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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 9, 30, 50, 51, 70, and 110

[NRC-2023-0144]

RIN 3150-AL04

Miscellaneous Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to make miscellaneous corrections. The amendments correct spelling and references; update contact information; and remove obsolete language. This is necessary to inform the public of these non-substantive amendments to the NRC's regulations.

DATES: This final rule is effective on December 21, 2023.

ADDRESSES: Please refer to Docket ID NRC-2023-0144 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0144. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: Dawn.Forder@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at

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FOR FURTHER INFORMATION CONTACT:

Tricia Lizama, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-4110, email: TriciaDolores.Lizama@nrc.gov.

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- IX. Compatibility of Agreement State Regulations

I. Introduction

The NRC is amending its regulations in parts 9, 30, 50, 51, 70, and 110 of title 10 of the *Code of Federal Regulations* (10 CFR). The NRC is making these amendments to correct spelling and references; revise contact information; and remove obsolete language.

II. Summary of Changes

10 CFR Part 9

Correct Reference. This final rule removes an obsolete reference in § 9.104(a)(4) to "§ 2.790(d)" and replaces it with the reference "§§ 2.390(b)(3)(i) and (b)(4)".

10 CFR Part 30

Correct Spelling. This final rule corrects the spelling of the term "supersede" in footnote 1 to § 30.32.

10 CFR Part 50

Correct Reference. This final rule removes the obsolete reference "Section 2.790 of 10 CFR part 2" in appendix C to part 50 and replaces it with "Section 2.390 of 10 CFR part 2".

Correct Reference. In appendix J to 10 CFR part 50, this final rule revises

footnote 2 by replacing it with a cross-reference to footnote 1.

10 CFR Part 51

Remove Obsolete Language: This final rule removes references to Subpart G that were inadvertently reinserted at §§ 51.34 and 51.102 in a final rule "Miscellaneous Corrections" (79 FR 66598; November 10, 2014).

10 CFR Part 70

Correct Spelling. This final rule corrects the spelling of the term "supersede" in the footnote to § 70.22. This rule also corrects the spelling of the term "combined" in § 70.24 paragraph (d)(1).

Correct Reference. This final rule redesignates in ascending order the footnotes in § 70.22(f) and (i)(3)(viii). This final rule also redesignates in numerical order the footnote in § 70.23(b).

10 CFR Part 110

Revise Contact Information. The NRC is providing an alternate method of contact for submitting reporting requirements through electronic submission by adding the email addresses "110.23reports@nrc.gov" in § 110.54(b) and "110.26reports@nrc.gov" in § 110.54(c).

III. Rulemaking Procedures

Under section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive publication in the **Federal Register** of a notice of proposed rulemaking and opportunity for comment requirements if it finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest. As authorized by 5 U.S.C. 553(b)(3)(B), the NRC finds good cause to waive notice and opportunity for comment on these amendments, because notice and opportunity for comment is unnecessary. The amendments will have no substantive impact and are of a minor and administrative nature dealing with corrections to certain CFR sections or are related only to management, organization, procedure, and practice. Specifically, the revisions correct spelling and references; revise contact information; and remove obsolete language. The Commission is exercising its authority under 5 U.S.C. 553(b) to publish these amendments as a final rule. The amendments are

effective December 21, 2023. These amendments do not require action by any person or entity regulated by the NRC and do not change the substantive responsibilities of any person or entity regulated by the NRC.

IV. Backfitting and Issue Finality

The NRC has determined that the corrections in this final rule would not constitute backfitting as defined in § 50.109, “Backfitting,” and as described in NRC Management Directive (MD) 8.4, “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests.” These corrections also would not constitute forward fitting as that term is defined and described in MD 8.4 or affect the issue finality of any approval issued under 10 CFR part 52. The amendments are non-substantive in nature, including correcting spelling and references; revising contact information; and removing obsolete language. They impose no new requirements and make no substantive changes to the regulations. The corrections do not involve any provisions that would impose backfits as defined in 10 CFR chapter I, or that would be inconsistent with the issue finality provisions in 10 CFR part 52. For these reasons, the issuance of this final rule would not constitute backfitting or be inconsistent with any of the issue finality provisions in 10 CFR part 52. Therefore, the NRC has not prepared any additional documentation for this correction rulemaking addressing backfitting or issue finality.

V. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31885).

VI. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described

in § 51.22(c)(2), which categorically excludes from environmental review rules that are corrective or of a minor, nonpolicy nature and do not substantially modify existing regulations. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

VII. Paperwork Reduction Act

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

VIII. Congressional Review Act

This final rule is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

IX. Compatibility of Agreement State Regulations

Under the “Agreement State Program Policy Statement” approved by the Commission on October 2, 2017, and published in the **Federal Register** (82 FR 48535; October 18, 2017), NRC program elements (including regulations) required for adequacy and having a particular health and safety component are those that are designated as Categories A, B, C, D, NRC, and H&S; and those required for compatibility include those regulations and other legally binding requirements designated as Compatibility Categories A, B, C, and D. Compatibility Category A are those program elements that include basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner in order to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. Compatibility Category B pertains to a limited number of program

elements that cross jurisdictional boundaries and should be addressed to ensure uniformity of regulation on a nationwide basis. The Agreement State program element should be essentially identical to that of NRC. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a national basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, above, and, thus, do not need to be adopted by Agreement States for purposes of compatibility. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to the Agreement States under the Atomic Energy Act of 1954, as amended, or provisions of title 10 of the *Code of Federal Regulations*. These program elements should not be adopted by the Agreement States. Category H&S program elements are not required for purposes of compatibility; however, they do have particular health and safety significance. The Agreement State should adopt the essential objectives of such program elements to maintain an adequate program.

The portions of this final rule that amend 10 CFR parts 30 and 70 are a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among Agreement State and NRC requirements, and are listed in the following table. The changes to 10 CFR parts 9, 50, 51, and 110 categories are not subject to Agreement State jurisdiction and consequently are not required for compatibility.

COMPATIBILITY TABLE

Section	Change	Subject	Compatibility	
			Existing	New
Part 30				
30.32(i)	AMEND	Application for specific licenses	H&S	H&S.
Part 70				
70.22(f), (i)	AMEND	Contents of application	NRC	NRC.
70.23(b)	AMEND	Requirements for the approval of applications	NRC	NRC.

COMPATIBILITY TABLE—Continued

Section	Change	Subject	Compatibility	
			Existing	New
70.24	AMEND	Criticality accident requirements	NRC	NRC.

List of Subjects**10 CFR Part 9**

Administrative practice and procedure, Courts, Criminal penalties, Freedom of information, Government employees, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear energy, Nuclear materials, Penalties, Radiation protection, Reporting and recordkeeping requirements, Whistleblowing.

10 CFR Part 50

Administrative practice and procedure, Antitrust, Backfitting, Classified information, Criminal penalties, Education, Emergency planning, Fire prevention, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statements, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 70

Classified information, Criminal penalties, Emergency medical services, Hazardous materials transportation, Material control and accounting, Nuclear energy, Nuclear materials, Packaging and containers, Penalties, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material, Whistleblowing.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Exports, Imports, Intergovernmental relations, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 9, 30, 50, 51, 70, and 110.

PART 9—PUBLIC RECORDS

- 1. The authority citation for part 9 continues to read as follows:

Authority: Atomic Energy Act of 1954, sec. 161 (42 U.S.C. 2201); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note.

Subpart A also issued under 31 U.S.C. 9701.

Subpart B also issued under 5 U.S.C. 552a.

Subpart C also issued under 5 U.S.C. 552b.

Subpart E also issued under 42 U.S.C. 405 note.

§ 9.104 [Amended]

- 2. In § 9.104, amend paragraph (a)(4) by removing the reference “§ 2.790(d) of this title” and adding in its place the references “§§ 2.390(b)(3)(i) and (b)(4) of this chapter;”.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

- 3. The authority citation for part 30 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 81, 161, 181, 182, 183, 184, 186, 187, 223, 234, 274 (42 U.S.C. 2014, 2111, 2201, 2231, 2232, 2233, 2234, 2236, 2237, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

§ 30.32 [Amended]

- 4. Amend footnote 1 in § 30.32 by removing “supercede” and adding in its place “supersede”.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

- 5. The authority citation for part 50 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167,

2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96–295, 94 Stat. 783.

Appendix C to Part 50 [Amended]

- 6. In appendix C to 10 CFR part 50, amend footnote 1 in section I.A.1 by removing the reference “2.790” and adding in its place the reference “2.390”.

- 7. In appendix J, revise footnote 2 to read as follows:

Appendix J to Part 50—Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors

* * * * *

² See footnote 1.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

- 8. The authority citation for part 51 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 193 (42 U.S.C. 2201, 2243); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); National Environmental Policy Act of 1969 (42 U.S.C. 4332, 4334, 4335); Nuclear Waste Policy Act of 1982, secs. 144(f), 121, 135, 141, 148 (42 U.S.C. 10134(f), 10141, 10155, 10161, 10168); 44 U.S.C. 3504 note.

Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under Nuclear Waste Policy Act secs. 135, 141, 148 (42 U.S.C. 10155, 10161, 10168).

Section 51.22 also issued under Atomic Energy Act sec. 274 (42 U.S.C. 2021) and under Nuclear Waste Policy Act sec. 121 (42 U.S.C. 10141).

Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10134(f)).

§ 51.34 [Amended]

- 9. In § 51.34, amend the first sentence in paragraph (b) by removing the reference “subpart G of”.

§ 51.102 [Amended]

- 10. In § 51.102, amend the first sentence in paragraph (c) by removing the reference “subpart G of”.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 11. The authority citation for part 70 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57(d), 108, 122, 161, 182, 183, 184, 186, 187, 193, 223, 234, 274, 1701 (42 U.S.C. 2071, 2073, 2077(d), 2138, 2152, 2201, 2232, 2233, 2234, 2236, 2237, 2243, 2273, 2282, 2021, 2297f); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

Section 70.21(g) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152).

Section 70.31 also issued under Atomic Energy Act sec. 57(d) (42 U.S.C. 2077(d)).

Sections 70.36 and 70.44 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234).

Section 70.81 also issued under Atomic Energy Act secs. 186, 187 (42 U.S.C. 2236, 2237).

Section 70.82 also issued under Atomic Energy Act sec. 108 (42 U.S.C. 2138).

■ 12. In § 70.22:

■ a. Amend paragraph (f) by redesignating footnote 2 as footnote 1.

■ b. Amend paragraph (i)(3)(viii) by redesignating footnote 1 as footnote 2 and revising newly redesignated footnote 2.

The revision reads as follows:

§ 70.22 Contents of applications.

* * * * *

(i) * * *

(3) * * *

(viii) * * *

[2] These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99–499 or other state or Federal reporting requirements.

§ 70.23 [Amended]

■ 13. Amend paragraph (b) of § 70.23 by removing the superscript “[3]” and adding in its place the superscript “[2]” and redesignating footnote 3 as footnote 2.

§ 70.24 [Amended]

■ 14. Amend paragraph (d)(1) of § 70.24 by removing “omined” and adding in its place “combined”.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 15. The authority citation for part 110 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 51, 53, 54, 57, 62, 63, 64, 65, 81, 82, 103, 104, 109, 111, 121, 122, 123, 124,

126, 127, 128, 129, 133, 134, 161, 170H, 181, 182, 183, 184, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2071, 2073, 2074, 2077, 2092, 2093, 2094, 2095, 2111, 2112, 2133, 2134, 2139, 2141, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2160c, 2160d, 2201, 2210h, 2231, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); Administrative Procedure Act (5 U.S.C. 552, 553); 42 U.S.C. 2139a, 2155a; 44 U.S.C. 3504 note.

Section 110.1(b) also issued under 22 U.S.C. 2403; 22 U.S.C. 2778a; 50 App. U.S.C. 2401 *et seq.*

§ 110.54 [Amended]

■ 16. In § 110.54:

■ a. Amend the second sentence in paragraph (b) introductory text by adding the phrase “or by electronic submission at *110.23reports@nrc.gov*” after the phrase “provided in § 110.4”; and

■ b. Amend the second sentence in paragraph (c) introductory text by adding the phrase “or by electronic submission at *110.26reports@nrc.gov*” after the phrase “provided in § 110.4”.

