary shall require compliance with these reporting requirements for:

(i) any model that was trained using a quantity of computing power greater than 10^{26} integer or floating-point operations, or using primarily biological sequence data and using a quantity of computing power greater than 10^{23} integer or floating-point operations; and

(ii) any computing cluster that has a set of machines physically co-located in a single datacenter, transitively connected by data center networking of over 100 Gbit/s, and having a theoretical maximum computing capacity of 10^{20} integer or floating-point operations per second for training AI.

(c) Because I find that additional steps must be taken to deal with the national emergency related to significant malicious cyber-enabled activities declared in Executive Order 13694 of April 1, 2015 (Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities), as amended by Executive Order 13757 of December 28, 2016 (Taking

Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities), and further amended by Executive Order 13984, to address the use of United States Infrastructure as a Service (IaaS) Products by foreign malicious cyber actors, including to impose additional record-keeping obligations with respect to foreign transactions and to assist in the investigation of transactions involving foreign malicious cyber actors, I hereby direct the Secretary of Commerce, within 90 days of the date of this order, to:

(i) Propose regulations that require United States IaaS Providers to submit a report to the Secretary of Commerce when a foreign person transacts with that United States IaaS Provider to train a large AI model with potential capabilities that could be used in malicious cyber-enabled activity (a ''training run''). Such reports shall include, at a minimum, the identity of the foreign person and the existence of any training run of an AI model meeting the criteria set forth in this section, or other criteria defined by the Secretary in regulations, as well as any additional information identified by the Secretary.

(ii) Include a requirement in the regulations proposed pursuant to subsection 4.2(c)(i) of this section that United States IaaS Providers prohibit any foreign reseller of their United States IaaS Product from providing those products unless such foreign reseller submits to the United States IaaS Provider a report, which the United States IaaS Provider must provide to the Secretary of Commerce, detailing each instance in which a foreign person transacts with the foreign reseller to use the United States IaaS Product to conduct a training run described in subsection 4.2(c)(i) of this section. Such reports shall include, at a minimum, the information specified in subsection 4.2(c)(i) of this section as well as any additional information identified by the Secretary.

(iii) Determine the set of technical conditions for a large AI model to have potential capabilities that could be used in malicious cyber-enabled activity, and revise that determination as necessary and appropriate. Until the Secretary makes such a determination, a model shall be considered to have potential capabilities that could be used in malicious cyber-enabled activity if it requires a quantity of computing power greater than 10^{26} integer or floating-point operations and is trained on a computing cluster that has a set of machines physically co-located in a single datacenter, transitively connected by data center networking of over 100 Gbit/s, and having a theoretical maximum compute capacity of 10^{20} integer or floating-point operations per second for training AI.

(d) Within 180 days of the date of this order, pursuant to the finding set forth in subsection 4.2(c) of this section, the Secretary of Commerce shall propose regulations that require United States IaaS Providers to ensure that foreign resellers of United States IaaS Products verify the identity of any foreign person that obtains an IaaS account (account) from the foreign reseller. These regulations shall, at a minimum:

(i) Set forth the minimum standards that a United States IaaS Provider must require of foreign resellers of its United States IaaS Products to verify the identity of a foreign person who opens an account or maintains an existing account with a foreign reseller, including:

(A) the types of documentation and procedures that foreign resellers of United States IaaS Products must require to verify the identity of any foreign person acting as a lessee or sub-lessee of these products or services;

(B) records that foreign resellers of United States IaaS Products must securely maintain regarding a foreign person that obtains an account, including information establishing:

(1) the identity of such foreign person, including name and address;

(2) the means and source of payment (including any associated financial institution and other identifiers such as credit card number, account number, customer identifier, transaction identifiers, or virtual currency wallet or wallet address identifier);

(3) the electronic mail address and telephonic contact information used to verify a foreign person's identity; and

(4) the internet Protocol addresses used for access or administration and the date and time of each such access or administrative action related to ongoing verification of such foreign person's ownership of such an account; and

(C) methods that foreign resellers of United States IaaS Products must implement to limit all third-party access to the information described in this subsection, except insofar as such access is otherwise consistent with this order and allowed under applicable law;

(ii) Take into consideration the types of accounts maintained by foreign resellers of United States IaaS Products, methods of opening an account, and types of identifying information available to accomplish the objectives of identifying foreign malicious cyber actors using any such products and avoiding the imposition of an undue burden on such resellers; and

(iii) Provide that the Secretary of Commerce, in accordance with such standards and procedures as the Secretary may delineate and in consultation with the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence, may exempt a United States IaaS Provider with respect to any specific foreign reseller of their United States IaaS Products, or with respect to any specific type of account or lessee, from the requirements of any regulation issued pursuant to this subsection. Such standards and procedures may include a finding by the Secretary that such foreign reseller, account, or lessee complies with security best practices to otherwise deter abuse of United States IaaS Products.

(e) The Secretary of Commerce is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.,* as may be necessary to carry out the purposes of subsections 4.2(c) and (d) of this section. Such actions may include a requirement that United States IaaS Providers require foreign resellers of United States IaaS Products to provide United States IaaS Providers verifications relative to those subsections.

4.3. Managing AI in Critical Infrastructure and in Cybersecurity. (a) To ensure the protection of critical infrastructure, the following actions shall be taken:

(i) Within 90 days of the date of this order, and at least annually thereafter, the head of each agency with relevant regulatory authority over critical infrastructure and the heads of relevant SRMAs, in coordination with the Director of the Cybersecurity and Infrastructure Security Agency within the Department of Homeland Security for consideration of cross-sector risks, shall evaluate and provide to the Secretary of Homeland Security an assessment of potential risks related to the use of AI in critical infrastructure sectors involved, including ways in which deploying AI may make critical infrastructure systems more vulnerable to critical failures, physical attacks, and cyber attacks, and shall consider ways to mitigate these vulnerabilities. Independent regulatory agencies are encouraged, as they deem appropriate, to contribute to sector-specific risk assessments.

(ii) Within 150 days of the date of this order, the Secretary of the Treasury shall issue a public report on best practices for financial institutions to manage AI-specific cybersecurity risks.

(iii) Within 180 days of the date of this order, the Secretary of Homeland Security, in coordination with the Secretary of Commerce and with SRMAs and other regulators as determined by the Secretary of Homeland Security, shall incorporate as appropriate the AI Risk Management Framework, NIST

AI 100–1, as well as other appropriate security guidance, into relevant safety and security guidelines for use by critical infrastructure owners and operators.

(iv) Within 240 days of the completion of the guidelines described in subsection 4.3(a)(iii) of this section, the Assistant to the President for National Security Affairs and the Director of OMB, in consultation with the Secretary of Homeland Security, shall coordinate work by the heads of agencies with authority over critical infrastructure to develop and take steps for the Federal Government to mandate such guidelines, or appropriate portions thereof, through regulatory or other appropriate action. Independent regulatory agencies are encouraged, as they deem appropriate, to consider whether to mandate guidance through regulatory action in their areas of authority and responsibility.

(v) The Secretary of Homeland Security shall establish an Artificial Intelligence Safety and Security Board as an advisory committee pursuant to section 871 of the Homeland Security Act of 2002 (Public Law 107–296). The Advisory Committee shall include AI experts from the private sector, academia, and government, as appropriate, and provide to the Secretary of Homeland Security and the Federal Government's critical infrastructure community advice, information, or recommendations for improving security, resilience, and incident response related to AI usage in critical infrastructure.

(b) To capitalize on AI's potential to improve United States cyber defenses:

(i) The Secretary of Defense shall carry out the actions described in subsections 4.3(b)(ii) and (iii) of this section for national security systems, and the Secretary of Homeland Security shall carry out these actions for non-national security systems. Each shall do so in consultation with the heads of other relevant agencies as the Secretary of Defense and the Secretary of Homeland Security may deem appropriate.

(ii) As set forth in subsection 4.3(b)(i) of this section, within 180 days of the date of this order, the Secretary of Defense and the Secretary of Homeland Security shall, consistent with applicable law, each develop plans for, conduct, and complete an operational pilot project to identify, develop, test, evaluate, and deploy AI capabilities, such as large-language models, to aid in the discovery and remediation of vulnerabilities in critical United States Government software, systems, and networks.

(iii) As set forth in subsection 4.3(b)(i) of this section, within 270 days of the date of this order, the Secretary of Defense and the Secretary of Homeland Security shall each provide a report to the Assistant to the President for National Security Affairs on the results of actions taken pursuant to the plans and operational pilot projects required by subsection 4.3(b)(ii) of this section, including a description of any vulnerabilities found and fixed through the development and deployment of AI capabilities and any lessons learned on how to identify, develop, test, evaluate, and deploy AI capabilities effectively for cyber defense.

4.4. Reducing Risks at the Intersection of AI and CBRN Threats. (a) To better understand and mitigate the risk of AI being misused to assist in the development or use of CBRN threats—with a particular focus on biological weapons—the following actions shall be taken:

(i) Within 180 days of the date of this order, the Secretary of Homeland Security, in consultation with the Secretary of Energy and the Director of the Office of Science and Technology Policy (OSTP), shall evaluate the potential for AI to be misused to enable the development or production of CBRN threats, while also considering the benefits and application of AI to counter these threats, including, as appropriate, the results of work conducted under section 8(b) of this order. The Secretary of Homeland Security shall:

(A) consult with experts in AI and CBRN issues from the Department of Energy, private AI laboratories, academia, and third-party model evaluators, as appropriate, to evaluate AI model capabilities to present CBRN

threats—for the sole purpose of guarding against those threats—as well as options for minimizing the risks of AI model misuse to generate or exacerbate those threats; and

(B) submit a report to the President that describes the progress of these efforts, including an assessment of the types of AI models that may present CBRN risks to the United States, and that makes recommendations for regulating or overseeing the training, deployment, publication, or use of these models, including requirements for safety evaluations and guardrails for mitigating potential threats to national security.

(ii) Within 120 days of the date of this order, the Secretary of Defense, in consultation with the Assistant to the President for National Security Affairs and the Director of OSTP, shall enter into a contract with the National Academies of Sciences, Engineering, and Medicine to conduct—and submit to the Secretary of Defense, the Assistant to the President for National Security Affairs, the Director of the Office of Pandemic Preparedness and Response Policy, the Director of OSTP, and the Chair of the Chief Data Officer Council—a study that:

(A) assesses the ways in which AI can increase biosecurity risks, including risks from generative AI models trained on biological data, and makes recommendations on how to mitigate these risks;

(B) considers the national security implications of the use of data and datasets, especially those associated with pathogens and omics studies, that the United States Government hosts, generates, funds the creation of, or otherwise owns, for the training of generative AI models, and makes recommendations on how to mitigate the risks related to the use of these data and datasets;

(C) assesses the ways in which AI applied to biology can be used to reduce biosecurity risks, including recommendations on opportunities to coordinate data and high-performance computing resources; and

(D) considers additional concerns and opportunities at the intersection of AI and synthetic biology that the Secretary of Defense deems appropriate.

(b) To reduce the risk of misuse of synthetic nucleic acids, which could be substantially increased by AI's capabilities in this area, and improve biosecurity measures for the nucleic acid synthesis industry, the following actions shall be taken:

(i) Within 180 days of the date of this order, the Director of OSTP, in consultation with the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Health and Human Services (HHS), the Secretary of Energy, the Secretary of Homeland Security, the Director of National Intelligence, and the heads of other relevant agencies as the Director of OSTP may deem appropriate, shall establish a framework, incorporating, as appropriate, existing United States Government guidance, to encourage providers of synthetic nucleic acid sequences to implement comprehensive, scalable, and verifiable synthetic nucleic acid procurement screening mechanisms, including standards and recommended incentives. As part of this framework, the Director of OSTP shall:

(A) establish criteria and mechanisms for ongoing identification of biological sequences that could be used in a manner that would pose a risk to the national security of the United States; and

(B) determine standardized methodologies and tools for conducting and verifying the performance of sequence synthesis procurement screening, including customer screening approaches to support due diligence with respect to managing security risks posed by purchasers of biological sequences identified in subsection 4.4(b)(i)(A) of this section, and processes for the reporting of concerning activity to enforcement entities.

(ii) Within 180 days of the date of this order, the Secretary of Commerce, acting through the Director of NIST, in coordination with the Director

of OSTP, and in consultation with the Secretary of State, the Secretary of HHS, and the heads of other relevant agencies as the Secretary of Commerce may deem appropriate, shall initiate an effort to engage with industry and relevant stakeholders, informed by the framework developed under subsection 4.4(b)(i) of this section, to develop and refine for possible use by synthetic nucleic acid sequence providers:

(A) specifications for effective nucleic acid synthesis procurement screening;

(B) best practices, including security and access controls, for managing sequence-of-concern databases to support such screening;

(C) technical implementation guides for effective screening; and

(D) conformity-assessment best practices and mechanisms.

(iii) Within 180 days of the establishment of the framework pursuant to subsection 4.4(b)(i) of this section, all agencies that fund life-sciences research shall, as appropriate and consistent with applicable law, establish that, as a requirement of funding, synthetic nucleic acid procurement is conducted through providers or manufacturers that adhere to the framework, such as through an attestation from the provider or manufacturer. The Assistant to the President for National Security Affairs and the Director of OSTP shall coordinate the process of reviewing such funding requirements to facilitate consistency in implementation of the framework across funding agencies.

(iv) In order to facilitate effective implementation of the measures described in subsections 4.4(b)(i)–(iii) of this section, the Secretary of Homeland Security, in consultation with the heads of other relevant agencies as the Secretary of Homeland Security may deem appropriate, shall:

(A) within 180 days of the establishment of the framework pursuant to subsection 4.4(b)(i) of this section, develop a framework to conduct structured evaluation and stress testing of nucleic acid synthesis procurement screening, including the systems developed in accordance with subsections 4.4(b)(i)–(ii) of this section and implemented by providers of synthetic nucleic acid sequences; and

(B) following development of the framework pursuant to subsection 4.4(b)(iv)(A) of this section, submit an annual report to the Assistant to the President for National Security Affairs, the Director of the Office of Pandemic Preparedness and Response Policy, and the Director of OSTP on any results of the activities conducted pursuant to subsection 4.4(b)(iv)(A) of this section, including recommendations, if any, on how to strengthen nucleic acid synthesis procurement screening, including customer screening systems.

4.5. Reducing the Risks Posed by Synthetic Content. To foster capabilities for identifying and labeling synthetic content produced by AI systems, and to establish the authenticity and provenance of digital content, both synthetic and not synthetic, produced by the Federal Government or on its behalf:

(a) Within 240 days of the date of this order, the Secretary of Commerce, in consultation with the heads of other relevant agencies as the Secretary of Commerce may deem appropriate, shall submit a report to the Director of OMB and the Assistant to the President for National Security Affairs identifying the existing standards, tools, methods, and practices, as well as the potential development of further science-backed standards and techniques, for:

(i) authenticating content and tracking its provenance;

(ii) labeling synthetic content, such as using watermarking;

(iii) detecting synthetic content;

(iv) preventing generative AI from producing child sexual abuse material or producing non-consensual intimate imagery of real individuals (to include intimate digital depictions of the body or body parts of an identifiable individual);

(v) testing software used for the above purposes; and

(vi) auditing and maintaining synthetic content.

(b) Within 180 days of submitting the report required under subsection 4.5(a) of this section, and updated periodically thereafter, the Secretary of Commerce, in coordination with the Director of OMB, shall develop guidance regarding the existing tools and practices for digital content authentication and synthetic content detection measures. The guidance shall include measures for the purposes listed in subsection 4.5(a) of this section.

(c) Within 180 days of the development of the guidance required under subsection 4.5(b) of this section, and updated periodically thereafter, the Director of OMB, in consultation with the Secretary of State; the Secretary of Defense; the Attorney General; the Secretary of Commerce, acting through the Director of NIST; the Secretary of Homeland Security; the Director of National Intelligence; and the heads of other agencies that the Director of OMB deems appropriate, shall—for the purpose of strengthening public confidence in the integrity of official United States Government digital content—issue guidance to agencies for labeling and authenticating such content that they produce or publish.

(d) The Federal Acquisition Regulatory Council shall, as appropriate and consistent with applicable law, consider amending the Federal Acquisition Regulation to take into account the guidance established under subsection 4.5 of this section.

4.6. Soliciting Input on Dual-Use Foundation Models with Widely Available Model Weights. When the weights for a dual-use foundation model are widely available—such as when they are publicly posted on the internet—there can be substantial benefits to innovation, but also substantial security risks, such as the removal of safeguards within the model. To address the risks and potential benefits of dual-use foundation models with widely available weights, within 270 days of the date of this order, the Secretary of Commerce, acting through the Assistant Secretary of Commerce for Communications and Information, and in consultation with the Secretary of State, shall:

(a) solicit input from the private sector, academia, civil society, and other stakeholders through a public consultation process on potential risks, benefits, other implications, and appropriate policy and regulatory approaches related to dual-use foundation models for which the model weights are widely available, including:

(i) risks associated with actors fine-tuning dual-use foundation models for which the model weights are widely available or removing those models' safeguards;

(ii) benefits to AI innovation and research, including research into AI safety and risk management, of dual-use foundation models for which the model weights are widely available; and

(iii) potential voluntary, regulatory, and international mechanisms to manage the risks and maximize the benefits of dual-use foundation models for which the model weights are widely available; and

(b) based on input from the process described in subsection 4.6(a) of this section, and in consultation with the heads of other relevant agencies as the Secretary of Commerce deems appropriate, submit a report to the President on the potential benefits, risks, and implications of dual-use foundation models for which the model weights are widely available, as well as policy and regulatory recommendations pertaining to those models.

4.7. Promoting Safe Release and Preventing the Malicious Use of Federal Data for AI Training. To improve public data access and manage security risks, and consistent with the objectives of the Open, Public, Electronic,

and Necessary Government Data Act (title II of Public Law 115–435) to expand public access to Federal data assets in a machine-readable format while also taking into account security considerations, including the risk that information in an individual data asset in isolation does not pose a security risk but, when combined with other available information, may pose such a risk:

(a) within 270 days of the date of this order, the Chief Data Officer Council, in consultation with the Secretary of Defense, the Secretary of Commerce, the Secretary of Energy, the Secretary of Homeland Security, and the Director of National Intelligence, shall develop initial guidelines for performing security reviews, including reviews to identify and manage the potential security risks of releasing Federal data that could aid in the development of CBRN weapons as well as the development of autonomous offensive cyber capabilities, while also providing public access to Federal Government data in line with the goals stated in the Open, Public, Electronic, and Necessary Government Data Act (title II of Public Law 115–435); and

(b) within 180 days of the development of the initial guidelines required by subsection 4.7(a) of this section, agencies shall conduct a security review of all data assets in the comprehensive data inventory required under 44 U.S.C. 3511(a)(1) and (2)(B) and shall take steps, as appropriate and consistent with applicable law, to address the highest-priority potential security risks that releasing that data could raise with respect to CBRN weapons, such as the ways in which that data could be used to train AI systems.

4.8. Directing the Development of a National Security Memorandum. To develop a coordinated executive branch approach to managing AI's security risks, the Assistant to the President for National Security Affairs and the Assistant to the President and Deputy Chief of Staff for Policy shall oversee an interagency process with the purpose of, within 270 days of the date of this order, developing and submitting a proposed National Security Memorandum on AI to the President. The memorandum shall address the governance of AI used as a component of a national security system or for military and intelligence purposes. The memorandum shall take into account current efforts to govern the development and use of AI for national security systems. The memorandum shall outline actions for the Department of Defense, the Department of State, other relevant agencies, and the Intelligence Community to address the national security risks and potential benefits posed by AI. In particular, the memorandum shall:

(a) provide guidance to the Department of Defense, other relevant agencies, and the Intelligence Community on the continued adoption of AI capabilities to advance the United States national security mission, including through directing specific AI assurance and risk-management practices for national security uses of AI that may affect the rights or safety of United States persons and, in appropriate contexts, non-United States persons; and

(b) direct continued actions, as appropriate and consistent with applicable law, to address the potential use of AI systems by adversaries and other foreign actors in ways that threaten the capabilities or objectives of the Department of Defense or the Intelligence Community, or that otherwise pose risks to the security of the United States or its allies and partners.

Sec. 5. *Promoting Innovation and Competition.*

5.1. Attracting AI Talent to the United States. (a) Within 90 days of the date of this order, to attract and retain talent in AI and other critical and emerging technologies in the United States economy, the Secretary of State and the Secretary of Homeland Security shall take appropriate steps to:

(i) streamline processing times of visa petitions and applications, including by ensuring timely availability of visa appointments, for noncitizens who seek to travel to the United States to work on, study, or conduct research in AI or other critical and emerging technologies; and

(ii) facilitate continued availability of visa appointments in sufficient volume for applicants with expertise in AI or other critical and emerging technologies.