Dated: November 7, 2023.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–24950 Filed 11–20–23; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION**12 CFR Part 721**

[NCUA–2023–0043]

RIN 3133–AF56

Charitable Donation Accounts

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending the charitable donation accounts (CDAs) section of the NCUA’s incidental powers rule. Specifically, the Board is adding a post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization recognized as exempt from taxation under section 501(c)(19) of the Internal Revenue Code (veterans’ organizations) to the definition of a “qualified charity” that a Federal credit union may contribute to using a CDA.

DATES: This rule is effective December 21, 2023.

FOR FURTHER INFORMATION CONTACT:

Policy: Rick Mayfield, Senior Capital Markets Specialist, Office of Examination and Insurance; Heather Murphy, Consumer Compliance Policy and Outreach Officer, Office of Consumer Financial Protection. **Legal:** Justin M. Anderson, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428. Rick Mayfield can be reached at (703) 518–6501; Heather Murphy can be reached at (703) 664–3102; and Justin Anderson can be reached at (703) 518–6540.

SUPPLEMENTARY INFORMATION:**I. Background****A. History of the Current Rule**

The Board approved the current CDA rule at its December 2013 meeting (2013 final rule).¹ The 2013 final rule permitted Federal credit unions to fund a CDA, which may hold investments that are otherwise impermissible for Federal credit unions, for use as a charitable contribution or donation under their incidental powers authority. The 2013 final rule defined a CDA as a hybrid charitable and investment vehicle that a Federal credit union may fund to provide charitable contributions and donations to a qualified charity. The 2013 final rule further defined “qualified charity”² as a charitable organization or other non-profit entity recognized as exempt from taxation under section 501(c)(3) of the Internal Revenue Code.³

B. Scope of “Qualified Charity”

As noted in the preceding section, the 2013 final rule permitted the use of CDAs as an incidental power for Federal credit unions. As CDAs can be funded with investments that are impermissible for Federal credit unions, the Board limited the scope of organizations that could be considered a “qualified charity” for purposes of the CDA rule. The 2013 final rule required that a “qualified charity” be a section 501(c)(3) entity as defined by the Internal Revenue Code. These organizations are non-profit and organized and operated exclusively for charitable purposes. Because CDAs can be funded with impermissible investments, the Board believes it is necessary to keep in place distinct limits on groups that are beneficiaries of a CDA. As such, any group the Board would consider adding as a “qualified

¹ 78 FR 76728 (Dec. 19, 2013).

² 12 CFR 721.3(b)(2).

³ 26 U.S.C. 501(c)(3).

charity” must be both a non-profit and be organized for a charitable purpose.

II. Proposed Rule and Comments

A. Veterans’ Organizations as a Qualified Charity

At its May 2023 meeting, the Board issued a proposed rule to amend the CDA rule by permitting veterans’ organizations recognized as exempt from taxation under section 501(c)(19) of the Internal Revenue Code to be included as a “qualified charity” as defined in the CDA rule.⁴ The Board noted that under section 501(c)(19), as described on the official Internal Revenue Service website, veterans’ organizations must meet the following requirements:

- It must be organized in the United States or any of its possessions;
- At least 75 percent of its members must be past or present members of the United States Armed Forces;
- At least 97.5 percent of its members must be:
 - present or former members of the United States Armed Forces,
 - cadets (including only students in college or university ROTC programs or at Armed Services academies), or
 - spouses, widows, widowers, ancestors, or lineal descendants of individuals referred to in the first or second bullet;
- It must be operated exclusively for one or more of the following purposes:
 - to promote the social welfare of the community (e.g., to promote the common good and general welfare of the people of the community);
 - to assist disabled and needy war veterans and members of the United States Armed Forces and their dependents—and the widows and orphans of deceased veterans;
 - to provide entertainment, care, and assistance to hospitalized veterans or members of the United States Armed Forces;
 - to carry on programs to perpetuate the memory of deceased veterans and members of the United States Armed Forces and comfort their survivors;
 - to conduct programs for religious, charitable, scientific, literary or educational purposes;
 - to sponsor or participate in activities of a patriotic nature;
 - to provide insurance benefits for members or their dependents; or
 - to provide social and recreational activities for members.
- No part of its net earnings may inure to the benefit of any private shareholder or individual.

An organization may also be exempt under section 501(c)(19) as an auxiliary unit or society of a veterans’ post or organization if it meets the following requirements:

- It is affiliated with, and organized in accordance with the bylaws and regulations of, a veterans’ post or organization described above;
- At least 75 percent of its members are veterans, spouses of veterans, or related to a veteran within two degrees of consanguinity (*i.e.*, grandparent, brother, sister, grandchild represent the most distant allowable relationships);
- All members are either members of a veterans’ post or organizations described above, or spouses of a member of such post or organization, or are related to a member of such post or organization within two degrees of consanguinity;
- No part of its net earning inures to the benefit of any private shareholder or individual.

Finally, an organization may be exempt under section 501(c)(19) as a trust or foundation for a veterans’ post or organization if it meets the following requirements:

- It is valid under local law and, if organized for charitable purposes, has a dissolution provision described in section 1.501(c)(3)–1(b)(4) of the Income Tax Regulations;
- The corpus or income cannot be diverted or used other than to fund a veterans’ post or organization for charitable purposes or as an insurance set-aside;
- The trust income is not unreasonably accumulated, and a substantial portion of the income is distributed to such veteran post or organization, or for exclusively religious, charitable, scientific, literary, educational or prevention of cruelty to children or animal purposes;
- It is organized exclusively for one or more of those purposes enumerated above for which a veterans’ post or organization itself may be organized.⁵

The Board received seven comments in response to the May 2023 proposal. One comment was directed at taxation in general and, thus, is outside the scope of this rulemaking. The remaining six commenters all supported the proposal as written. One of these six commenters did request clarification of the applicability of the proposed change. In response, the Board is reiterating that, under this final rule, any “veterans’ organization” that meets the requirements in section 501(c)(19) of

the Internal Revenue Code is a “qualified charity” for purposes of the CDA rule.

B. Other Organizations the Board Should Consider

In addition to the foregoing, in the May 2023 proposal, the Board also asked if there are other groups, entities, or organizations the Board should consider adding to the definition of a “qualified charity” to inform potential future rulemaking in this area. In response, four commenters offered suggestions of other groups that the Board should consider including as “charitable organizations” under the CDA rule. One of these commenters provided a general response, suggesting that the Board consider adding any “qualified charity if it serves a mission advancing and benefitting individuals, community(s), and society not able to provide for themselves.” This commenter went on to state, “The Board should consider local, community, social and other groups without 501(c) status whose mission and members volunteer their time (and money) who also seek donations and act to benefit the public at large to improve the quality of living interests of all residents and society.” The remaining three commenters requested the Board consider the following specific groups:

- 501(c)(4): Civic Leagues, Social Welfare Organizations, and Local Associations of Employees.
- 501(c)(5): Labor, Agricultural, and Horticultural Organizations.
- 501(c)(6): Business Leagues, Chambers of Commerce, and Real Estate Boards.
- 501(c)(7): Social and Recreational Clubs.
- 501(c)(29): Qualified Nonprofit Health Insurance Issuers.

The Board will retain these suggestions to inform any future rulemakings in this area.

III. Regulatory Procedures

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to a rulemaking in which an agency creates a new or amends existing information collection requirements.⁶ For purposes of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The NCUA may not conduct or sponsor, and the respondent is not required to respond to an information collection, unless it displays a valid Office of Management

⁴ 26 U.S.C. 503(c)(19); 26 CFR 1–501(c)(19)–1. See <https://www.irs.gov/charities-non-profits/other-non-profits/veterans-organizations>.

⁶ 44 U.S.C. 3507(d); 5 CFR part 1320.

and Budget (OMB) control number. OMB has approved the current information collection requirements and assigned them control number 3133–0133. This rule adds a new entity to the definition of a “qualified charity.” NCUA does not anticipate an increase in the recordkeeping requirement associated with CDAs.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act⁷ requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities (defined as credit unions with under \$100 million in assets).⁸ This rule merely adds an additional category of permissible entities to which a Federal credit union may donate through a CDA. Currently, there are only 136 Federal credit unions utilizing CDAs, with an average size of approximately \$1.74 billion. Of these 136, only 18 are “small entities,” as defined in the first sentence of this paragraph. The NCUA estimates that a limited number of Federal credit unions would utilize the authority granted in this rule. In addition, as the rule merely adds another category of permissible entities a Federal credit union may donate to through a CDA, the NCUA does not find that this rule would impose a cost or burden on any Federal credit unions. As such, the NCUA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive Order to adhere to fundamental federalism principles.

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The rule will affect only Federal credit unions. Federally insured, State-chartered credit unions derive their investment and incidental powers authority from State law, and the NCUA’s regulations do not determine the permissibility of such investments or activities. The NCUA has therefore determined that this rule does

not constitute a policy that has federalism implications for purposes of the Executive Order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998). The final rule could increase charitable donations by Federal credit unions to organizations that provide benefits or services to veterans’ households, but the Board believes that the connection will not be direct and is uncertain.

E. Small Business Regulatory Enforcement Fairness Act—Congressional Review Act

The Congressional Review chapter of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) generally provides for congressional review of agency rules.⁹ A reporting requirement is triggered in instances where the NCUA issues a final rule as defined in the Administrative Procedure Act.¹⁰ Besides being subject to congressional oversight, an agency rule may also be subject to a delayed effective date if it is a “major rule.” The NCUA does not believe this rule is a “major rule” within the meaning of the relevant sections of the statute. As required by the statute, the NCUA will submit this final rule to OMB for it to determine if this final rule is a “major rule” for purposes of the statute. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

List of Subjects in 12 CFR Part 721

Credit unions.

By the NCUA Board on November 16, 2023.

Melane Conyers-Ausbrooks,
Secretary of the Board.

For the reasons discussed in the preamble, the NCUA Board is amending 12 CFR part 721 as follows:

PART 721—INCIDENTAL POWERS

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 12 U.S.C. 1757(17), 1766, and 1789.

■ 2. Amend § 721.3 by revising paragraph (b)(2)(vii)(B) to read as follows:

§ 721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union’s business?

* * * * *

(b) * * *

(2) * * *

(vii) * * *

(B) *Qualified charity* is a charitable organization or other non-profit entity recognized as exempt from taxation under section 501(c)(3) or 501(c)(19) of the Internal Revenue Code.

* * * * *

[FR Doc. 2023–25749 Filed 11–20–23; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2140; Project Identifier AD–2023–01071–T; Amendment 39–22590; AD 2023–22–06]

RIN 2120–AA64

Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 96–12–20, which applied to certain Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G airplanes. AD 96–12–20 required visual inspections to detect loose, missing, or deformed fasteners in the upper truss mounts of certain engines, visual inspections to detect cracking in the associated lugs, repetitive ultrasonic inspections to detect cracking of the upper lugs, and replacement of damaged or cracked parts. AD 96–12–20 also provided for an optional terminating action for the repetitive inspections. This AD was prompted by reports of fatigue cracking of the lugs of the upper truss mount, and by reports of cracks found prior to the initial inspection times required by AD 96–12–20 and the determination that the terminating action is no longer valid. This AD requires one-time inspections for cracked or severed engine truss mount upper lugs of the outboard engines, and replacement of the engine truss mount if necessary. This AD also revises the applicability to include all Model 382, 382B, 382E, 382F, and 382G airplanes, and all Model

⁷ 5 U.S.C. 601 *et seq.*

⁸ *Id.* at 603(a); NCUA Interpretive Ruling and Policy Statement 15–2.

⁹ 5 U.S.C. 551.

¹⁰ *Id.*

EC-130Q, C-130H, HP-C-130A, C-130A, and C-130B (including Model 282-44A-05) airplanes. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 21, 2023.

The FAA must receive comments on this AD by January 5, 2024.