(b) Within 120 days of the date of this order, the Secretary of State shall:

(i) consider initiating a rulemaking to establish new criteria to designate countries and skills on the Department of State's Exchange Visitor Skills List as it relates to the 2-year foreign residence requirement for certain J–1 nonimmigrants, including those skills that are critical to the United States;

(ii) consider publishing updates to the 2009 Revised Exchange Visitor Skills List (74 FR 20108); and

(iii) consider implementing a domestic visa renewal program under 22 CFR 41.111(b) to facilitate the ability of qualified applicants, including highly skilled talent in AI and critical and emerging technologies, to continue their work in the United States without unnecessary interruption.

(c) Within 180 days of the date of this order, the Secretary of State shall:

(i) consider initiating a rulemaking to expand the categories of nonimmigrants who qualify for the domestic visa renewal program covered under 22 CFR 41.111(b) to include academic J–1 research scholars and F–1 students in science, technology, engineering, and mathematics (STEM); and

(ii) establish, to the extent permitted by law and available appropriations, a program to identify and attract top talent in AI and other critical and emerging technologies at universities, research institutions, and the private sector overseas, and to establish and increase connections with that talent to educate them on opportunities and resources for research and employment in the United States, including overseas educational components to inform top STEM talent of nonimmigrant and immigrant visa options and potential expedited adjudication of their visa petitions and applications.

(d) Within 180 days of the date of this order, the Secretary of Homeland Security shall:

(i) review and initiate any policy changes the Secretary determines necessary and appropriate to clarify and modernize immigration pathways for experts in AI and other critical and emerging technologies, including O–1A and EB–1 noncitizens of extraordinary ability; EB–2 advanced-degree holders and noncitizens of exceptional ability; and startup founders in AI and other critical and emerging technologies using the International Entrepreneur Rule; and

(ii) continue its rulemaking process to modernize the H–1B program and enhance its integrity and usage, including by experts in AI and other critical and emerging technologies, and consider initiating a rulemaking to enhance the process for noncitizens, including experts in AI and other critical and emerging technologies and their spouses, dependents, and children, to adjust their status to lawful permanent resident.

(e) Within 45 days of the date of this order, for purposes of considering updates to the ''Schedule A'' list of occupations, 20 CFR 656.5, the Secretary of Labor shall publish a request for information (RFI) to solicit public input, including from industry and worker-advocate communities, identifying AI and other STEM-related occupations, as well as additional occupations across the economy, for which there is an insufficient number of ready, willing, able, and qualified United States workers.

(f) The Secretary of State and the Secretary of Homeland Security shall, consistent with applicable law and implementing regulations, use their discretionary authorities to support and attract foreign nationals with special skills in AI and other critical and emerging technologies seeking to work, study, or conduct research in the United States.

(g) Within 120 days of the date of this order, the Secretary of Homeland Security, in consultation with the Secretary of State, the Secretary of Commerce, and the Director of OSTP, shall develop and publish informational resources to better attract and retain experts in AI and other critical and emerging technologies, including:

(i) a clear and comprehensive guide for experts in AI and other critical and emerging technologies to understand their options for working in the United States, to be published in multiple relevant languages on AI.gov; and

(ii) a public report with relevant data on applications, petitions, approvals, and other key indicators of how experts in AI and other critical and emerging technologies have utilized the immigration system through the end of Fiscal Year 2023.

5.2. Promoting Innovation. (a) To develop and strengthen public-private partnerships for advancing innovation, commercialization, and risk-mitigation methods for AI, and to help promote safe, responsible, fair, privacy-protecting, and trustworthy AI systems, the Director of NSF shall take the following steps:

(i) Within 90 days of the date of this order, in coordination with the heads of agencies that the Director of NSF deems appropriate, launch a pilot program implementing the National AI Research Resource (NAIRR), consistent with past recommendations of the NAIRR Task Force. The program shall pursue the infrastructure, governance mechanisms, and user interfaces to pilot an initial integration of distributed computational, data, model, and training resources to be made available to the research community in support of AI-related research and development. The Director of NSF shall identify Federal and private sector computational, data, software, and training resources appropriate for inclusion in the NAIRR pilot program. To assist with such work, within 45 days of the date of this order, the heads of agencies whom the Director of NSF identifies for coordination pursuant to this subsection shall each submit to the Director of NSF a report identifying the agency resources that could be developed and integrated into such a pilot program. These reports shall include a description of such resources, including their current status and availability; their format, structure, or technical specifications; associated agency expertise that will be provided; and the benefits and risks associated with their inclusion in the NAIRR pilot program. The heads of independent regulatory agencies are encouraged to take similar steps, as they deem appropriate.

(ii) Within 150 days of the date of this order, fund and launch at least one NSF Regional Innovation Engine that prioritizes AI-related work, such as AI-related research, societal, or workforce needs.

(iii) Within 540 days of the date of this order, establish at least four new National AI Research Institutes, in addition to the 25 currently funded as of the date of this order.

(b) Within 120 days of the date of this order, to support activities involving high-performance and data-intensive computing, the Secretary of Energy, in coordination with the Director of NSF, shall, in a manner consistent with applicable law and available appropriations, establish a pilot program to enhance existing successful training programs for scientists, with the goal of training 500 new researchers by 2025 capable of meeting the rising demand for AI talent.

(c) To promote innovation and clarify issues related to AI and inventorship of patentable subject matter, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO Director) shall:

(i) within 120 days of the date of this order, publish guidance to USPTO patent examiners and applicants addressing inventorship and the use of AI, including generative AI, in the inventive process, including illustrative

examples in which AI systems play different roles in inventive processes and how, in each example, inventorship issues ought to be analyzed;

(ii) subsequently, within 270 days of the date of this order, issue additional guidance to USPTO patent examiners and applicants to address other considerations at the intersection of AI and IP, which could include, as the USPTO Director deems necessary, updated guidance on patent eligibility to address innovation in AI and critical and emerging technologies; and

(iii) within 270 days of the date of this order or 180 days after the United States Copyright Office of the Library of Congress publishes its forthcoming AI study that will address copyright issues raised by AI, whichever comes later, consult with the Director of the United States Copyright Office and issue recommendations to the President on potential executive actions relating to copyright and AI. The recommendations shall address any copyright and related issues discussed in the United States Copyright Office's study, including the scope of protection for works produced using AI and the treatment of copyrighted works in AI training.

(d) Within 180 days of the date of this order, to assist developers of AI in combatting AI-related IP risks, the Secretary of Homeland Security, acting through the Director of the National Intellectual Property Rights Coordination Center, and in consultation with the Attorney General, shall develop a training, analysis, and evaluation program to mitigate AI-related IP risks. Such a program shall:

(i) include appropriate personnel dedicated to collecting and analyzing reports of AI-related IP theft, investigating such incidents with implications for national security, and, where appropriate and consistent with applicable law, pursuing related enforcement actions;

(ii) implement a policy of sharing information and coordinating on such work, as appropriate and consistent with applicable law, with the Federal Bureau of Investigation; United States Customs and Border Protection; other agencies; State and local agencies; and appropriate international organizations, including through work-sharing agreements;

(iii) develop guidance and other appropriate resources to assist private sector actors with mitigating the risks of AI-related IP theft;

(iv) share information and best practices with AI developers and law enforcement personnel to identify incidents, inform stakeholders of current legal requirements, and evaluate AI systems for IP law violations, as well as develop mitigation strategies and resources; and

(v) assist the Intellectual Property Enforcement Coordinator in updating the Intellectual Property Enforcement Coordinator Joint Strategic Plan on Intellectual Property Enforcement to address AI-related issues.

(e) To advance responsible AI innovation by a wide range of healthcare technology developers that promotes the welfare of patients and workers in the healthcare sector, the Secretary of HHS shall identify and, as appropriate and consistent with applicable law and the activities directed in section 8 of this order, prioritize grantmaking and other awards, as well as undertake related efforts, to support responsible AI development and use, including:

(i) collaborating with appropriate private sector actors through HHS programs that may support the advancement of AI-enabled tools that develop personalized immune-response profiles for patients, consistent with section 4 of this order;

(ii) prioritizing the allocation of 2024 Leading Edge Acceleration Project cooperative agreement awards to initiatives that explore ways to improve healthcare-data quality to support the responsible development of AI tools for clinical care, real-world-evidence programs, population health, public health, and related research; and

(iii) accelerating grants awarded through the National Institutes of Health Artificial Intelligence/Machine Learning Consortium to Advance Health Equity and Researcher Diversity (AIM–AHEAD) program and showcasing current AIM–AHEAD activities in underserved communities.

(f) To advance the development of AI systems that improve the quality of veterans' healthcare, and in order to support small businesses' innovative capacity, the Secretary of Veterans Affairs shall:

(i) within 365 days of the date of this order, host two 3-month nationwide AI Tech Sprint competitions; and

(ii) as part of the AI Tech Sprint competitions and in collaboration with appropriate partners, provide participants access to technical assistance, mentorship opportunities, individualized expert feedback on products under development, potential contract opportunities, and other programming and resources.

(g) Within 180 days of the date of this order, to support the goal of strengthening our Nation's resilience against climate change impacts and building an equitable clean energy economy for the future, the Secretary of Energy, in consultation with the Chair of the Federal Energy Regulatory Commission, the Director of OSTP, the Chair of the Council on Environmental Quality, the Assistant to the President and National Climate Advisor, and the heads of other relevant agencies as the Secretary of Energy may deem appropriate, shall:

(i) issue a public report describing the potential for AI to improve planning, permitting, investment, and operations for electric grid infrastructure and to enable the provision of clean, affordable, reliable, resilient, and secure electric power to all Americans;

(ii) develop tools that facilitate building foundation models useful for basic and applied science, including models that streamline permitting and environmental reviews while improving environmental and social outcomes;

(iii) collaborate, as appropriate, with private sector organizations and members of academia to support development of AI tools to mitigate climate change risks;

(iv) take steps to expand partnerships with industry, academia, other agencies, and international allies and partners to utilize the Department of Energy's computing capabilities and AI testbeds to build foundation models that support new applications in science and energy, and for national security, including partnerships that increase community preparedness for climate-related risks, enable clean-energy deployment (including addressing delays in permitting reviews), and enhance grid reliability and resilience; and

(v) establish an office to coordinate development of AI and other critical and emerging technologies across Department of Energy programs and the 17 National Laboratories.

(h) Within 180 days of the date of this order, to understand AI's implications for scientific research, the President's Council of Advisors on Science and Technology shall submit to the President and make publicly available a report on the potential role of AI, especially given recent developments in AI, in research aimed at tackling major societal and global challenges. The report shall include a discussion of issues that may hinder the effective use of AI in research and practices needed to ensure that AI is used responsibly for research.

5.3. Promoting Competition. (a) The head of each agency developing policies and regulations related to AI shall use their authorities, as appropriate and consistent with applicable law, to promote competition in AI and related technologies, as well as in other markets. Such actions include addressing risks arising from concentrated control of key inputs, taking steps to stop unlawful collusion and prevent dominant firms from disadvantaging competitors, and working to provide new opportunities for small businesses and

entrepreneurs. In particular, the Federal Trade Commission is encouraged to consider, as it deems appropriate, whether to exercise the Commission's existing authorities, including its rulemaking authority under the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.,* to ensure fair competition in the AI marketplace and to ensure that consumers and workers are protected from harms that may be enabled by the use of AI.

(b) To promote competition and innovation in the semiconductor industry, recognizing that semiconductors power AI technologies and that their availability is critical to AI competition, the Secretary of Commerce shall, in implementing division A of Public Law 117–167, known as the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022, promote competition by:

(i) implementing a flexible membership structure for the National Semiconductor Technology Center that attracts all parts of the semiconductor and microelectronics ecosystem, including startups and small firms;

(ii) implementing mentorship programs to increase interest and participation in the semiconductor industry, including from workers in underserved communities;

(iii) increasing, where appropriate and to the extent permitted by law, the availability of resources to startups and small businesses, including:

(A) funding for physical assets, such as specialty equipment or facilities, to which startups and small businesses may not otherwise have access;

(B) datasets—potentially including test and performance data—collected, aggregated, or shared by CHIPS research and development programs;

(C) workforce development programs;

(D) design and process technology, as well as IP, as appropriate; and

(E) other resources, including technical and intellectual property assistance, that could accelerate commercialization of new technologies by startups and small businesses, as appropriate; and

(iv) considering the inclusion, to the maximum extent possible, and as consistent with applicable law, of competition-increasing measures in notices of funding availability for commercial research-and-development facilities focused on semiconductors, including measures that increase access to facility capacity for startups or small firms developing semiconductors used to power AI technologies.

(c) To support small businesses innovating and commercializing AI, as well as in responsibly adopting and deploying AI, the Administrator of the Small Business Administration shall:

(i) prioritize the allocation of Regional Innovation Cluster program funding for clusters that support planning activities related to the establishment of one or more Small Business AI Innovation and Commercialization Institutes that provide support, technical assistance, and other resources to small businesses seeking to innovate, commercialize, scale, or otherwise advance the development of AI;

(ii) prioritize the allocation of up to $2 million in Growth Accelerator Fund Competition bonus prize funds for accelerators that support the incorporation or expansion of AI-related curricula, training, and technical assistance, or other AI-related resources within their programming; and

(iii) assess the extent to which the eligibility criteria of existing programs, including the State Trade Expansion Program, Technical and Business Assistance funding, and capital-access programs—such as the 7(a) loan program, 504 loan program, and Small Business Investment Company (SBIC) program—support appropriate expenses by small businesses related to the adoption of AI and, if feasible and appropriate, revise eligibility criteria to improve support for these expenses.

(d) The Administrator of the Small Business Administration, in coordination with resource partners, shall conduct outreach regarding, and raise

awareness of, opportunities for small businesses to use capital-access programs described in subsection 5.3(c) of this section for eligible AI-related purposes, and for eligible investment funds with AI-related expertise—particularly those seeking to serve or with experience serving underserved communities—to apply for an SBIC license.

Sec. 6. *Supporting Workers.* (a) To advance the Government's understanding of AI's implications for workers, the following actions shall be taken within 180 days of the date of this order:

(i) The Chairman of the Council of Economic Advisers shall prepare and submit a report to the President on the labor-market effects of AI.

(ii) To evaluate necessary steps for the Federal Government to address AI-related workforce disruptions, the Secretary of Labor shall submit to the President a report analyzing the abilities of agencies to support workers displaced by the adoption of AI and other technological advancements. The report shall, at a minimum:

(A) assess how current or formerly operational Federal programs designed to assist workers facing job disruptions—including unemployment insurance and programs authorized by the Workforce Innovation and Opportunity Act (Public Law 113–128)—could be used to respond to possible future AI-related disruptions; and

(B) identify options, including potential legislative measures, to strengthen or develop additional Federal support for workers displaced by AI and, in consultation with the Secretary of Commerce and the Secretary of Education, strengthen and expand education and training opportunities that provide individuals pathways to occupations related to AI.

(b) To help ensure that AI deployed in the workplace advances employees' well-being:

(i) The Secretary of Labor shall, within 180 days of the date of this order and in consultation with other agencies and with outside entities, including labor unions and workers, as the Secretary of Labor deems appropriate, develop and publish principles and best practices for employers that could be used to mitigate AI's potential harms to employees' well-being and maximize its potential benefits. The principles and best practices shall include specific steps for employers to take with regard to AI, and shall cover, at a minimum:

(A) job-displacement risks and career opportunities related to AI, including effects on job skills and evaluation of applicants and workers;

(B) labor standards and job quality, including issues related to the equity, protected-activity, compensation, health, and safety implications of AI in the workplace; and

(C) implications for workers of employers' AI-related collection and use of data about them, including transparency, engagement, management, and activity protected under worker-protection laws.

(ii) After principles and best practices are developed pursuant to subsection (b)(i) of this section, the heads of agencies shall consider, in consultation with the Secretary of Labor, encouraging the adoption of these guidelines in their programs to the extent appropriate for each program and consistent with applicable law.

(iii) To support employees whose work is monitored or augmented by AI in being compensated appropriately for all of their work time, the Secretary of Labor shall issue guidance to make clear that employers that deploy AI to monitor or augment employees' work must continue to comply with protections that ensure that workers are compensated for their hours worked, as defined under the Fair Labor Standards Act of 1938, 29 U.S.C. 201 *et seq.,* and other legal requirements.

(c) To foster a diverse AI-ready workforce, the Director of NSF shall prioritize available resources to support AI-related education and AI-related

workforce development through existing programs. The Director shall additionally consult with agencies, as appropriate, to identify further opportunities for agencies to allocate resources for those purposes. The actions by the Director shall use appropriate fellowship programs and awards for these purposes.

Sec. 7. *Advancing Equity and Civil Rights.*

7.1. Strengthening AI and Civil Rights in the Criminal Justice System. (a) To address unlawful discrimination and other harms that may be exacerbated by AI, the Attorney General shall:

(i) consistent with Executive Order 12250 of November 2, 1980 (Leadership and Coordination of Nondiscrimination Laws), Executive Order 14091, and 28 CFR 0.50–51, coordinate with and support agencies in their implementation and enforcement of existing Federal laws to address civil rights and civil liberties violations and discrimination related to AI;

(ii) direct the Assistant Attorney General in charge of the Civil Rights Division to convene, within 90 days of the date of this order, a meeting of the heads of Federal civil rights offices—for which meeting the heads of civil rights offices within independent regulatory agencies will be encouraged to join—to discuss comprehensive use of their respective authorities and offices to: prevent and address discrimination in the use of automated systems, including algorithmic discrimination; increase coordination between the Department of Justice's Civil Rights Division and Federal civil rights offices concerning issues related to AI and algorithmic discrimination; improve external stakeholder engagement to promote public awareness of potential discriminatory uses and effects of AI; and develop, as appropriate, additional training, technical assistance, guidance, or other resources; and

(iii) consider providing, as appropriate and consistent with applicable law, guidance, technical assistance, and training to State, local, Tribal, and territorial investigators and prosecutors on best practices for investigating and prosecuting civil rights violations and discrimination related to automated systems, including AI.

(b) To promote the equitable treatment of individuals and adhere to the Federal Government's fundamental obligation to ensure fair and impartial justice for all, with respect to the use of AI in the criminal justice system, the Attorney General shall, in consultation with the Secretary of Homeland Security and the Director of OSTP:

(i) within 365 days of the date of this order, submit to the President a report that addresses the use of AI in the criminal justice system, including any use in:

(A) sentencing;

(B) parole, supervised release, and probation;

(C) bail, pretrial release, and pretrial detention;

(D) risk assessments, including pretrial, earned time, and early release or transfer to home-confinement determinations;

(E) police surveillance;

(F) crime forecasting and predictive policing, including the ingestion of historical crime data into AI systems to predict high-density ''hot spots'';

(G) prison-management tools; and

(H) forensic analysis;

(ii) within the report set forth in subsection 7.1(b)(i) of this section:

(A) identify areas where AI can enhance law enforcement efficiency and accuracy, consistent with protections for privacy, civil rights, and civil liberties; and

(B) recommend best practices for law enforcement agencies, including safeguards and appropriate use limits for AI, to address the concerns

set forth in section 13(e)(i) of Executive Order 14074 as well as the best practices and the guidelines set forth in section 13(e)(iii) of Executive Order 14074; and

(iii) supplement the report set forth in subsection 7.1(b)(i) of this section as appropriate with recommendations to the President, including with respect to requests for necessary legislation.

(c) To advance the presence of relevant technical experts and expertise (such as machine-learning engineers, software and infrastructure engineering, data privacy experts, data scientists, and user experience researchers) among law enforcement professionals:

(i) The interagency working group created pursuant to section 3 of Executive Order 14074 shall, within 180 days of the date of this order, identify and share best practices for recruiting and hiring law enforcement professionals who have the technical skills mentioned in subsection 7.1(c) of this section, and for training law enforcement professionals about responsible application of AI.

(ii) Within 270 days of the date of this order, the Attorney General shall, in consultation with the Secretary of Homeland Security, consider those best practices and the guidance developed under section 3(d) of Executive Order 14074 and, if necessary, develop additional general recommendations for State, local, Tribal, and territorial law enforcement agencies and criminal justice agencies seeking to recruit, hire, train, promote, and retain highly qualified and service-oriented officers and staff with relevant technical knowledge. In considering this guidance, the Attorney General shall consult with State, local, Tribal, and territorial law enforcement agencies, as appropriate.

(iii) Within 365 days of the date of this order, the Attorney General shall review the work conducted pursuant to section 2(b) of Executive Order 14074 and, if appropriate, reassess the existing capacity to investigate law enforcement deprivation of rights under color of law resulting from the use of AI, including through improving and increasing training of Federal law enforcement officers, their supervisors, and Federal prosecutors on how to investigate and prosecute cases related to AI involving the deprivation of rights under color of law pursuant to 18 U.S.C. 242.