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

- *Federal eRulemaking Portal:* Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

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

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) by searching for and locating Docket No. FAA-2023-2140; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Fred Caplan, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404-474-5507; email: 9-ASO-ATLACO-ADs@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2023-2140 and Project Identifier AD-2023-01071-T" at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to [regulations.gov](https://www.regulations.gov), including any personal information you provide. The agency will also post a report summarizing each

substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Fred Caplan, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404-474-5507; email: 9-ASO-ATLACO-ADs@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 96-12-20, Amendment 39-9663 (61 FR 29279, June 10, 1996; corrected August 16, 1996 (61 FR 42549)) (AD 96-12-20), for certain Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G airplanes. AD 96-12-20 required visual inspections to detect loose, missing, or deformed fasteners in the upper truss mounts of certain engines; inspections to detect cracking in the associated lugs; repetitive ultrasonic inspections to detect cracking of the upper lugs; and replacement of damaged and cracked parts. This amendment also provides for an optional terminating action for the repetitive inspections. AD 96-12-20 was prompted by reports of fatigue cracking of the lugs of the upper truss mount. The FAA issued AD 96-12-20 to prevent multiple failures of the upper truss mounts due to problems associated with fatigue cracking, which could adversely affect the integrity of the engine mount structure.

Actions Since AD 96-12-20 Was Issued

Since the FAA issued AD 96-12-20, the FAA has been notified of additional crack findings in engine truss mount upper lugs occurring prior to the initial inspection times required by AD 96-12-20. The cracks were found to have progressed entirely through these parts and have been found on multiple

airplanes. In addition, modified parts, required by the terminating action in AD 96-12-20, that were intended to have a longer operational life have not resulted in longer periods before cracks occur; therefore, the previous terminating action is not valid, and airplanes on which the terminating action was done must be inspected. The restricted category models EC-130Q, C-130H, HP-C-130A, C-130A, and C-130B (including Model 282-44A-05) were added to the Model 382 airplanes affected by AD 96-12-20, since they share the same type design in the area where cracking is occurring. Fatigue cracking of a single engine truss mount upper lug could reduce the static strength of an engine mount to limit load, while cracking of both lugs can lead to separation of the engine, catastrophic structural damage, and loss of control of the airplane.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD does not retain the requirements of AD 96-12-20. This AD revises the applicability of AD 96-12-20 by expanding to all Model 382, 382B, 382E, 382F, and 382G airplanes, and adding Model EC-130Q, C-130H, HP-C-130A, C-130A, and C-130B (including Model 282-44A-05) airplanes. This AD requires one-time inspections to detect cracking of the No. 1 and No. 4 engine truss mount upper lugs, lower surfaces, at outer wing station (OWS) 162 and OWS 197; cracking of the No. 1 and No. 4 engine truss mount upper lug side surfaces, inboard and outboard, at OWS 162 and OWS 197; and severed engine truss mount upper lugs; and replacement of the engine truss mount if found with cracked or severed engine truss mount upper lugs.

Interim Action

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

Impact on Intrastate Aviation in Alaska

In light of the heavy reliance on aviation for intrastate transportation in Alaska, the FAA fully considered the effects of this AD (including costs to be borne by affected operators) from the earliest possible stages of AD development. This AD is based on those considerations, and was developed with

regard to minimizing the economic impact on operators to the extent possible, consistent with the safety objectives of this AD. In any event, the Federal Aviation Regulations require operators to correct an unsafe condition identified on an airplane to ensure operation of that airplane in an airworthy condition. The FAA has determined in this case that the requirements are necessary and the indirect costs would be outweighed by the safety benefits of the AD.

Justification for Immediate Adoption and Determination of the Effective Date

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

authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause. An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because fatigue cracking of a single engine truss mount upper lug reduces the static strength of an engine mount to limit load, while cracking of both lugs can lead to separation of the engine, catastrophic structural damage, and loss of control of the airplane. Further, based upon the additional applicability of affected airplanes and the previously insufficient service information, it is likely that further fatigue cracking and reduction in static strength has occurred and could result in imminent separation of the engine, catastrophic structural damage, and loss of control of the airplane. Finally, the compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final

rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment. **Regulatory Flexibility Act** The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required. **Costs of Compliance** The FAA estimates that this AD affects 41 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	10 work-hours × \$85 per hour = \$850	\$0	\$850	\$34,850

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD is not a “significant regulatory action” under Executive Order 12866.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:
a. Removing Airworthiness Directive (AD) AD 96–12–20, Amendment 39–9663 (61 FR 29279, June 10, 1996; corrected August 16, 1996 (61 FR 42549)); and
b. Adding the following new AD:
2023–22–06 Lockheed Martin Corporation/ Lockheed Martin Aeronautics Company: Amendment 39–22590; Docket No. FAA–2023–2140; Project Identifier AD–2023–01071–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 21, 2023.

(b) Affected ADs

This AD replaces AD 96–12–20, Amendment 39–9663 (61 FR 29279, June 10, 1996; corrected August 16, 1996 (61 FR 42549)) (AD 96–12–20).

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (2) of this AD.
(1) All Lockheed Martin Corporation/ Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G airplanes, certificated in any category.

(2) All airplanes specified in paragraphs (c)(2)(i) through (xi) of this AD, type certificated in the restricted category.

(i) LeSEA Model C-130A airplanes (transferred from Central Air Services, Inc.), Type Certificate Data Sheet (TCDS) A34SO, Revision 1.

(ii) T.B.M., Inc., Model C-130A airplanes, TCDS A39CE, Revision 3.

(iii) Western International Aviation, Inc., Model C-130A airplanes, TCDS A33NM.

(iv) USDA Forest Service Model C-130A airplanes, TCDS A15NM, Revision 4.

(v) Snow Aviation International, Inc., Model C-130A airplanes, TCDS TQ3CH, Revision 1.

(vi) International Air Response (transferred from Rogers Helicopters, Inc., and Heavylift Helicopters Inc.) Model C-130A airplanes, TCDS A31NM, Revision 3.

(vii) Heavylift Helicopters, Inc., Model C-130B airplanes, TCDS A35NM, Revision 1.

(viii) Hawkins & Powers Aviation, Inc., Model HP-C-130A airplanes, TCDS A30NM, Revision 1.

(ix) Coulson Aviation (USA), Inc., Model EC-130Q and C-130H airplanes, TCDS T00019LA, Revision 4.

(x) Lockheed-Georgia Company Model 282-44A-05 (C-130B) airplanes, TCDS A5SO.

(xi) Surplus Model C-130A airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Unsafe Condition

This AD was prompted by reports of fatigue cracking of an upper lug of the engine truss mount, and by reports of cracks found prior to the initial inspection times required by AD 96-12-20. The FAA is issuing this AD to address such fatigue cracking. Fatigue cracking of a single engine truss mount upper lug could reduce the static strength of an engine mount to limit load, while cracking of both lugs can lead to separation of the engine, catastrophic structural damage, and loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

Within 35 days after the effective date of this AD, do the inspections specified in paragraphs (g)(1) and (2) of this AD, using a method approved in accordance with the procedures specified in paragraph (i) of this AD. If any cracked or severed engine truss mount upper lug is found, the engine truss mount must be replaced before further flight, using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(1) Do a one-time detailed visual inspection for cracking of the No. 1 and No. 4 engine truss mount upper lugs, lower surfaces, at outer wing station (OWS) 162 and OWS 197; and for severed engine truss mount upper lugs; at a total of four locations: two locations per engine mount, one mount assembly at each OWS.

(2) Do a one-time borescope inspection for cracking of the No. 1 and No. 4 engine truss mount upper lug side surfaces, inboard and outboard, at OWS 162 and OWS 197; and for severed engine truss mount upper lugs; at a total of eight locations: two locations per engine truss mount lug, two lugs per engine, one mount assembly at each OWS.

Note 1 to paragraph (g): Guidance for accomplishing the inspections and replacement can be found in Lockheed Martin Aeronautics Company Alert Service Bulletin A382-57-103, dated October 19, 2023.

(h) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the inspections required by this AD can be performed, but special flight permits may not be issued to operate the airplane after a visual or borescope inspection has identified a cracked or severed lug, unless the operator contacts the Manager, East Certification Branch, FAA, for specific limitations that must be followed and complies with those limitations.

(i) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(j) Related Information

(1) For more information about this AD, contact Fred Caplan, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404-474-5507; email: 9-ASO-ATLACO-ADs@faa.gov.

(2) For Lockheed Martin Aeronautics Company service information identified in this AD that is not incorporated by reference, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P-58, 86 S Cobb Drive, Marietta, GA 30063; telephone 770-494-5444; fax 770-494-5445; email ams.portal@lmco.com. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

(k) Material Incorporated by Reference

None.

Issued on November 16, 2023.

Ross Landes,

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

[FR Doc. 2023-25762 Filed 11-17-23; 4:15 pm]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 231115-0270]

RIN 0694-AJ45

Additions to the Entity List

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding four entities under nine entries to the Entity List. These entities are listed under the destinations of Costa Rica (1), Ecuador (1), India (1), Panama (2), Spain (1), Russia (1), and Venezuela (2). These entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. Some entities are added under multiple entries, accounting for the difference in the totals.

DATES: This rule is effective November 17, 2023.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-5991, Email: ERC@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Entity List (supplement no. 4 to part 744 of the EAR (15 CFR parts 730-774)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States, pursuant to § 744.11(b). The EAR impose additional license requirements on, and limit the availability of, most license exceptions for exports, reexports, and transfers (in-country) when a listed entity is a party to the transaction. The license review policy for each listed entity is identified in the

“License Review Policy” column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document that added the entity to the Entity List. The Bureau of Industry and Security (BIS) places entities on the Entity List pursuant to parts 744 (Control Policy: End-User and End-Use Based) and 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

Entity List Decisions

Additions to the Entity List

The ERC determined to add Aerofalcon S.L., under the destination of Spain; Novax Group S.A., under the destinations of Costa Rica, Ecuador, Panama, Venezuela, and Russia; and Zero Waste Global SA, under the destinations of Panama and Venezuela, to the Entity List. These entities are added to the Entity List pursuant to § 744.11 of the EAR for engaging in activities contrary to U.S. national security and foreign policy interests. Specifically, these entities were used by their principals to circumvent U.S. sanctions, supplying the representatives of Nicolás Maduro in Venezuela with U.S. origin aircraft parts. This circumvention was conducted by, among other efforts, concealing the true end user and end destination of the exports using misrepresentations and fraudulent documents, including the filing of false Electronic Export Information. These entities will be added with a license requirement for all items subject to the EAR and a license review policy of presumption of denial.

The ERC determined to add Si2 Microsystems Private Limited, under the destination of India, to the Entity List. This entity is added to the Entity List for providing support to Russia’s military and/or defense industrial base. Specifically, this entity supplied Russian consignees connected to the Russian defense sector with U.S.-origin integrated circuits after March 1, 2023. These integrated circuits are classified under Harmonized Tariff System (HTS)-6 codes 854231, 854232, 854233, and/or 854239. These HTS-6 codes are identified under supplement no. 4 to

part 746 (Russian and Belarusian Industry Sector Sanctions Pursuant to § 746.5(a)(1)(ii)). All U.S.-origin items classified under these HTS-6 codes have been controlled for export and reexport and transfer within Russia since September 15, 2022. Such U.S.-origin items require a license under § 746.5(a)(1)(ii) of the EAR when destined to Russia or Belarus.¹

Therefore, the documented shipments by this entity to Russia of such U.S.-origin items are contrary to U.S. national security and foreign policy interests under § 744.11(b) of the EAR. This entity will be added with a license requirement for all items subject to the EAR and a license review policy of denial.

For the reasons described above, this final rule adds the following four entities, including aliases where appropriate, to the Entity List:

Costa Rica

- Novax Group S.A.

Ecuador

- Novax Group S.A.

India

- Si2 Microsystems Private Limited.

Panama

- Novax Group S.A.; and
- Zero Waste Global SA.

Spain

- Aerofalcon S.L.

Russia

- Novax Group S.A.

Venezuela

- Novax Group S.A.; and
- Zero Waste Global SA.

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on November 17, 2023, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a

foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) before December 18, 2023. Any such items not actually exported, reexported or transferred (in-country) before midnight, on December 18, 2023, require a license in accordance with this final rule.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves an information collection approved by OMB under control number 0694–0088, Simplified Network Application Processing System. BIS does not anticipate a change to the burden hours associated with this collection as a result of this rule. Information regarding the collection, including all supporting materials, can be accessed at <https://www.reginfo.gov/public/do/PRAMain>.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are not applicable. Accordingly, no

¹ On February 24, 2023 (88 FR 12150), BIS also expanded controls to include certain foreign-made items classified under the same HTS-6 codes destined to Russia, due to their demonstrated use in weapons found on the battlefield in Ukraine. Such foreign-made items are subject to the EAR and the license requirements of § 746.8(a)(2) when a reexport, export from abroad, or transfer (in-country) meets the destination scope of the Russia/Belarus/Temporarily occupied Crimea region of Ukraine FDP (Foreign Direct Product) rule described in § 734.9(f) of the EAR.

regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—END-USE AND END-USER CONTROLS

- 1. The authority citation for part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O.

12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 8, 2022, 87 FR 68015, 3 CFR, 2022 Comp., p. 563; Notice of September 7, 2023, 88 FR 62439 (September 11, 2023).

- 2. Supplement no. 4 is amended:

■ a. Under COSTA RICA, by adding, in alphabetical order, an entry for “Novax Group S.A.,”

■ b. Under ECUADOR, by adding, in alphabetical order, an entry for “Novax Group S.A.,”

■ c. Under INDIA, by adding, in alphabetical order, an entry for “Si2 Microsystems Private Limited.,”

■ d. Under PANAMA, by adding, in alphabetical order, entries for “Novax Group S.A.,” *and* “Zero Waste Global SA.,”

■ e. Under SPAIN, by adding, in alphabetical order, an entry for “Aerofalcon S.L.,”

■ f. Under RUSSIA, by adding in alphabetical order, an entry for “Novax Group S.A.,” *and*

■ g. Under VENEZUELA, by adding in alphabetical order, entries for “Novax Group S.A.,” *and* “Zero Waste Global SA.” to read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License, requirement	License review policy	Federal Register citation
COSTA RICA	Novax Group S.A., Centro Corporative Lindora, Oficina Nro. 2–10, Pozos de Santa Ana, San Jose, 10903, Costa Rica. (See alternate addresses under Ecuador, Panama, Russia, and Venezuela).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER AND 11/21/ 2023].
ECUADOR	Novax Group S.A., Avenida Joaquin Orrantia y Juan Tanca Marengo, Torres del Mall del Sol Piso 4, Torre B, Guayaquil, Ecuador. (See alternate addresses under Costa Rica, Panama, Russia, and Venezuela).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER AND 11/21/ 2023].
INDIA	Si2 Microsystems Private Limited, 84, Deep Towers, EPIP Industrial Area, Whitefield, Bangalore, Karnataka, 560066, India; <i>and</i> #52/A, 1st Cross, 3rd Main KIADB Industrial Area, Hoskote, Bangalore, Karnataka, 562114, India; <i>and</i> 3796, 7th Main, Hal II Stage, Bangalore, Karnataka, 560008, India; <i>and</i> 493/3 Bramhalingeswara Complex, Airport Road, Bangalore, Karnataka, 560008, India; <i>and</i> 177/2 Bannerghatta Road, Begur Hobli Bilekahalli Industrial Area, Bangalore, Karnataka, 560076, India.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 11/21/ 2023].
PANAMA	Novax Group S.A., Avenida Aquilino de la Guardia con Calle 47, Edificio Ocean Plaza, Piso 16, Oficina 8, Ciudad de Panama, Panama. (See alternate addresses under Costa Rica, Ecuador, Russia, and Venezuela).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER AND 11/21/ 2023].
	Zero Waste Global S.A., 58 Street Obarrios Office One Building, Suite 1302, Panama City, Panama. (See alternate address under Venezuela).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER AND 11/21/ 2023].
RUSSIA	Novax Group S.A., Koptevskaya Ulitsa 67, Moscow, 125239, Russia. (See alternate addresses under Costa Rica, Ecuador, Panama, and Venezuela).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER AND 11/21/ 2023].
SPAIN	Aerofalcon S.L., Calle Ángel Cervero 28, Madrid, 28043, Spain.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER AND 11/21/ 2023].
VENEZUELA				

Country	Entity	License, requirement	License review policy	Federal Register citation
	Novax Group S.A., Caracas, Venezuela. (See alternate addresses under Costa Rica, Ecuador, Panama, and Russia).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER AND 11/21/2023].
	Zero Waste Global S.A., Between Avenida Beethoven and Avenida Principal de Bello Monte, Edificio El Cigarral PH-A, Caracas, CP 1050, Venezuela. (See alternate address under Panama).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER AND 11/21/2023].
	*	*	*	*

* * * * *

Matthew S. Borman,
Deputy Assistant Secretary for Export Administration.
[FR Doc. 2023–25684 Filed 11–17–23; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 202

[Docket No. FDA–2009–N–0582]

RIN 0910–AG27

Direct-to-Consumer Prescription Drug Advertisements: Presentation of the Major Statement in a Clear, Conspicuous, and Neutral Manner in Advertisements in Television and Radio Format

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

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is issuing a final rule to amend its regulations concerning direct-to-consumer (DTC) advertisements (ads) for human prescription drugs presented in television or radio format and stating the name of the drug and its conditions of use (DTC TV/radio ads). Specifically, the final rule implements a requirement of the Federal Food, Drug, and Cosmetic Act (FD&C Act), added by the Food and Drug Administration Amendments Act of 2007 (FDAAA), that in such DTC TV/radio ads, the major statement relating to side effects and contraindications must be presented in a clear, conspicuous, and neutral manner. As directed by FDAAA, FDA is establishing standards to determine whether the major statement in DTC TV/radio ads is presented in a clear, conspicuous, and neutral manner.

DATES: This rule is effective May 20, 2024. The compliance date of this rule is November 20, 2024.

ADDRESSES: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and insert the docket number found in brackets in the heading of this final rule into the “Search” box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT:
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I. Executive Summary

A. Purpose of the Final Rule

This final rule implements a statutory requirement that in human prescription drug advertisements presented directly to consumers in television or radio format and stating the name of the drug and its conditions of use (DTC TV/radio ads), the major statement relating to side effects and contraindications (major statement) (Ref. 1) must be presented in a clear, conspicuous, and neutral manner. (As used in this document, unless specifically stated otherwise, references to DTC ads and similar terms encompass ads for human prescription drugs only.) In enacting that requirement, Congress directed FDA to issue regulations establishing standards for determining whether a major statement is presented in a clear,

conspicuous, and neutral manner. The final rule establishes five standards that, independently and collectively, help ensure that the major statement is presented in a clear, conspicuous, and neutral manner. This rule does not change the content of the major statement.

This rule is an incremental addition to a longstanding body of prescription drug advertising regulations. The statute and regulations regarding DTC ads have long required that, with limited regulatory exceptions, prescription drug ads include information about the advertised drug's risks as well as its effectiveness. This final rule complements the longstanding requirements for including risk information in prescription drug ads, setting standards for the manner of presentation of the major statement of side effects and contraindications in DTC TV/radio ads to help ensure that this risk information is presented effectively—that is, in a way that helps consumers notice, attend to, and understand the drug's risks.

By helping consumers notice, attend to, and understand a drug's risks, the final rule directly advances two substantial Government interests. First, the measures required by the final rule help ensure that DTC TV/radio ads convey a truthful and non-misleading net impression about the advertised drug, including its risks. Second, these measures help ensure that consumers are better informed when they participate in healthcare decision making. Although prescription drugs must be prescribed by a healthcare provider (HCP) and cannot be accessed by consumers directly, consumers make decisions that have a critical effect on health and well-being, such as whether to fill a prescription, whether to initiate taking the prescribed drug, and whether to continue taking the drug in adherence to a prescribed regimen. The clear, conspicuous, and neutral presentation of risk information in DTC TV/radio ads, in addition to benefit information,

helps ensure that these ads convey a truthful and non-misleading net impression about the advertised drug and that consumers are better informed when they participate in healthcare decision making.

B. Summary of the Major Provisions of the Final Rule

This final rule specifies five standards that, independently and collectively, help ensure that the major statement is presented in a clear, conspicuous, and neutral manner. The final rule establishes that the information must be presented in consumer-friendly language and terminology that is readily understandable. The audio information in the major statement must be at least as understandable as the audio information presented in the rest of the ad. In ads in TV format, the information presented in the audio portion of the major statement must also be presented concurrently in text for a sufficient duration to allow it to be read easily. In ads in TV format, the information in text must be formatted such that the information can be read easily. The ad must not include audio or visual elements during the presentation of the major statement that are likely to interfere with comprehension of the major statement.

C. Legal Authority

This final rule amends FDA's prescription drug advertising regulations to be consistent with the current requirements of the FD&C Act, as amended by FDAAA, that in human prescription drug ads presented directly to consumers in television or radio format and stating the name of the drug and its conditions of use, the major statement relating to side effects and contraindications shall be presented in a clear, conspicuous, and neutral manner. In addition, FDAAA directed FDA to establish standards for determining whether the major statement in DTC TV/radio ads is presented in a clear, conspicuous, and

neutral manner—and does so in this rule. Furthermore, this rule is authorized by various provisions of the FD&C Act.

D. Costs and Benefits

The benefits of this final rule stem from and include helping consumers notice, attend to, and understand the major statement in DTC TV/radio ads. The standards in the final rule help to ensure that DTC TV/radio ads convey a truthful and non-misleading net impression about the advertised drug and help ensure that consumers are better informed when they participate in healthcare decision making. We discuss the benefits qualitatively.

The costs of this final rule include the cost to read and understand the rule, to revise a firm's¹ standard operating procedures, and to revise TV and radio ads during the transition period leading up to the compliance date. We also expect there to be modest ongoing costs for industry to review future DTC TV/radio ads to ensure that these advertisements comply with this final rule and an ongoing opportunity cost related to a potential change in the relative allocation of time within the ad between the presentation of the major statement and the presentation of other content. The total present value of costs over a 10-year time horizon ranges from \$104.8 million to \$331.8 million, with a primary estimate of \$218.3 million, at a 7 percent discount rate; the present value ranges from \$123.8 million to \$393.0 million, with a primary estimate of \$258.4 million, at a 3 percent discount rate. Annualized costs over a 10-year time horizon range from \$14.9 million to \$47.2 million, with a primary estimate of \$31.1 million, at a 7 percent discount rate; annualized costs over a 10-year time horizon range from \$14.5 million to \$46.1 million, with a primary estimate of \$30.3 million, at a 3 percent discount rate.

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

Abbreviation/acronym	What it means
CBER	Center for Biologics Evaluation and Research.
CDER	Center for Drug Evaluation and Research.
CFR	Code of Federal Regulations.
CMP	Civil Monetary Penalties.
DTC	Direct-to-Consumer.
FDA	United States Food and Drug Administration.
FDAAA	Food and Drug Administration Amendments Act of 2007.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
FR	Federal Register.
FTC	Federal Trade Commission.
HCP	Healthcare provider, healthcare professional, healthcare practitioner.

¹ In this document, “firm” refers to manufacturers, packers, and distributors of

prescription drugs and all of their representatives, including both individuals and corporate entities.

Abbreviation/acronym	What it means
OMB	Office of Management and Budget.
SUPERS	Superimposed text.
TV	Television.
U.S.C	United States Code.

III. Background

A. Overview of Direct-to-Consumer Prescription Drug Advertising and Its Regulation

American consumers encounter ads for an enormous variety of goods and services, each ad seeking to attract their attention, pique their interest, and ultimately drive demand for the advertised product or service. But few ads provide information about products as important as prescription drugs. Prescription drugs are integral to healthcare, and decisions about their use can have critical effects on health and well-being. These decisions about prescription drug use not only impact each individual patient's health and well-being but also affect others, including family, friends, and caregivers.