7.2. Protecting Civil Rights Related to Government Benefits and Programs. (a) To advance equity and civil rights, consistent with the directives of Executive Order 14091, and in addition to complying with the guidance on Federal Government use of AI issued pursuant to section 10.1(b) of this order, agencies shall use their respective civil rights and civil liberties offices and authorities—as appropriate and consistent with applicable law—to prevent and address unlawful discrimination and other harms that result from uses of AI in Federal Government programs and benefits administration. This directive does not apply to agencies' civil or criminal enforcement authorities. Agencies shall consider opportunities to ensure that their respective civil rights and civil liberties offices are appropriately consulted on agency decisions regarding the design, development, acquisition, and use of AI in Federal Government programs and benefits administration. To further these objectives, agencies shall also consider opportunities to increase coordination, communication, and engagement about AI as appropriate with community-based organizations; civil-rights and civil-liberties organizations; academic institutions; industry; State, local, Tribal, and territorial governments; and other stakeholders.

(b) To promote equitable administration of public benefits:

(i) The Secretary of HHS shall, within 180 days of the date of this order and in consultation with relevant agencies, publish a plan, informed by the guidance issued pursuant to section 10.1(b) of this order, addressing the use of automated or algorithmic systems in the implementation by States and localities of public benefits and services administered by the Secretary, such as to promote: assessment of access to benefits by qualified recipients; notice to recipients about the presence of such systems; regular

evaluation to detect unjust denials; processes to retain appropriate levels of discretion of expert agency staff; processes to appeal denials to human reviewers; and analysis of whether algorithmic systems in use by benefit programs achieve equitable and just outcomes.

(ii) The Secretary of Agriculture shall, within 180 days of the date of this order and as informed by the guidance issued pursuant to section 10.1(b) of this order, issue guidance to State, local, Tribal, and territorial public-benefits administrators on the use of automated or algorithmic systems in implementing benefits or in providing customer support for benefit programs administered by the Secretary, to ensure that programs using those systems:

(A) maximize program access for eligible recipients;

(B) employ automated or algorithmic systems in a manner consistent with any requirements for using merit systems personnel in public-benefits programs;

(C) identify instances in which reliance on automated or algorithmic systems would require notification by the State, local, Tribal, or territorial government to the Secretary;

(D) identify instances when applicants and participants can appeal benefit determinations to a human reviewer for reconsideration and can receive other customer support from a human being;

(E) enable auditing and, if necessary, remediation of the logic used to arrive at an individual decision or determination to facilitate the evaluation of appeals; and

(F) enable the analysis of whether algorithmic systems in use by benefit programs achieve equitable outcomes.

7.3. Strengthening AI and Civil Rights in the Broader Economy. (a) Within 365 days of the date of this order, to prevent unlawful discrimination from AI used for hiring, the Secretary of Labor shall publish guidance for Federal contractors regarding nondiscrimination in hiring involving AI and other technology-based hiring systems.

(b) To address discrimination and biases against protected groups in housing markets and consumer financial markets, the Director of the Federal Housing Finance Agency and the Director of the Consumer Financial Protection Bureau are encouraged to consider using their authorities, as they deem appropriate, to require their respective regulated entities, where possible, to use appropriate methodologies including AI tools to ensure compliance with Federal law and:

(i) evaluate their underwriting models for bias or disparities affecting protected groups; and

(ii) evaluate automated collateral-valuation and appraisal processes in ways that minimize bias.

(c) Within 180 days of the date of this order, to combat unlawful discrimination enabled by automated or algorithmic tools used to make decisions about access to housing and in other real estate-related transactions, the Secretary of Housing and Urban Development shall, and the Director of the Consumer Financial Protection Bureau is encouraged to, issue additional guidance:

(i) addressing the use of tenant screening systems in ways that may violate the Fair Housing Act (Public Law 90–284), the Fair Credit Reporting Act (Public Law 91–508), or other relevant Federal laws, including how the use of data, such as criminal records, eviction records, and credit information, can lead to discriminatory outcomes in violation of Federal law; and

(ii) addressing how the Fair Housing Act, the Consumer Financial Protection Act of 2010 (title X of Public Law 111–203), or the Equal Credit Opportunity Act (Public Law 93–495) apply to the advertising of housing,

credit, and other real estate-related transactions through digital platforms, including those that use algorithms to facilitate advertising delivery, as well as on best practices to avoid violations of Federal law.

(d) To help ensure that people with disabilities benefit from AI's promise while being protected from its risks, including unequal treatment from the use of biometric data like gaze direction, eye tracking, gait analysis, and hand motions, the Architectural and Transportation Barriers Compliance Board is encouraged, as it deems appropriate, to solicit public participation and conduct community engagement; to issue technical assistance and recommendations on the risks and benefits of AI in using biometric data as an input; and to provide people with disabilities access to information and communication technology and transportation services.

Sec. 8. *Protecting Consumers, Patients, Passengers, and Students.* (a) Independent regulatory agencies are encouraged, as they deem appropriate, to consider using their full range of authorities to protect American consumers from fraud, discrimination, and threats to privacy and to address other risks that may arise from the use of AI, including risks to financial stability, and to consider rulemaking, as well as emphasizing or clarifying where existing regulations and guidance apply to AI, including clarifying the responsibility of regulated entities to conduct due diligence on and monitor any third-party AI services they use, and emphasizing or clarifying requirements and expectations related to the transparency of AI models and regulated entities' ability to explain their use of AI models.

(b) To help ensure the safe, responsible deployment and use of AI in the healthcare, public-health, and human-services sectors:

(i) Within 90 days of the date of this order, the Secretary of HHS shall, in consultation with the Secretary of Defense and the Secretary of Veterans Affairs, establish an HHS AI Task Force that shall, within 365 days of its creation, develop a strategic plan that includes policies and frameworks—possibly including regulatory action, as appropriate—on responsible deployment and use of AI and AI-enabled technologies in the health and human services sector (including research and discovery, drug and device safety, healthcare delivery and financing, and public health), and identify appropriate guidance and resources to promote that deployment, including in the following areas:

(A) development, maintenance, and use of predictive and generative AI-enabled technologies in healthcare delivery and financing—including quality measurement, performance improvement, program integrity, benefits administration, and patient experience—taking into account considerations such as appropriate human oversight of the application of AI-generated output;

(B) long-term safety and real-world performance monitoring of AI-enabled technologies in the health and human services sector, including clinically relevant or significant modifications and performance across population groups, with a means to communicate product updates to regulators, developers, and users;

(C) incorporation of equity principles in AI-enabled technologies used in the health and human services sector, using disaggregated data on affected populations and representative population data sets when developing new models, monitoring algorithmic performance against discrimination and bias in existing models, and helping to identify and mitigate discrimination and bias in current systems;

(D) incorporation of safety, privacy, and security standards into the software-development lifecycle for protection of personally identifiable information, including measures to address AI-enhanced cybersecurity threats in the health and human services sector;

(E) development, maintenance, and availability of documentation to help users determine appropriate and safe uses of AI in local settings in the health and human services sector;

(F) work to be done with State, local, Tribal, and territorial health and human services agencies to advance positive use cases and best practices for use of AI in local settings; and

(G) identification of uses of AI to promote workplace efficiency and satisfaction in the health and human services sector, including reducing administrative burdens.

(ii) Within 180 days of the date of this order, the Secretary of HHS shall direct HHS components, as the Secretary of HHS deems appropriate, to develop a strategy, in consultation with relevant agencies, to determine whether AI-enabled technologies in the health and human services sector maintain appropriate levels of quality, including, as appropriate, in the areas described in subsection (b)(i) of this section. This work shall include the development of AI assurance policy—to evaluate important aspects of the performance of AI-enabled healthcare tools—and infrastructure needs for enabling pre-market assessment and post-market oversight of AI-enabled healthcare-technology algorithmic system performance against real-world data.

(iii) Within 180 days of the date of this order, the Secretary of HHS shall, in consultation with relevant agencies as the Secretary of HHS deems appropriate, consider appropriate actions to advance the prompt understanding of, and compliance with, Federal nondiscrimination laws by health and human services providers that receive Federal financial assistance, as well as how those laws relate to AI. Such actions may include:

(A) convening and providing technical assistance to health and human services providers and payers about their obligations under Federal nondiscrimination and privacy laws as they relate to AI and the potential consequences of noncompliance; and

(B) issuing guidance, or taking other action as appropriate, in response to any complaints or other reports of noncompliance with Federal nondiscrimination and privacy laws as they relate to AI.

(iv) Within 365 days of the date of this order, the Secretary of HHS shall, in consultation with the Secretary of Defense and the Secretary of Veterans Affairs, establish an AI safety program that, in partnership with voluntary federally listed Patient Safety Organizations:

(A) establishes a common framework for approaches to identifying and capturing clinical errors resulting from AI deployed in healthcare settings as well as specifications for a central tracking repository for associated incidents that cause harm, including through bias or discrimination, to patients, caregivers, or other parties;

(B) analyzes captured data and generated evidence to develop, wherever appropriate, recommendations, best practices, or other informal guidelines aimed at avoiding these harms; and

(C) disseminates those recommendations, best practices, or other informal guidance to appropriate stakeholders, including healthcare providers.

(v) Within 365 days of the date of this order, the Secretary of HHS shall develop a strategy for regulating the use of AI or AI-enabled tools in drug-development processes. The strategy shall, at a minimum:

(A) define the objectives, goals, and high-level principles required for appropriate regulation throughout each phase of drug development;

(B) identify areas where future rulemaking, guidance, or additional statutory authority may be necessary to implement such a regulatory system;

(C) identify the existing budget, resources, personnel, and potential for new public/private partnerships necessary for such a regulatory system; and

(D) consider risks identified by the actions undertaken to implement section 4 of this order.

(c) To promote the safe and responsible development and use of AI in the transportation sector, in consultation with relevant agencies:

(i) Within 30 days of the date of this order, the Secretary of Transportation shall direct the Nontraditional and Emerging Transportation Technology (NETT) Council to assess the need for information, technical assistance, and guidance regarding the use of AI in transportation. The Secretary of Transportation shall further direct the NETT Council, as part of any such efforts, to:

(A) support existing and future initiatives to pilot transportation-related applications of AI, as they align with policy priorities articulated in the Department of Transportation's (DOT) Innovation Principles, including, as appropriate, through technical assistance and connecting stakeholders;

(B) evaluate the outcomes of such pilot programs in order to assess when DOT, or other Federal or State agencies, have sufficient information to take regulatory actions, as appropriate, and recommend appropriate actions when that information is available; and

(C) establish a new DOT Cross-Modal Executive Working Group, which will consist of members from different divisions of DOT and coordinate applicable work among these divisions, to solicit and use relevant input from appropriate stakeholders.