Of course, by definition, prescription drugs cannot be accessed directly by consumers; they must be prescribed by a practitioner licensed by law to administer such drugs (commonly referred to as a healthcare professional, provider, or practitioner, here referred to as HCPs). But the billions of dollars drug manufacturers spend annually to promote their prescription drugs directly to consumers through TV ads and other media demonstrate recognition that consumers make critical choices related to treatment with prescription drugs. For example, consumers decide whether to make an initial appointment with an HCP, whether to ask the HCP about a particular drug, whether to fill a prescription, whether to take the drug, and whether to continue taking it in adherence to the prescribed regimen.

These decisions are informed by what consumers know about a drug, starting with the most basic awareness of the drug's availability and the health condition(s) for which it is approved. For U.S. consumers, that knowledge is often derived from DTC ads, a major source of information about human prescription drugs (Refs. 2 to 6). Analysis of submissions by firms to FDA's Center for Drug Evaluation and Research (CDER) of ads that the firms identify as DTC radio or TV ads, together with spending data, illustrates the widespread use of these formats for prescription drug advertising. For example, in 2007, when the clear,

conspicuous, and neutral manner requirement was enacted, firms identified 74 new DTC radio ads in submissions to FDA's CDER, spending \$30 million on all prescription drug DTC radio ads in that year (Ref. 7). In 2020, firms identified 56 new DTC radio ads in submissions to FDA's CDER, while spending on all prescription drug DTC radio ads increased to \$57.4 million for that same year (Ref. 8).

TV ads for prescription drugs are even more prevalent, and attract enormous absolute and relative spending. In 2007, firms identified 434 new DTC TV ads in submissions to FDA's CDER, and the reported expenditure for all prescription drug DTC TV ads in that year was \$2.87 billion of a total of \$4.77 billion spent on DTC advertising (Ref. 7). In 2020, firms identified 564 new DTC TV ads in submissions to FDA's CDER, and the reported expenditure for all prescription drug DTC TV ads that year was \$4.58 billion of a total of \$6.58 billion spent on DTC advertising (Ref. 9). While the number of TV ads has increased, a published analysis of DTC TV ads found that ads in 2016 presented many of the same elements (e.g., use of emotional appeals, focus on drug benefits over health information) as ads in a 2004 analysis, indicating a general consistency in such ads over time (Ref. 10).

Prescription drug firms have long maintained that their DTC ads respond to consumer desire for information about prescription drugs (Ref. 11). However, in light of their pervasiveness, consumers are likely to be exposed to DTC TV/radio ads even if they are not actively seeking information about any prescription drug.

Evidence shows that DTC ads inform important consumer decisions about healthcare. For example, surveys indicate that DTC advertising influences whether consumers seek more information about a drug, decide to visit and discuss an advertised drug with an HCP, or decide not to see an HCP (Refs. 12 to 17). This is one reason why Congress enacted the requirement in section 502(n) of the FD&C Act addressed by this final rule, requiring the major statement of side effects and contraindications in DTC TV/radio ads to be presented in a clear, conspicuous, and neutral manner. As one lead sponsor explained during Senate floor

consideration, a motivation for the legislation was "[r]esearch . . . show[ing] that people are more likely to go to the doctor, ask thoughtful questions, and discuss sensitive health issues with their doctors as a result of DTC ads." See 153 Cong. Rec. S5631 (May 7, 2007) (statement of Sen. Roberts).

Like all advertisers, prescription drug firms have ample business incentives to present their products in a positive light to potential consumers. But those business incentives do not assure clear communication of the advertised drug's negative attributes to consumers. Firms' lack of business incentives, combined with DTC ads' ability to inform and influence consumer participation in healthcare decision making, points to the need for Government regulation of prescription drug ads in particular. Ensuring that DTC ads that provide benefit information about prescription drugs also effectively communicate risk information is particularly important because the effective presentation of risk information is critical to helping to ensure that DTC TV/radio ads convey a truthful and non-misleading net impression about the advertised drug, including its risks, and that consumers are better informed when they participate in healthcare decision making, as described elsewhere in this document. Further, the consumer is uniquely positioned to know about particular, personal circumstances or limitations (e.g., other medicines and supplements being taken, constraints on time or other resources, allergies, preferences) that are important factors in decision making about prescription drug treatments. See Ref. 18 noting the changing role of consumer as processor of health information. When taking into account their own specific circumstances and what they know about a prescription drug, a consumer decides whether they will accept undesirable side effects in light of health benefits, whether they will devote the necessary ongoing attention to monitoring and management to optimize net outcomes, or even whether they need to avoid or prefer to avoid a drug completely because the risks for that individual are too great. As further explained below, the measures in this rule join other longstanding

requirements that help remedy the lack of business incentive for prescription drug firms to effectively communicate the risks of their products to consumers, and thus, the standards established in this rule, independently and collectively, advance the substantial Government interests in helping to ensure that DTC TV/radio ads convey a truthful and non-misleading net impression about the advertised drug and that consumers are better-informed when they participate in healthcare decision making.

1. Government Interests in This Regulation

For DTC TV/radio ads, the measures in this rule enhance the manner of presentation of risk information to increase the likelihood that consumers will notice, attend to, and understand the major statement in these ads, which conveys the drug's major side effects and contraindications. Improving consumer understanding of these risks helps ensure that an ad conveys a truthful and non-misleading net impression about the advertised drug. And improving consumer understanding also helps ensure that consumers are better-informed when they participate in healthcare decision making.

As the Supreme Court has recognized, "there is no question that [the Government's] interest in ensuring the accuracy of commercial information in the marketplace is substantial" (*Edenfield v. Fane*, 507 U.S. 761, 769 (1993)). Consistent with this overall interest for all advertising, this rule helps ensure that DTC TV/radio ads communicate risk so that they convey a truthful and non-misleading net impression about the advertised drug. This purpose was also identified by an author of the statutory provision underlying this regulation. See 153 Cong. Rec. S5631 (May 7, 2007) (statement of Sen. Roberts during floor consideration) ("My amendment requires that major statements about a drug's side effects, contraindications, and effectiveness in television or radio ads be presented in a clear and conspicuous manner so as not to mislead the public."). In addition, although Federal law does not prohibit DTC advertising of any legally marketed drug, research indicates that some consumers erroneously believe that drugs that have serious side effects cannot be advertised to consumers (Ref. 19). While this rule does not change the content of the major statement in prescription drug ads, presenting the major statement in a clear, conspicuous, and neutral manner will help

consumers understand if there are serious risks associated with a drug. Thus, this rule seeks to help ensure that DTC ads communicate risk information in a manner that helps consumers notice, attend to, and understand the drug's risks.

The Government also has a substantial interest in promoting consumer understanding of a prescription drug's risks in order to help ensure that consumers are better informed when they participate in healthcare decision making at each of the many important healthcare decision points already described, taking account of their individual circumstances. See, e.g., *American Hosp. Ass'n v. Azar*, 983 F.3d 528, 538 (D.C. Cir. 2020) ("providing consumers with factual price information to facilitate more informed health care decisions"); *CTIA—The Wireless Ass'n v. City of Berkeley*, 928 F.3d 832, 846 (9th Cir. 2019) (informing consumers regarding radiation emissions from cell phone and methods of avoiding excessive exposure); *Discount Tobacco City & Lottery, Inc. v. United States*, 674 F.3d 509, 567 (6th Cir. 2012) ("effectively communicat[ing] the associated health risks [of tobacco products] so that consumers possess accurate, factual information when deciding whether to buy tobacco products"); *Nat'l Elec. Mfrs. Ass'n v. Sorrell*, 272 F.3d 104, 115 (2d Cir. 2001) ("increasing consumer awareness of the presence of mercury in a variety of products").

Ensuring that a drug's specific risks are effectively communicated in DTC TV/radio ads helps inform consumers—another purpose identified by an author of the legislation underlying this rulemaking. See 153 Cong. Rec. S5645 (May 7, 2007) (statement of Sen. Harkin) (stating that the amendment seeks "to help the FDA and the companies to provide better information so that consumers can make real choices"). This regulation, by helping to assure that ads that address a prescription drug's benefits also facilitate understanding of risks, helps consumers when they are exploring healthcare options.

Improving consumer understanding of an advertised prescription drug's risks to better inform those consumers when they participate in healthcare decision making is especially important in the American healthcare environment. Evidence indicates that HCPs have limited time with patients (Refs. 20 to 23) and discussions with patients are only one among varied HCP duties that may include clinical care, research, mentoring, teaching, electronic health recordkeeping, and other administrative

duties (Refs. 24 and 25). Moreover, as previously noted, consumers have information about their individual circumstances that may be relevant, or even critical, to any decision about use of a particular prescription drug. Helping ensure consumers have the information they need to formulate appropriate questions or bring up relevant information about their personal circumstances during interactions with HCPs helps consumers make productive use of those interactions.

2. Consistency With Longstanding Statutory and Regulatory Measures Regarding Prescription Drug Risk Presentation

The basic concepts of the rule continue the approach taken in many longstanding measures applicable to prescription drug advertising and labeling. For example, since 1938 (for labeling) and 1976 (for advertising), section 201(n) of the FD&C Act has reflected the principle that disclosing material facts that include the "consequences" of using the drug to which labeling or advertising relates is key to ensuring that such communications are not misleading.

Moreover, the more precise principle that when drug manufacturers choose to advertise prescription drugs, those ads must provide risk information was recognized with the 1962 enactment of section 502(n) of the FD&C Act, specifying that prescription drug ads must include "a true statement of . . . other information in brief summary relating to side effects, contraindications and effectiveness as shall be required in regulations" Accordingly, a specific regulatory requirement to convey a prescription drug's risks in its advertising has been in place since 1963. See 28 FR 6375 at 6376 (June 20, 1963). And since 1969, the prescription drug advertising regulations have specifically addressed the use of a statement of the advertised drug's major side effects and contraindications in TV and radio advertising. See 34 FR 7802 (May 16, 1969). Similarly, many drug firms have also long acknowledged that DTC ads that convey benefit information should also contain risk information (Ref. 11).

After industry's initial forays into DTC prescription drug advertising in the early 1980s, FDA confirmed that DTC advertising was likewise subject to these established prescription drug advertising regulations. See 50 FR 36677 at 36678 (September 9, 1985) and § 202.1(e)(1) (1985). This was the regulatory framework that was in place in 2007, when Congress amended the

underlying statutory provision in section 502(n) of the FD&C Act to codify the importance of ads effectively communicating risk to consumers by further specifying that this “major statement relating to side effects and contraindications” in human prescription drug advertisements presented directly to consumers in television or radio format and stating the name of the drug and its conditions of use, be presented in a clear, conspicuous, and neutral manner.

The specific “clear, conspicuous, and neutral manner” provision that this regulation addresses is also part of a longstanding line of statutory and regulatory provisions that help ensure that an inadequate manner of presentation does not undermine required disclosures about prescription drugs. See, e.g., 21 U.S.C. 352(c) (enacted by Pub. L. 75–717 (June 25, 1938)), establishing misbranding if prominence, conspicuousness, and terms used to present required elements of labeling for drugs and devices are not sufficient to “render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.” In fact, provisions for presenting required information clearly and prominently have been a part of requirements for prescription drug advertising since the first such regulations were issued. See 28 FR 6375 at 6377 (initial regulations issued under section 502(n) of the FD&C Act, including 21 CFR 1.105(i), requiring information concerning side effects and contraindications to appear “in reasonably close association with the information concerning effectiveness” with “the same relative degree of prominence as the information concerning effectiveness, taking into account all pertinent factors, including typography, layout, contrast, and other printing features.”); see also current § 202.1(e)(7)(viii).

This rulemaking complements these longstanding prescription drug advertising requirements. This rule brings additional clarity to existing provisions about the major statement in DTC TV/radio ads by providing information on how that major statement must sound and (in the case of TV ads) look.

In sum, this rulemaking is an important incremental measure, adding to a longstanding body of legal requirements addressing effective communication of risk information about prescription drugs in consumer-directed promotional communications. The rule helps ensure that DTC TV/radio ads convey a truthful and non-misleading net impression about the

advertised drug and helps ensure that consumers are better informed when they participate in healthcare decision making.

B. History of the Rulemaking

In the proposed rule (**Federal Register** of March 29, 2010 (75 FR 15376)), we proposed to amend our regulations regarding DTC TV/radio ads in accordance with section 901(d)(3) of FDAAA (see 21 U.S.C. 352(n)). Specifically, we proposed to implement provisions of FDAAA requiring that in human prescription drug advertisements presented directly to consumers in television or radio format and stating the name of the drug and its conditions of use, the major statement relating to side effects and contraindications shall be presented in a clear, conspicuous, and neutral manner.

We proposed the following four standards for determining whether the major statement in these ads is presented in the statutorily required manner:

#1. Information is presented in language that is readily understandable by consumers.

#2. Audio information is understandable in terms of the volume, articulation, and pacing used.

#3. Textual information is placed appropriately and is presented against a contrasting background for sufficient duration and in a size and style of font that allows the information to be read easily.

#4. The advertisement does not include distracting representations (including statements, text, images, or sounds or any combination thereof) that detract from the communication of the major statement.

We also solicited comment on a potential fifth standard to require that in TV ads, the major statement be presented simultaneously in both audio and visual portions of the ad—a practice known as dual modality.

In developing these proposed standards, FDA considered standards developed by other Federal Agencies, including the Federal Trade Commission (FTC), the Department of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission, for determining whether disclosures in TV/radio ads, as well as disclosures in other contexts, are “clear and conspicuous” (75 FR 15376 at 15377–15379). Then, as now, the Agency considered these standards to be highly relevant because they aim to ensure that required disclosures are effectively presented so that consumers are not misled about the

attributes of the product or service that is the subject of the communication. As discussed in section III.A.1 of this document, FDA has a similar interest in ensuring that DTC TV/radio ads convey a truthful, non-misleading net impression about the advertised drug.

FDA noted in the preamble of the proposed rule that these other Federal standards revealed the widespread incorporation of common themes, which FDA in turn incorporated in its own proposed standards, and now incorporates in its final standards, because they are all factors that contribute to whether the audience will notice, attend to, and understand the risk information in the major statement (75 FR 15376 at 15378–15379). These themes were: “ease of comprehension of the language used in the disclosure; the formatting and location of textual information in the disclosure; audio considerations such as pacing, volume, and qualities of speech; and the presence of any distracting elements during the disclosure” (75 FR 15376 at 15378). The language of the standards from other Federal Agencies cited in the proposed rule and the themes incorporated by those other Federal standards remain unchanged.²

In the proposed rule, FDA also noted that its proposed standards were consistent with factors described and discussed in its draft guidance entitled “Presenting Risk Information in Prescription Drug and Medical Device Promotion” (May 2009) (draft Risk Guidance; Ref. 26) (available at <https://www.fda.gov/media/76269/download>) (75 FR 15376 at 15379). That draft guidance reflects consideration of a broad body of social science research into human cognition and factors that impact attention and comprehension.

The Agency also noted in the proposed rule that it was unaware of any previous standards or regulations concerning the definition of “neutral manner” in the context of required disclosures but considered “neutral manner” to mean “unbiased manner” of presentation and thus proposed standards accordingly. The Agency suggested, “To achieve a ‘neutral,’ unbiased presentation of the major statement and to avoid undercutting its effectiveness, the major statement must not be presented in competition with other elements if these elements would arrest the attention and distract consumers from the presentation of the risk information” (75 FR 15376 at 15380). As part of the overall

² The definition of “clear and conspicuous” in one regulation cited in the proposed rule, 12 CFR 40.3, is now part of 12 CFR 1016.3.

establishment of standards for effectively communicating necessary risk information in a clear, conspicuous, and neutral way, we requested comments on standards to establish what is “neutral” (75 FR 15376 at 15380).

In the proposed rule (75 FR 15376 at 15379), we noted that FDA had conducted a study on the impact of certain types of visual distraction on consumer understanding of risk and benefit information in DTC TV ads for prescription drugs (referred to in this document as the Distraction Study), the results of which were at that time still undergoing analysis (and, consequently, were not the basis of any specific provision in the proposed rule). FDA acknowledged the limitations of this study, but because FDA believed it could be relevant to the rulemaking, announced plans to place the report of the results into the docket for the proposed rule with opportunity for comment. Accordingly, in the **Federal Register** of January 27, 2012 (77 FR 4273), we announced the addition of the Distraction Study report to the docket (Ref. 27), and we reopened the rulemaking comment period until February 27, 2012, to provide an opportunity for interested parties to comment on the study as it relates to the proposed standards (Docket No. FDA–2009–N–0582). In the **Federal Register** of March 29, 2012 (77 FR 16973), we reopened the comment period for the rulemaking proceeding again until April 9, 2012, in response to a request for more time to submit comments to the Agency on the Distraction Study report as it related to the proposed standards.

The Distraction Study examined three factors that might influence viewers’ understanding of the risk information presented in the audio portion of a TV ad. This research evaluated the effects of:

- Presence or absence of superimposed text (SUPERS) that concurrently presented verbatim, key words and phrases from the audio presentation of risk;
- Variations in the positive (affective) tone of visual images; and
- Visual information that was either inconsistent or consistent with the audio risk information.

The results of the Distraction Study indicate that presenting the same risk information visually (*i.e.*, in SUPERS) and in audio at the same time (dual modality) improves consumers’ understanding of the risk information. The Distraction Study did not find support for the hypotheses that understanding of the risk information is adversely influenced by concurrently

presenting positively toned visual images or by concurrently presenting information in visuals that is inconsistent with the risk information presented in audio (Ref. 27). While the Distraction Study and its results were a consideration during the formulation of the standards in this final rule, they were neither the sole justification for, nor the only information considered in, the development of any of the proposed or final standards.

FDA based the standards in the proposed rule on scientific research, literature, and existing Government standards, all of which continue to be relevant for the final rule. Research findings supporting the proposed rule’s standards—including research findings on dual modality and distraction—were available during the public comment periods and have been subsequently corroborated by additional research, including research supporting that comprehension and recall is increased when information is provided in both audio and text and also when information is presented without distraction. In this final rule, the fundamental concepts remain the same as those articulated in the proposed rule. Evolving technologies have allowed for DTC TV/radio ads to be presented on a broader range of devices and disseminated via a broader range of platforms since the issuance of the proposed rule.³ However, from an informal review of ads firms recently submitted to FDA in accordance with regulatory requirements (21 CFR 314.81(b)(3)(i) and 601.12(f)(4)), FDA observes that firms have not developed distinct ads for dissemination on these new devices and platforms and that DTC TV/radio ads remain essentially the same. Moreover, fundamental attributes of communication that impact the likelihood that audiences will notice, attend to, and comprehend information, which the standards in the proposed and final rules concentrate on, do not turn on the delivery technology.

We recognize the passage of time between the closure of the last comment period on the proposed rule and the issuance of this final rule, which

resulted in large part from competing demands for limited Agency resources, such as repeated redirection of personnel into emergency operations for natural disasters, the opioid epidemic, and infectious disease outbreaks including Ebola, Zika, and the COVID–19 pandemic. Despite this passage of time, FDA concludes that this rulemaking is both procedurally and substantively sound. A central purpose of notice-and-comment rulemaking is to obtain public input, see *Make the Rd. N.Y. v. Wolf*, 962 F.3d 612, 634 (D.C. Cir. 2020) and *United States v. Cain*, 583 F.3d 408, 420 (6th Cir. 2009). The Agency has provided three public comment periods, offering meaningful opportunities for any interested persons to comment on the rulemaking and the bases for the standards laid out in this rulemaking.⁴ Indeed, no parties have requested additional opportunity for comment since closure of the last comment period, even though the Agency’s plans to issue a final rule have been consistently made public through the Unified Agenda since 2017. Moreover, as noted above, the Agency has determined that there are no material changes in the fundamental concepts, relevant facts (including evolving technologies), scientific research, literature, or existing Government standards underlying the rule. For these reasons, FDA concludes that it is appropriate to issue this final rule without offering a fourth opportunity for public comment.

C. Summary of Comments to the Proposed Rule

There were three public comment periods for the proposed rule. In total, FDA received over 70 submissions from consumers, public interest or consumer groups, trade and industry associations, healthcare providers, and drug firms. Overall, the majority of comments express support for the proposed rule. Several comments request that FDA edit the proposed rule, provide clarification, or provide more detail. Several comments suggest that FDA undertake additional research before finalizing the rule. We address these and other comments throughout this document.

³ See, e.g., Ipsos, “Half of American TV viewers watch 10 or more hours of TV during the week,” Report, July 28, 2021, available at <https://www.ipsos.com/en-us/news-polls/american-tv-viewing-habits-2021>, accessed September 7, 2023; Leiner, D.J. and N.L. Neuendorf, “Does Streaming TV Change Our Concept of Television?” *Journal of Broadcasting & Electronic Media*, 66(1):153–175, 2022. doi:10.1080/08838151.2021.2013221; Radioworld, “How Technology Helps Radio and Its Listeners,” April 9, 2019, available at <https://www.radioworld.com/columns-and-views/guest-commentaries/rab-audio-technology-helps-radio>, accessed September 7, 2023.

⁴ See also *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2385, (2020) (The Administrative Procedure Act (APA) prescribes the “maximum procedural requirements that an agency must follow in order to promulgate a rule.”) (internal quotation marks omitted); *Sanofi-Aventis US LLC v. HHS*, 58 F.4th 696, 706 (3d Cir. 2023) (“all the APA requires of an agency before publishing a final rule is (1) putting a notice of proposed rulemaking in the **Federal Register**, (2) accepting comments on that proposal, and (3) considering those comments. See 5 U.S.C. 553(b)–(c).”)

D. General Overview of Final Rule and Changes to the Proposed Rule

This final rule implements a FDAAA requirement (codified in 21 U.S.C. 352(n)) that in human prescription drug advertisements presented directly to consumers in television or radio format and stating the name of the drug and its conditions of use, the major statement relating to side effects and contraindications shall be presented in a clear, conspicuous, and neutral manner. This statutory requirement has been in effect since March 25, 2008. In line with other Government standards, findings from scientific research and literature, and the proposed rule, this final rule establishes standards for determining whether the major statement in these ads is presented in a clear, conspicuous, and neutral manner.

We discuss the following:

- In the final rule, we do not address “neutral” separately from the overall concept of a “clear, conspicuous, and neutral manner” of presentation, nor do we associate that attribute exclusively with any single standard. Rather, we conclude that the final standards, independently and collectively, contribute to a clear, conspicuous, and neutral manner of presentation.

- Proposed standard #1 (final standard #1; § 202.1(e)(1)(ii)(A)): “Information is presented in language that is readily understandable by consumers.” The final standard specifies that the major statement must be presented in consumer-friendly language and terminology that is readily understandable.

- Proposed standard #2 (final standard #2; § 202.1(e)(1)(ii)(B)): “Audio information is understandable in terms of the volume, articulation, and pacing used.” The final rule clarifies that the audio information in the major statement must be at least as understandable as the audio information presented in the rest of the ad in terms of the volume, articulation, and pacing used.

- Proposed potential standard #5 (final standard #3; § 202.1(e)(1)(ii)(C)): The final rule includes a standard requiring that for ads in TV format, the major statement be presented concurrently using both audio and text (dual modality). To achieve dual modality: (1) either the text displays the verbatim key terms or phrases from the corresponding audio, or the text displays a verbatim complete transcript of the corresponding audio; and (2) the text is displayed for a sufficient duration to allow it to be read easily. For the purposes of this standard, the duration is considered sufficient if the

text display begins at the same time and ends at approximately the same time as the corresponding audio.

- Proposed standard #3 (final standard #4; § 202.1(e)(1)(ii)(D)): “Textual information is placed appropriately and is presented against a contrasting background for sufficient duration and in a size and style of font that allows the information to be read easily.” The final rule removes the duration requirement from this standard, including it instead in final standard #3, and clarifies that this standard applies to the text portion of the major statement in ads in television format. For clarity, we also reorganized the phrasing of this standard.

- Proposed standard #4 (final standard #5; § 202.1(e)(1)(ii)(E)): “The advertisement does not include distracting elements (including statements, text, images, or sounds or any combination thereof) that detract from the communication of the major statement.” The final rule revises the standard to specify that, in order to satisfy it, during presentation of the major statement, the ad does not include audio or visual elements, alone or in combination, that are likely to interfere with comprehension of the major statement.