(ii) Within 90 days of the date of this order, the Secretary of Transportation shall direct appropriate Federal Advisory Committees of the DOT to provide advice on the safe and responsible use of AI in transportation. The committees shall include the Advanced Aviation Advisory Committee, the Transforming Transportation Advisory Committee, and the Intelligent Transportation Systems Program Advisory Committee.

(iii) Within 180 days of the date of this order, the Secretary of Transportation shall direct the Advanced Research Projects Agency-Infrastructure (ARPA–I) to explore the transportation-related opportunities and challenges of AI—including regarding software-defined AI enhancements impacting autonomous mobility ecosystems. The Secretary of Transportation shall further encourage ARPA–I to prioritize the allocation of grants to those opportunities, as appropriate. The work tasked to ARPA–I shall include soliciting input on these topics through a public consultation process, such as an RFI.

(d) To help ensure the responsible development and deployment of AI in the education sector, the Secretary of Education shall, within 365 days of the date of this order, develop resources, policies, and guidance regarding AI. These resources shall address safe, responsible, and nondiscriminatory uses of AI in education, including the impact AI systems have on vulnerable and underserved communities, and shall be developed in consultation with stakeholders as appropriate. They shall also include the development of an ''AI toolkit'' for education leaders implementing recommendations from the Department of Education's AI and the Future of Teaching and Learning report, including appropriate human review of AI decisions, designing AI systems to enhance trust and safety and align with privacy-related laws and regulations in the educational context, and developing education-specific guardrails.

(e) The Federal Communications Commission is encouraged to consider actions related to how AI will affect communications networks and consumers, including by:

(i) examining the potential for AI to improve spectrum management, increase the efficiency of non-Federal spectrum usage, and expand opportunities for the sharing of non-Federal spectrum;

(ii) coordinating with the National Telecommunications and Information Administration to create opportunities for sharing spectrum between Federal and non-Federal spectrum operations;

(iii) providing support for efforts to improve network security, resiliency, and interoperability using next-generation technologies that incorporate AI, including self-healing networks, 6G, and Open RAN; and

(iv) encouraging, including through rulemaking, efforts to combat unwanted robocalls and robotexts that are facilitated or exacerbated by AI and to deploy AI technologies that better serve consumers by blocking unwanted robocalls and robotexts.

Sec. 9. *Protecting Privacy.* (a) To mitigate privacy risks potentially exacerbated by AI—including by AI's facilitation of the collection or use of information about individuals, or the making of inferences about individuals—the Director of OMB shall:

(i) evaluate and take steps to identify commercially available information (CAI) procured by agencies, particularly CAI that contains personally identifiable information and including CAI procured from data brokers and CAI procured and processed indirectly through vendors, in appropriate agency inventory and reporting processes (other than when it is used for the purposes of national security);

(ii) evaluate, in consultation with the Federal Privacy Council and the Interagency Council on Statistical Policy, agency standards and procedures associated with the collection, processing, maintenance, use, sharing, dissemination, and disposition of CAI that contains personally identifiable information (other than when it is used for the purposes of national security) to inform potential guidance to agencies on ways to mitigate privacy and confidentiality risks from agencies' activities related to CAI;

(iii) within 180 days of the date of this order, in consultation with the Attorney General, the Assistant to the President for Economic Policy, and the Director of OSTP, issue an RFI to inform potential revisions to guidance to agencies on implementing the privacy provisions of the E-Government Act of 2002 (Public Law 107–347). The RFI shall seek feedback regarding how privacy impact assessments may be more effective at mitigating privacy risks, including those that are further exacerbated by AI; and

(iv) take such steps as are necessary and appropriate, consistent with applicable law, to support and advance the near-term actions and long-term strategy identified through the RFI process, including issuing new or updated guidance or RFIs or consulting other agencies or the Federal Privacy Council.

(b) Within 365 days of the date of this order, to better enable agencies to use PETs to safeguard Americans' privacy from the potential threats exacerbated by AI, the Secretary of Commerce, acting through the Director of NIST, shall create guidelines for agencies to evaluate the efficacy of differential-privacy-guarantee protections, including for AI. The guidelines shall, at a minimum, describe the significant factors that bear on differential-privacy safeguards and common risks to realizing differential privacy in practice.

(c) To advance research, development, and implementation related to PETs:

(i) Within 120 days of the date of this order, the Director of NSF, in collaboration with the Secretary of Energy, shall fund the creation of a Research Coordination Network (RCN) dedicated to advancing privacy research and, in particular, the development, deployment, and scaling of PETs. The RCN shall serve to enable privacy researchers to share information, coordinate and collaborate in research, and develop standards for the privacy-research community.

(ii) Within 240 days of the date of this order, the Director of NSF shall engage with agencies to identify ongoing work and potential opportunities to incorporate PETs into their operations. The Director of NSF shall, where feasible and appropriate, prioritize research—including efforts to translate research discoveries into practical applications—that encourage the adoption of leading-edge PETs solutions for agencies' use, including

through research engagement through the RCN described in subsection (c)(i) of this section.

(iii) The Director of NSF shall use the results of the United States-United Kingdom PETs Prize Challenge to inform the approaches taken, and opportunities identified, for PETs research and adoption.

Sec. 10. *Advancing Federal Government Use of AI.*

10.1. Providing Guidance for AI Management. (a) To coordinate the use of AI across the Federal Government, within 60 days of the date of this order and on an ongoing basis as necessary, the Director of OMB shall convene and chair an interagency council to coordinate the development and use of AI in agencies' programs and operations, other than the use of AI in national security systems. The Director of OSTP shall serve as Vice Chair for the interagency council. The interagency council's membership shall include, at minimum, the heads of the agencies identified in 31 U.S.C. 901(b), the Director of National Intelligence, and other agencies as identified by the Chair. Until agencies designate their permanent Chief AI Officers consistent with the guidance described in subsection 10.1(b) of this section, they shall be represented on the interagency council by an appropriate official at the Assistant Secretary level or equivalent, as determined by the head of each agency.

(b) To provide guidance on Federal Government use of AI, within 150 days of the date of this order and updated periodically thereafter, the Director of OMB, in coordination with the Director of OSTP, and in consultation with the interagency council established in subsection 10.1(a) of this section, shall issue guidance to agencies to strengthen the effective and appropriate use of AI, advance AI innovation, and manage risks from AI in the Federal Government. The Director of OMB's guidance shall specify, to the extent appropriate and consistent with applicable law:

(i) the requirement to designate at each agency within 60 days of the issuance of the guidance a Chief Artificial Intelligence Officer who shall hold primary responsibility in their agency, in coordination with other responsible officials, for coordinating their agency's use of AI, promoting AI innovation in their agency, managing risks from their agency's use of AI, and carrying out the responsibilities described in section 8(c) of Executive Order 13960 of December 3, 2020 (Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government), and section 4(b) of Executive Order 14091;

(ii) the Chief Artificial Intelligence Officers' roles, responsibilities, seniority, position, and reporting structures;

(iii) for the agencies identified in 31 U.S.C. 901(b), the creation of internal Artificial Intelligence Governance Boards, or other appropriate mechanisms, at each agency within 60 days of the issuance of the guidance to coordinate and govern AI issues through relevant senior leaders from across the agency;

(iv) required minimum risk-management practices for Government uses of AI that impact people's rights or safety, including, where appropriate, the following practices derived from OSTP's Blueprint for an AI Bill of Rights and the NIST AI Risk Management Framework: conducting public consultation; assessing data quality; assessing and mitigating disparate impacts and algorithmic discrimination; providing notice of the use of AI; continuously monitoring and evaluating deployed AI; and granting human consideration and remedies for adverse decisions made using AI;

(v) specific Federal Government uses of AI that are presumed by default to impact rights or safety;

(vi) recommendations to agencies to reduce barriers to the responsible use of AI, including barriers related to information technology infrastructure, data, workforce, budgetary restrictions, and cybersecurity processes;

(vii) requirements that agencies identified in 31 U.S.C. 901(b) develop AI strategies and pursue high-impact AI use cases;

(viii) in consultation with the Secretary of Commerce, the Secretary of Homeland Security, and the heads of other appropriate agencies as determined by the Director of OMB, recommendations to agencies regarding:

(A) external testing for AI, including AI red-teaming for generative AI, to be developed in coordination with the Cybersecurity and Infrastructure Security Agency;

(B) testing and safeguards against discriminatory, misleading, inflammatory, unsafe, or deceptive outputs, as well as against producing child sexual abuse material and against producing non-consensual intimate imagery of real individuals (including intimate digital depictions of the body or body parts of an identifiable individual), for generative AI;

(C) reasonable steps to watermark or otherwise label output from generative AI;

(D) application of the mandatory minimum risk-management practices defined under subsection 10.1(b)(iv) of this section to procured AI;

(E) independent evaluation of vendors' claims concerning both the effectiveness and risk mitigation of their AI offerings;

(F) documentation and oversight of procured AI;

(G) maximizing the value to agencies when relying on contractors to use and enrich Federal Government data for the purposes of AI development and operation;

(H) provision of incentives for the continuous improvement of procured AI; and

(I) training on AI in accordance with the principles set out in this order and in other references related to AI listed herein; and

(ix) requirements for public reporting on compliance with this guidance.

(c) To track agencies' AI progress, within 60 days of the issuance of the guidance established in subsection 10.1(b) of this section and updated periodically thereafter, the Director of OMB shall develop a method for agencies to track and assess their ability to adopt AI into their programs and operations, manage its risks, and comply with Federal policy on AI. This method should draw on existing related efforts as appropriate and should address, as appropriate and consistent with applicable law, the practices, processes, and capabilities necessary for responsible AI adoption, training, and governance across, at a minimum, the areas of information technology infrastructure, data, workforce, leadership, and risk management.