We also made the following non-substantive editorial changes on our own initiative:

- Section 202.1: Relocated text that defines prescription drug for purposes of this section (previously included in § 202.1(e)(1)). Within this definition, replaced the phrase “drugs for use by man” with the phrase “drugs intended for use by humans.”

- Section 202.1(e): Divided information into subordinate paragraphs for clarity, ease of reading, and plain language.

- Section 202.1(e)(1)(i): Added subparagraphs for ease of reading and reference to § 202.1(e)(1)(ii)(C) for clarity. Replaced “approved or permitted package labeling” with “approved or permitted product labeling.”

- Section 202.1(e)(1)(ii): Revised introductory language to reflect that it is the manner of presentation of the major statement that is “clear, conspicuous, and neutral,” if the standards that follow are met.

IV. Legal Authority

This final rule amends § 202.1 to be consistent with the current requirements of section 502(n) of the FD&C Act, as amended by section 901(d)(3) of FDAAA, which establishes a requirement that in human prescription drug ads presented directly

to consumers in television or radio format and stating the name of the drug and its conditions of use, the major statement relating to side effects and contraindications shall be presented in a clear, conspicuous, and neutral manner. In addition, FDA was directed by FDAAA (see section 901(d)(3)(B)) to establish standards for determining whether the major statement in DTC TV/radio ads is presented in a clear, conspicuous, and neutral manner—and does so in this rule. Furthermore, this rule is authorized by various statutory provisions, including sections 201, 301, 502, 505, 512, and 701 of the FD&C Act.

V. Comments on the Proposed Rule and FDA Response

A. Introduction

During the initial comment period (March 29 to June 28, 2010), FDA received more than 30 submissions on the proposed rule from consumers, public interest groups, trade associations, and the drug industry. When we reopened the comment period to allow for comment on the Distraction Study report as it relates to the proposed standards (January 27 to February 27, 2012, and March 29 to April 9, 2012), we received nearly 40 additional submissions.

In sections V.B through V.O of this document, we describe the comments received on the proposed rule and provide our responses. To make it easier to identify the comments and our responses, the word “Comment,” in parentheses, appears before the comment’s description, and the word “Response,” in parentheses, appears before our response. We have numbered each comment to help distinguish between different comments. We have grouped similar comments together under the same number and, in some cases, we have separated different subjects discussed in the same comment and designated them as distinct comments for purposes of our responses. The number assigned to each comment or comment topic is purely for organizational purposes and does not signify the comment’s value or importance or the order in which comments were received. We reviewed all comments and carefully considered all points and perspectives. However, comments not directly relevant to this rulemaking were read and considered but are not discussed in this document.

B. General Comments

The majority of comments, including input from industry, support the proposed rule, while only a few comments oppose the rule. Several

comments indicate that the proposed rule was an important first step, but even more needs to be done, and some suggest that FDA needs additional information or research results before the regulation is finalized. Various other comments request clarification on certain issues in the proposed rule. We address these and other comments throughout this document.

C. Research Studies—Comments and FDA Response

In the proposed rule, FDA referenced a number of research studies relevant to the proposed standards generally and to dual modality specifically, and also referenced the Agency's draft Risk Guidance, which itself describes a well-established body of social science research relevant to the standards in the proposed and final rule. As previously described, FDA also mentioned the Distraction Study in the proposed rule, although its results were still undergoing analysis at that time, and indicated that FDA intended to add the study report to the docket for the rulemaking when available and provide opportunity for public comment, as FDA believed those study results might provide helpful information to consider in the rulemaking. FDA subsequently provided two opportunities for the public to comment on the results and FDA's analyses of the study and how it related to the proposed standards (77 FR 4273 and 77 FR 16973). Many of the comments discuss how the Distraction Study relates to the proposed standards. Several comments conclude that the results of the study directly support the proposed rule. However, several other comments argue that the study design was flawed or did not support the proposed rule. Several comments suggest that additional research should be conducted regarding distraction and the understanding of risk information by consumers.

Comments on the results of the Distraction Study as it relates to proposed standard #4 regarding distracting elements that detract from the communication of the major statement are addressed in section V.J of this document (final standard #5).

Comments pertaining to the use of dual modality in the Distraction Study are addressed in section V.K of this document.

However, we briefly address several general comments related to the Distraction Study and other research here.

(Comment 1) Several comments suggest that the Distraction Study did not examine a sufficient number of factors regarding consumers'

understanding of risk information. One comment notes that the Distraction Study did not examine all four proposed standards to determine what would be considered clear, conspicuous, and neutral. Another comment points out that there are many factors beyond those studied that affect the assessment of risk. This comment suggests that FDA should examine how individual perception of risk is influenced by personal experiences, education level, race, gender, age, and knowledge of the agent creating the risk.

Another comment states that the Distraction Study failed to address the full context in which the benefits and risks of prescription drugs are actually considered, specifically with respect to the doctor-patient relationship. The comment argues that doctor-patient interaction is an integral part of the communication of benefits and risks for prescription drugs and thus must be considered in any assessment regarding risk communication. The comment suggests additional studies be conducted, including: (1) studies that measure the effect of DTC ads on the quality of any subsequent discussions between the patient and physician and (2) studies that measure comprehension of benefits and risks only after consultation with a physician.

One comment suggests that FDA should consider additional research to determine the elements of advertising that may distract a viewer's attention from the major statement. Another comment notes that no study can account for all possible distractions consumers might face.

(Response 1) Many of these comments appear to overstate the role of the Distraction Study with regard to the development of the standards for a clear, conspicuous, and neutral presentation of the major statement. We conclude that there is a strong basis for the final rule without the Distraction Study or the additional research that some comments suggest be conducted.

The Distraction Study was designed only to examine the effects of three particular, pre-defined factors: the presence or absence of SUPERS that concurrently presented verbatim, key words and phrases from the audio presentation of risk; variations in the positive (affective) tone of visual images; and visual information that was either inconsistent or consistent with the audio risk information. Consistent with the limitations of the Distraction Study, which FDA acknowledged in the proposed rule (see 75 FR 15376 at 15379), neither the proposed nor final standards for "clear, conspicuous, and neutral manner" of presentation of the

major statement are contingent on its results.

Indeed, a much larger body of social science research, together with disclosure standards of other Federal agencies and ordinary experience with situations where multiple factors compete for attention and may affect comprehension, informs the proposed and final standards for a clear, conspicuous, and neutral manner of presentation of the major statement. For example, the Agency's draft Risk Guidance, referenced in the proposed rule as describing factors consistent with the proposed rule's standards (75 FR 15376 at 15379), included cognitive science research that predated the Agency's Distraction Study and demonstrated that, while there is some variation based on expertise, all people have limits on the amount of information they can think through and process at one time (see draft Risk Guidance, at p. 6 and fn. 20 (in this rule, Refs. 28–30)). Further, the draft guidance notes that to process information, a person must first pay attention to it. The guidance then goes on to discuss multiple factors (with underlying research) that contribute to whether people will pay attention to information, including formatting factors. Among other things, the draft guidance points to the well-established body of research that existed at the time of the proposed rule—and has been further corroborated since that time—that various elements can interfere with attention and comprehension. See, e.g., draft guidance p. 18, fn. 47 (in this rule, Refs. 31–33); p. 19, fns. 54 to 56 (in this rule, Refs. 34–36); and p. 20, fn. 61 (in this rule, Ref. 37). References cited in the Distraction Study report that was added to the docket for this rulemaking and made available for public comment include additional research on well-documented distracting effects of certain other elements. (See Distraction Study report, p. 3, fn. 1, citing research on scene changes (in this rule, Ref. 38) and music (in this rule, Ref. 39).) Similar information about social science research relevant to other aspects of proposed standards #1 through #4 also appears in the draft Risk Guidance, which the proposed rule itself references. The public had the opportunity to comment on the rule and the Agency's use of the guidance and research to inform the proposed standards. That research remains relevant to this final rule. The proposed and final standards also have a basis in disclosure standards of other Federal agencies (cited in the proposed rule and unchanged since) and ordinary

experience with situations where multiple factors compete for attention and may affect comprehension. As to dual modality, the proposed rule summarized a substantial body of research supportive of the utility of this technique, predating the Distraction Study (75 FR 15376 at 15383). As discussed in section V.K of this document, findings of this research regarding the positive impact of dual modality have been corroborated subsequently by the Distraction Study and other research.

Other comments submitted to the docket for the final rule discuss technical details of the Distraction Study's methodology and analyses, rather than the standards in the rule. Sections V.J and V.K of this document address non-technical comments related to the Distraction Study's methodology as it relates to final standard #3 (section V.J) and final standard #5 (section V.K). However, because the Distraction Study was only one of many pieces of information FDA considered when formulating the standards for this rule, technical comments on the study methodology are not further discussed here.

(Comment 2) One comment recommends that FDA develop strategies to ensure consumer understanding of the information contained in DTC ads, such as using patient focus groups to pre-approve the most common risk statements. Additionally, the comment suggests that other elements, such as font size, color, and placement, should be tested with consumers. The comment further suggests that FDA should conduct research to provide an evidence-based assessment of the proposed standards to ensure that they result in consumer-directed ads that effectively communicate risk in a clear, conspicuous, and neutral way. The comment concludes that this research would allow FDA to use quantitative, documented evidence, rather than relying on the consensus of expert opinion.

Two comments also suggest that FDA should consider conducting research and a further analysis on how individual elements combined and presented together would affect the overall communication of the advertised drug's potential benefits and associated risks. A separate comment suggests that the communication of benefits and risks in DTC ads should be tested on an ad-to-ad basis against quantitative standards for evaluating comprehension and understanding among the intended audience.

(Response 2) As part of the rulemaking process culminating in the standards in this final rule, FDA considered many resources, including the many comments submitted during the multiple comment periods, and the literature, research, and other Government standards described elsewhere in this document. In light of the consistency of findings in the research evaluating the presentation of risk information in DTC ads for prescription drugs from the time of the proposed rule through now, as well as the other Federal Government standards for clear and conspicuous disclosures of information cited in the proposed rule and still in place today, we conclude that we have sufficient information to finalize this regulation without additional research.

D. The Major Statement—Comments and FDA Response

In proposed § 202.1(e)(1)(i), FDA proposed to add the term “major statement” in parentheses after the phrase “major side effects and contraindications” to reflect the Agency's interpretation that this is the meaning of the terminology used in section 502(n) of the FD&C Act as amended, an interpretation consistent with previous usage (see 75 FR 15376 and 15379; Ref. 1). We did not receive comments directly on this proposal and our final rule includes this provision for the same reasons we proposed it. We did receive comments and questions about the major statement in general.

(Comment 3) One comment suggests that FDA should incorporate the concept of “net impression” (the message communicated by all elements of the piece as a whole) by adding the following language to the end of proposed § 202.1(e)(1)(i): “The adequacy of the major statement will be determined not just in relation to risk-related statements, but by the net impression of the advertisement as a whole.”

(Response 3) We disagree with adding the suggested language. Although both the major statement and other components of the ad collectively contribute to the overall net impression, under section 502(n) of the FD&C Act, the requirement that certain information be presented in a “clear, conspicuous, and neutral manner” applies specifically to “the major statement relating to side effects and contraindications”—not to the ad as a whole. Because this requirement is specific to the presentation of the major statement, a failure to satisfy this requirement cannot be remedied by the presentation of statements in other

portions of the ad. For this reason, we decline to add the proposed language, which would allow for the interpretation that an inadequately presented major statement can be made adequate by statements in other parts of the ad.

FDA will, however, continue to evaluate the net impression created by a DTC TV/radio ad in determining whether that ad is false or misleading. FDA considers net impression as well as evaluates specific risk-related statements in these ads. It is consistent with this approach to issue regulations that recognize the need for the major statement to satisfy, on its own, specific statutory requirements. Furthermore, presenting the major statement in a clear, conspicuous, and neutral manner should help ensure DTC TV/radio ads convey a truthful and non-misleading net impression about the advertised drug.