(d) To assist agencies in implementing the guidance to be established in subsection 10.1(b) of this section:

(i) within 90 days of the issuance of the guidance, the Secretary of Commerce, acting through the Director of NIST, and in coordination with the Director of OMB and the Director of OSTP, shall develop guidelines, tools, and practices to support implementation of the minimum risk-management practices described in subsection 10.1(b)(iv) of this section; and

(ii) within 180 days of the issuance of the guidance, the Director of OMB shall develop an initial means to ensure that agency contracts for the acquisition of AI systems and services align with the guidance described in subsection 10.1(b) of this section and advance the other aims identified in section 7224(d)(1) of the Advancing American AI Act (Public Law 117–263, div. G, title LXXII, subtitle B).

(e) To improve transparency for agencies' use of AI, the Director of OMB shall, on an annual basis, issue instructions to agencies for the collection, reporting, and publication of agency AI use cases, pursuant to section 7225(a) of the Advancing American AI Act. Through these instructions, the Director shall, as appropriate, expand agencies' reporting on how they are managing risks from their AI use cases and update or replace the guidance originally established in section 5 of Executive Order 13960.

(f) To advance the responsible and secure use of generative AI in the Federal Government:

(i) As generative AI products become widely available and common in online platforms, agencies are discouraged from imposing broad general bans or blocks on agency use of generative AI. Agencies should instead limit access, as necessary, to specific generative AI services based on specific risk assessments; establish guidelines and limitations on the appropriate use of generative AI; and, with appropriate safeguards in place, provide their personnel and programs with access to secure and reliable generative AI capabilities, at least for the purposes of experimentation and routine tasks that carry a low risk of impacting Americans' rights. To protect Federal Government information, agencies are also encouraged to employ risk-management practices, such as training their staff on proper use, protection, dissemination, and disposition of Federal information; negotiating appropriate terms of service with vendors; implementing measures designed to ensure compliance with record-keeping, cybersecurity, confidentiality, privacy, and data protection requirements; and deploying other measures to prevent misuse of Federal Government information in generative AI.

(ii) Within 90 days of the date of this order, the Administrator of General Services, in coordination with the Director of OMB, and in consultation with the Federal Secure Cloud Advisory Committee and other relevant agencies as the Administrator of General Services may deem appropriate, shall develop and issue a framework for prioritizing critical and emerging technologies offerings in the Federal Risk and Authorization Management Program authorization process, starting with generative AI offerings that have the primary purpose of providing large language model-based chat interfaces, code-generation and debugging tools, and associated application programming interfaces, as well as prompt-based image generators. This framework shall apply for no less than 2 years from the date of its issuance. Agency Chief Information Officers, Chief Information Security Officers, and authorizing officials are also encouraged to prioritize generative AI and other critical and emerging technologies in granting authorities for agency operation of information technology systems and any other applicable release or oversight processes, using continuous authorizations and approvals wherever feasible.

(iii) Within 180 days of the date of this order, the Director of the Office of Personnel Management (OPM), in coordination with the Director of OMB, shall develop guidance on the use of generative AI for work by the Federal workforce.

(g) Within 30 days of the date of this order, to increase agency investment in AI, the Technology Modernization Board shall consider, as it deems appropriate and consistent with applicable law, prioritizing funding for AI projects for the Technology Modernization Fund for a period of at least 1 year. Agencies are encouraged to submit to the Technology Modernization Fund project funding proposals that include AI—and particularly generative AI—in service of mission delivery.

(h) Within 180 days of the date of this order, to facilitate agencies' access to commercial AI capabilities, the Administrator of General Services, in coordination with the Director of OMB, and in collaboration with the Secretary of Defense, the Secretary of Homeland Security, the Director of National Intelligence, the Administrator of the National Aeronautics and Space Administration, and the head of any other agency identified by the Administrator of General Services, shall take steps consistent with applicable law to facilitate access to Federal Government-wide acquisition solutions for specified types of AI services and products, such as through the creation of a resource guide or other tools to assist the acquisition workforce. Specified types of AI capabilities shall include generative AI and specialized computing infrastructure.

(i) The initial means, instructions, and guidance issued pursuant to subsections 10.1(a)–(h) of this section shall not apply to AI when it is used as a component of a national security system, which shall be addressed by the proposed National Security Memorandum described in subsection 4.8 of this order.

10.2. Increasing AI Talent in Government. (a) Within 45 days of the date of this order, to plan a national surge in AI talent in the Federal Government, the Director of OSTP and the Director of OMB, in consultation with the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, the Assistant to the President and Domestic Policy Advisor, and the Assistant to the President and Director of the Gender Policy Council, shall identify priority mission areas for increased Federal Government AI talent, the types of talent that are highest priority to recruit and develop to ensure adequate implementation of this order and use of relevant enforcement and regulatory authorities to address AI risks, and accelerated hiring pathways.

(b) Within 45 days of the date of this order, to coordinate rapid advances in the capacity of the Federal AI workforce, the Assistant to the President and Deputy Chief of Staff for Policy, in coordination with the Director of OSTP and the Director of OMB, and in consultation with the National Cyber Director, shall convene an AI and Technology Talent Task Force, which shall include the Director of OPM, the Director of the General Services Administration's Technology Transformation Services, a representative from the Chief Human Capital Officers Council, the Assistant to the President for Presidential Personnel, members of appropriate agency technology talent programs, a representative of the Chief Data Officer Council, and a representative of the interagency council convened under subsection 10.1(a) of this section. The Task Force's purpose shall be to accelerate and track the hiring of AI and AI-enabling talent across the Federal Government, including through the following actions:

(i) within 180 days of the date of this order, tracking and reporting progress to the President on increasing AI capacity across the Federal Government, including submitting to the President a report and recommendations for further increasing capacity;

(ii) identifying and circulating best practices for agencies to attract, hire, retain, train, and empower AI talent, including diversity, inclusion, and accessibility best practices, as well as to plan and budget adequately for AI workforce needs;

(iii) coordinating, in consultation with the Director of OPM, the use of fellowship programs and agency technology-talent programs and human-capital teams to build hiring capabilities, execute hires, and place AI talent to fill staffing gaps; and

(iv) convening a cross-agency forum for ongoing collaboration between AI professionals to share best practices and improve retention.

(c) Within 45 days of the date of this order, to advance existing Federal technology talent programs, the United States Digital Service, Presidential Innovation Fellowship, United States Digital Corps, OPM, and technology talent programs at agencies, with support from the AI and Technology Talent Task Force described in subsection 10.2(b) of this section, as appropriate and permitted by law, shall develop and begin to implement plans to support the rapid recruitment of individuals as part of a Federal Government-wide AI talent surge to accelerate the placement of key AI and AI-enabling talent in high-priority areas and to advance agencies' data and technology strategies.

(d) To meet the critical hiring need for qualified personnel to execute the initiatives in this order, and to improve Federal hiring practices for AI talent, the Director of OPM, in consultation with the Director of OMB, shall:

(i) within 60 days of the date of this order, conduct an evidence-based review on the need for hiring and workplace flexibility, including Federal Government-wide direct-hire authority for AI and related data-science and

technical roles, and, where the Director of OPM finds such authority is appropriate, grant it; this review shall include the following job series at all General Schedule (GS) levels: IT Specialist (2210), Computer Scientist (1550), Computer Engineer (0854), and Program Analyst (0343) focused on AI, and any subsequently developed job series derived from these job series;

(ii) within 60 days of the date of this order, consider authorizing the use of excepted service appointments under 5 CFR 213.3102(i)(3) to address the need for hiring additional staff to implement directives of this order;

(iii) within 90 days of the date of this order, coordinate a pooled-hiring action informed by subject-matter experts and using skills-based assessments to support the recruitment of AI talent across agencies;

(iv) within 120 days of the date of this order, as appropriate and permitted by law, issue guidance for agency application of existing pay flexibilities or incentive pay programs for AI, AI-enabling, and other key technical positions to facilitate appropriate use of current pay incentives;

(v) within 180 days of the date of this order, establish guidance and policy on skills-based, Federal Government-wide hiring of AI, data, and technology talent in order to increase access to those with nontraditional academic backgrounds to Federal AI, data, and technology roles;

(vi) within 180 days of the date of this order, establish an interagency working group, staffed with both human-resources professionals and recruiting technical experts, to facilitate Federal Government-wide hiring of people with AI and other technical skills;

(vii) within 180 days of the date of this order, review existing Executive Core Qualifications (ECQs) for Senior Executive Service (SES) positions informed by data and AI literacy competencies and, within 365 days of the date of this order, implement new ECQs as appropriate in the SES assessment process;

(viii) within 180 days of the date of this order, complete a review of competencies for civil engineers (GS–0810 series) and, if applicable, other related occupations, and make recommendations for ensuring that adequate AI expertise and credentials in these occupations in the Federal Government reflect the increased use of AI in critical infrastructure; and

(ix) work with the Security, Suitability, and Credentialing Performance Accountability Council to assess mechanisms to streamline and accelerate personnel-vetting requirements, as appropriate, to support AI and fields related to other critical and emerging technologies.

(e) To expand the use of special authorities for AI hiring and retention, agencies shall use all appropriate hiring authorities, including Schedule A(r) excepted service hiring and direct-hire authority, as applicable and appropriate, to hire AI talent and AI-enabling talent rapidly. In addition to participating in OPM-led pooled hiring actions, agencies shall collaborate, where appropriate, on agency-led pooled hiring under the Competitive Service Act of 2015 (Public Law 114–137) and other shared hiring. Agencies shall also, where applicable, use existing incentives, pay-setting authorities, and other compensation flexibilities, similar to those used for cyber and information technology positions, for AI and data-science professionals, as well as plain-language job titles, to help recruit and retain these highly skilled professionals. Agencies shall ensure that AI and other related talent needs (such as technology governance and privacy) are reflected in strategic workforce planning and budget formulation.

(f) To facilitate the hiring of data scientists, the Chief Data Officer Council shall develop a position-description library for data scientists (job series 1560) and a hiring guide to support agencies in hiring data scientists.

(g) To help train the Federal workforce on AI issues, the head of each agency shall implement—or increase the availability and use of—AI training and familiarization programs for employees, managers, and leadership in

technology as well as relevant policy, managerial, procurement, regulatory, ethical, governance, and legal fields. Such training programs should, for example, empower Federal employees, managers, and leaders to develop and maintain an operating knowledge of emerging AI technologies to assess opportunities to use these technologies to enhance the delivery of services to the public, and to mitigate risks associated with these technologies. Agencies that provide professional-development opportunities, grants, or funds for their staff should take appropriate steps to ensure that employees who do not serve in traditional technical roles, such as policy, managerial, procurement, or legal fields, are nonetheless eligible to receive funding for programs and courses that focus on AI, machine learning, data science, or other related subject areas.

(h) Within 180 days of the date of this order, to address gaps in AI talent for national defense, the Secretary of Defense shall submit a report to the President through the Assistant to the President for National Security Affairs that includes:

(i) recommendations to address challenges in the Department of Defense's ability to hire certain noncitizens, including at the Science and Technology Reinvention Laboratories;

(ii) recommendations to clarify and streamline processes for accessing classified information for certain noncitizens through Limited Access Authorization at Department of Defense laboratories;

(iii) recommendations for the appropriate use of enlistment authority under 10 U.S.C. 504(b)(2) for experts in AI and other critical and emerging technologies; and

(iv) recommendations for the Department of Defense and the Department of Homeland Security to work together to enhance the use of appropriate authorities for the retention of certain noncitizens of vital importance to national security by the Department of Defense and the Department of Homeland Security.

Sec. 11. *Strengthening American Leadership Abroad.* (a) To strengthen United States leadership of global efforts to unlock AI's potential and meet its challenges, the Secretary of State, in coordination with the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, the Director of OSTP, and the heads of other relevant agencies as appropriate, shall:

(i) lead efforts outside of military and intelligence areas to expand engagements with international allies and partners in relevant bilateral, multilateral, and multi-stakeholder fora to advance those allies' and partners' understanding of existing and planned AI-related guidance and policies of the United States, as well as to enhance international collaboration; and

(ii) lead efforts to establish a strong international framework for managing the risks and harnessing the benefits of AI, including by encouraging international allies and partners to support voluntary commitments similar to those that United States companies have made in pursuit of these objectives and coordinating the activities directed by subsections (b), (c), (d), and (e) of this section, and to develop common regulatory and other accountability principles for foreign nations, including to manage the risk that AI systems pose.

(b) To advance responsible global technical standards for AI development and use outside of military and intelligence areas, the Secretary of Commerce, in coordination with the Secretary of State and the heads of other relevant agencies as appropriate, shall lead preparations for a coordinated effort with key international allies and partners and with standards development organizations, to drive the development and implementation of AI-related consensus standards, cooperation and coordination, and information sharing. In particular, the Secretary of Commerce shall:

(i) within 270 days of the date of this order, establish a plan for global engagement on promoting and developing AI standards, with lines of effort that may include:

(A) AI nomenclature and terminology;

(B) best practices regarding data capture, processing, protection, privacy, confidentiality, handling, and analysis;

(C) trustworthiness, verification, and assurance of AI systems; and

(D) AI risk management;

(ii) within 180 days of the date the plan is established, submit a report to the President on priority actions taken pursuant to the plan; and

(iii) ensure that such efforts are guided by principles set out in the NIST AI Risk Management Framework and United States Government National Standards Strategy for Critical and Emerging Technology.

(c) Within 365 days of the date of this order, to promote safe, responsible, and rights-affirming development and deployment of AI abroad:

(i) The Secretary of State and the Administrator of the United States Agency for International Development, in coordination with the Secretary of Commerce, acting through the director of NIST, shall publish an AI in Global Development Playbook that incorporates the AI Risk Management Framework's principles, guidelines, and best practices into the social, technical, economic, governance, human rights, and security conditions of contexts beyond United States borders. As part of this work, the Secretary of State and the Administrator of the United States Agency for International Development shall draw on lessons learned from programmatic uses of AI in global development.

(ii) The Secretary of State and the Administrator of the United States Agency for International Development, in collaboration with the Secretary of Energy and the Director of NSF, shall develop a Global AI Research Agenda to guide the objectives and implementation of AI-related research in contexts beyond United States borders. The Agenda shall:

(A) include principles, guidelines, priorities, and best practices aimed at ensuring the safe, responsible, beneficial, and sustainable global development and adoption of AI; and

(B) address AI's labor-market implications across international contexts, including by recommending risk mitigations.

(d) To address cross-border and global AI risks to critical infrastructure, the Secretary of Homeland Security, in coordination with the Secretary of State, and in consultation with the heads of other relevant agencies as the Secretary of Homeland Security deems appropriate, shall lead efforts with international allies and partners to enhance cooperation to prevent, respond to, and recover from potential critical infrastructure disruptions resulting from incorporation of AI into critical infrastructure systems or malicious use of AI.

(i) Within 270 days of the date of this order, the Secretary of Homeland Security, in coordination with the Secretary of State, shall develop a plan for multilateral engagements to encourage the adoption of the AI safety and security guidelines for use by critical infrastructure owners and operators developed in section 4.3(a) of this order.

(ii) Within 180 days of establishing the plan described in subsection (d)(i) of this section, the Secretary of Homeland Security shall submit a report to the President on priority actions to mitigate cross-border risks to critical United States infrastructure.

Sec. 12. *Implementation.* (a) There is established, within the Executive Office of the President, the White House Artificial Intelligence Council (White House AI Council). The function of the White House AI Council is to coordinate the activities of agencies across the Federal Government to ensure the effective formulation, development, communication, industry engagement

related to, and timely implementation of AI-related policies, including policies set forth in this order.

(b) The Assistant to the President and Deputy Chief of Staff for Policy shall serve as Chair of the White House AI Council.

(c) In addition to the Chair, the White House AI Council shall consist of the following members, or their designees:

(i) the Secretary of State;

(ii) the Secretary of the Treasury;

(iii) the Secretary of Defense;

(iv) the Attorney General;

(v) the Secretary of Agriculture;

(vi) the Secretary of Commerce;

(vii) the Secretary of Labor;

(viii) the Secretary of HHS;

(ix) the Secretary of Housing and Urban Development;

(x) the Secretary of Transportation;

(xi) the Secretary of Energy;

(xii) the Secretary of Education;

(xiii) the Secretary of Veterans Affairs;

(xiv) the Secretary of Homeland Security;

(xv) the Administrator of the Small Business Administration;

(xvi) the Administrator of the United States Agency for International Development;

(xvii) the Director of National Intelligence;

(xviii) the Director of NSF;

(xix) the Director of OMB;

(xx) the Director of OSTP;

(xxi) the Assistant to the President for National Security Affairs;

(xxii) the Assistant to the President for Economic Policy;

(xxiii) the Assistant to the President and Domestic Policy Advisor;

(xxiv) the Assistant to the President and Chief of Staff to the Vice President;

(xxv) the Assistant to the President and Director of the Gender Policy Council;

(xxvi) the Chairman of the Council of Economic Advisers;

(xxvii) the National Cyber Director;

(xxviii) the Chairman of the Joint Chiefs of Staff; and

(xxix) the heads of such other agencies, independent regulatory agencies, and executive offices as the Chair may from time to time designate or invite to participate.

(d) The Chair may create and coordinate subgroups consisting of White House AI Council members or their designees, as appropriate.

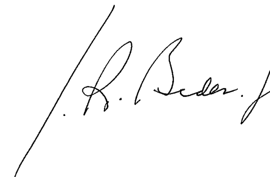
Sec. 13. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(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,
October 30, 2023.

[FR Doc. 2023–24283
Filed 10–31–23; 11:15 am]
Billing code 3395–F4–P

Reader Aids

Federal Register

Vol. 88, No. 210

Wednesday, November 1, 2023

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, NOVEMBER

74877–75226......................... 1

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10659...............................74877
Executive Orders:
14110...............................75191

14 CFR

Proposed Rules:
61....................................74908
63....................................74908
65....................................74908
141..................................74908

16 CFR

Proposed Rules:
1264................................74909

17 CFR

240..................................75100
249..................................75100

18 CFR

40....................................74879

21 CFR

Proposed Rules:
1......................................74939

31 CFR

240..................................74884

42 CFR

Proposed Rules:
414..................................74947
425..................................74947
495..................................74947

43 CFR

3170................................74890

45 CFR

Proposed Rules:
171..................................74947

48 CFR

Proposed Rules:
1 (2 documents) 74970
2 (2 documents) 74970
4 (2 documents) 74970
7 (2 documents) 74970
10 (2 documents) 74970
11 (2 documents) 74970
12 (2 documents) 74970
37 (2 documents) 74970
39 (2 documents) 74970
52 (2 documents) 74970

50 CFR

17....................................74890
Proposed Rules:
223..................................74971

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List October 10, 2023

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/*_layouts/PG/register.aspx.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—NOVEMBER 2023

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
November 1	Nov 16	Nov 22	Dec 1	Dec 6	Dec 18	Jan 2	Jan 30
November 2	Nov 17	Nov 24	Dec 4	Dec 7	Dec 18	Jan 2	Jan 31
November 3	Nov 20	Nov 24	Dec 4	Dec 8	Dec 18	Jan 2	Feb 1
November 6	Nov 21	Nov 27	Dec 6	Dec 11	Dec 21	Jan 5	Feb 5
November 7	Nov 22	Nov 28	Dec 7	Dec 12	Dec 22	Jan 8	Feb 5
November 8	Nov 24	Nov 29	Dec 8	Dec 13	Dec 26	Jan 8	Feb 6
November 9	Nov 24	Nov 30	Dec 11	Dec 14	Dec 26	Jan 8	Feb 7
November 13	Nov 28	Dec 4	Dec 13	Dec 18	Dec 28	Jan 12	Feb 12
November 14	Nov 29	Dec 5	Dec 14	Dec 19	Dec 29	Jan 16	Feb 12
November 15	Nov 30	Dec 6	Dec 15	Dec 20	Jan 2	Jan 16	Feb 13
November 16	Dec 1	Dec 7	Dec 18	Dec 21	Jan 2	Jan 16	Feb 14
November 17	Dec 4	Dec 8	Dec 18	Dec 22	Jan 2	Jan 16	Feb 15
November 20	Dec 5	Dec 11	Dec 20	Dec 26	Jan 4	Jan 19	Feb 20
November 21	Dec 6	Dec 12	Dec 21	Dec 26	Jan 5	Jan 22	Feb 20
November 22	Dec 7	Dec 13	Dec 22	Dec 27	Jan 8	Jan 22	Feb 20
November 24	Dec 11	Dec 15	Dec 26	Dec 29	Jan 8	Jan 23	Feb 22
November 27	Dec 12	Dec 18	Dec 27	Jan 2	Jan 11	Jan 26	Feb 26
November 28	Dec 13	Dec 19	Dec 28	Jan 2	Jan 12	Jan 29	Feb 26
November 29	Dec 14	Dec 20	Dec 29	Jan 3	Jan 16	Jan 29	Feb 27
November 30	Dec 15	Dec 21	Jan 2	Jan 4	Jan 16	Jan 29	Feb 28