(Comment 4) One comment recommends that the rule specify the location of the major statement in the ad. This comment suggests that the major statement should not appear in the middle of the ad “where it can be bookended by benefit information and is least likely to be retained by consumers.”

(Response 4) We decline to include in the final rule a provision specifying exactly where the major statement must appear in the ad. This final rule's standards for presenting the major statement in a clear, conspicuous, and neutral manner complement, rather than displace, FDA's longstanding approach to assessing whether the ad as a whole complies with other requirements. To ensure that the ad provides fair balance between information relating to side effects and contraindications and information relating to effectiveness of the drug, and to assess whether it conveys a truthful and non-misleading net impression about the advertised drug, FDA already considers the placement of risk information together with many other elements of the piece, including framing, signaling, themes, and other risk presentation factors.

E. Standards To Determine a Clear, Conspicuous, and Neutral Manner—General Comments and FDA Response

In this final rule, as directed by FDAAA, FDA establishes standards for determining whether the major statement in DTC TV/radio ads is presented in a clear, conspicuous, and neutral manner as required by section 502(n) of the FD&C Act. (Of five final standards, two apply only to ads in television format.)

Although we believe that the five standards established by this rule, when applied collectively, will best help ensure that the major statement in a DTC TV/radio ad is presented in a clear, conspicuous, and neutral manner, each standard independently enhances the manner of presentation to increase the likelihood that consumers will notice, attend to, and understand the advertised drug's major side effects and contraindications. In the event of a stay or invalidation of any standard(s), those that remain in effect would continue to function sensibly⁵ to advance these statutory objectives and provide useful standards for firms to meet their existing statutory obligation. For example, invalidation of a standard that addresses visual aspects of presentation would have no effect on standards addressing audio aspects or terminology. Likewise, in the absence of final standard #3 (dual modality) or final standard #5 (audio or visual elements that are likely to interfere with comprehension), each of the other standards would continue to contribute to a clear, conspicuous, and neutral manner of presentation of the major statement. Therefore, it is FDA's intent to preserve each of the rule's standards to the fullest possible extent, to help advance the important Government interests described in section III.A.1.

As noted in section III.B of this document, in the proposed rule, FDA stated that it was unaware of any previous standards or regulations concerning the definition of "neutral manner" in the context of required disclosures and requested comment on this topic. In addition, in conjunction with proposed standard #4, FDA stated, "To achieve a 'neutral,' unbiased presentation of the major statement and to avoid undercutting its effectiveness, the major statement must not be presented in competition with other elements if these elements would arrest the attention and distract consumers from the presentation of the risk information" (75 FR 15376 at 15380). However, FDA did not intend to suggest that the "neutral" element of the statutory requirement is only explained by or only relates to proposed standard #4, nor did we intend to foreclose the possibility that the other standards contribute to achieving a manner of presentation that is neutral as well as

clear and conspicuous. We received comments suggesting ways in which "a neutral manner" could be explained through the other standards. To the extent that comments discuss neutrality specifically with respect to any of the five final standards, we discuss the comments within the sections that address those standards.

(Comment 5) One comment supports the maintenance of a neutral tone in DTC ads to ensure that consumers are able to glean as much information about risk as possible. One comment asks FDA to confirm that "neutral" relates to the way in which the ad presents the major statement as opposed to the substantive content of the major statement. Another comment suggests that neutrality means that the major statement should only include FDA-approved uses and some measure of the risks of potential side effects.

One comment argues that neutrality has nothing to do with distraction and suggests that Congress intended to incorporate a different meaning of neutrality because it had the opportunity to require that the major statement be totally devoid of all potentially distracting information by mandating that it be in plain black-and-white or "tombstone" format. This comment also notes that the definition of "neutral" from Black's Law Dictionary is "indifferent; unbiased; impartial; not engaged on either side; not taking an active part with either of the contending sides." The comment states that a DTC ad in TV/radio format is qualitatively neutral if it neither under-warns consumers about the major risks nor overly deters consumers from using a beneficial product. Thus, the comment concludes that neutral should relate to the content or substance of an ad and not the style or manner in which the content is presented.

Furthermore, within a discussion about neutrality, the same comment notes that a DTC TV/radio ad that overemphasizes risks is potentially as misleading as one that overemphasizes benefits. Several other comments express similar views. One of these comments states that how consumers feel about prescription medications and the impressions they have regarding the safety of these products can affect appropriate use of the products. The comment also notes that the company's research suggests that adherence to a prescribed medication is based on three factors: (1) concerns about the drug (*i.e.*, short- and long-term risks), (2) perceived need for the drug, and (3) concerns about drug cost. Another comment encourages FDA to further consider issuing standards to clarify

what could be a subjective concept open to issues of interpretation and meaning. This comment encourages FDA to evaluate through research with target audiences whether an ad is balanced in the presentation of benefits and risks and whether serious risk information in ads is understood.

Another comment suggests that a broad definition of "neutral" should be adopted. The comment proposes that to present information "neutrally" DTC advertisements should compare the advertised product's risks with the expected benefits (including considerations relating to consumer convenience, comfort, cost, and expected benefits); compare the safety and efficacy of the advertised product with other products for the same indication (*e.g.*, existing products both under patent and generic); and compare the safety and efficacy of the advertised product with non-pharmaceutical approaches for the same indication (*e.g.*, lifestyle modifications). This comment claims that including this information will result in a more neutral presentation by giving consumers a balanced picture of the benefits and risks of the advertised product. A separate comment expresses its support of these views.

In response to those comments, another comment says that FDA should not reconstruct the substantive contours of the major statement requirement in the guise of defining neutrality, for example, by requiring such concepts as comparative safety and effectiveness versus other pharmacologic and non-pharmacologic approaches to treatment, including lifestyle modifications.

(Response 5) We agree with the general principle that it is in the interest of the public health that the risk information in an ad is presented in an engaging manner and is neither overstated nor understated. However, several of these comments focused in some way on a perceived requirement that neutrality apply to DTC TV/radio ads generally and were mistaken as to what information is required to be included in the major statement or thought that FDA might change the content of the major statement through this rulemaking. DTC TV/radio ads, like all prescription drug ads, are required to contain a fair balance of risk and benefit information (§ 202.1(e)(5)(ii)). However, the requirement of a clear, conspicuous, and neutral manner of presentation, as laid out in the statute, relates to the manner of presentation of the major statement and not to the manner of presentation of the ad as a whole. Further, FDA is not using this rulemaking and the requirement of a

⁵ See, *e.g.*, *Belmont Mun. Light Dep't v. FERC*, 38 F.4th 173, 188 (D.C. Cir. 2022) (finding severability of a portion of an administrative action, applying the principle that severability is appropriate where "the agency prefers severability to overturning the entire regulation" and where the remainder of the regulation "could function sensibly without the stricken provision") (citations omitted).

“clear, conspicuous, and neutral manner” of presentation to change the content of the major statement (e.g., the risk information provided). Thus, this rulemaking, which addresses the manner of presentation of the major statement, does not require that the major statement include benefit information in comparison to risks, quantitative information, or information about other pharmacologic or non-pharmacologic approaches for the same indications.

FDA agrees that neutral means unbiased, and to provide more specific direction to firms, we establish final standards that, independently and collectively, help to ensure that the major statement is presented in a neutral, as well as clear and conspicuous manner. We acknowledge the research cited by the comment that describes how patients’ beliefs about prescription drugs relate to patient propensity to adhere to certain prescription drugs. We agree that consumers’ beliefs and understanding about a prescription drug informs their participation in important healthcare decision making, including decisions about whether to take the prescription drug. This rule, by establishing standards for the clear, conspicuous, and neutral presentation of the major statement in DTC TV/radio ads, helps ensure that consumers are better informed when they participate in healthcare decision making and helps ensure that DTC TV/radio ads convey a truthful, non-misleading net impression about the advertised drug.

(Comment 6) One comment makes two suggestions to overcome what it described as biases held by manufacturers and consumers. First, it asks that the rule require inclusion of the statement that “The FDA has not approved this ad” to correct misleading beliefs that FDA approves all ads and that only drugs that are proven to be very safe can be advertised on TV. This comment argues that this required disclosure would make the major statement more neutral by disassociating the ad from any Government imprimatur regarding the safety of the drug or whether such safety is adequately described by the ad the consumer is seeing. Second, it asks that the rule require that the MedWatch hotline statement be included in DTC TV/radio ads to communicate that, overall, the drug being advertised is not known to be risk-free.

(Response 6) FDA has decided that we will not require through this rulemaking the additional language requested by this comment addressing FDA non-approval of the ad and the MedWatch

hotline. As explained more fully throughout this document, this rulemaking does not change the content of the major statement, but rather establishes standards that address the statutory requirement that the major statement be presented in a clear, conspicuous, and neutral manner.

(Comment 7) Another comment states that the Distraction Study did not provide helpful information for FDA to consider in determining whether a major statement is presented in a neutral manner or provide evidence that a neutral presentation of the major statement is essential for the consumer to fully understand the risk and benefit information.

(Response 7) The results of the Distraction Study are not the sole justification for any part of this rule; rather, the results of that study constitute one of many pieces of information FDA considered when formulating the final standards for this rule. Furthermore, to the extent the comment suggests that it may be unnecessary to present the major statement in a “neutral” manner, we note that Congress has established the requirement that the major statement be presented in a “clear, conspicuous, and neutral” manner, and this rule is being issued consistent with that statutory requirement (21 U.S.C. 352(n)).

F. Consumer/Audience—Comments and FDA Response

The clear, conspicuous, and neutral statutory requirement applies to ads for human prescription drugs that state the name of the drug and its conditions of use that are presented directly to consumers in TV or radio format (21 U.S.C. 352(n)). So, this final regulation applies to such ads directed toward consumers. FDA proposed in standard #1 that to be considered clear, conspicuous, and neutral, the major statement must be “presented in language that is readily understandable by consumers.” In the final rule, the language of “by consumers” is not included within this standard, for reasons explained below.

(Comment 8) One comment suggests that FDA add the word “reasonable” before “consumer” in proposed standard #1 to be consistent with FDA’s draft Risk Guidance. A second comment suggests adding more substance to the standard by requiring the firm to take into account its audience either by adding “reasonable consumer” or “consumer[s] to who[m] the ad is directed” to the end of proposed standard #1. Another comment, citing *Sims v. GC Services, L.P.*, 445 F.3d 959, 963 (7th Cir. 2006), suggests that FDA

use the standard that the FTC adopted in relation to debt collection practices, i.e., a “least sophisticated consumer” standard—someone who is “uninformed, naïve, or trusting” but who has a “rudimentary knowledge [about the subject] and who is capable of making logical deduction[s] and inferences.”

(Response 8) Because this regulation applies only to DTC TV/radio ads, it is inherent that the audience for these ads is consumers, and it is unnecessary to specify a consumer audience in the codified text of individual standards. Accordingly, although the proposed regulatory text for standard #1 included the words, “by consumers”, we do not include “by consumers” in the text of standard #1 as finalized. It is FDA’s position that the “consumer” audience for a DTC TV/radio ad is an ordinary consumer and that the ordinary consumer acts reasonably—a position that is consistent with the Agency’s longstanding approach in evaluating DTC prescription drug advertising, including the approach reflected in the 2009 draft Risk Guidance (Ref. 26), an approach which remains unchanged since the proposed rule. For the purposes of this rulemaking, FDA declines to adopt the “least sophisticated consumer” standard used by FTC for debt collection practices, which primarily focuses on specific content related to such practices. The ordinary consumer better aligns with FDA’s interests in addressing the presentation of risk in DTC ads.

G. Proposed Standard #1 (Final Standard #1) (Language)—Comments and FDA Response

FDA proposed in standard #1 (proposed § 202.1(e)(1)(ii)(A)) that to be considered clear, conspicuous, and neutral, the major statement must be “presented in language that is readily understandable by consumers.” The concept of using language tailored to the consumer audience is consistent with other approaches for consumer disclosures (Refs. 40 and 26) (75 FR 15376 at 15378). We retain this concept in the final rule but, as further explained in this section, we modified this standard (final standard #1) to require that the major statement “is presented in consumer-friendly language and terminology that is readily understandable.” We have made these changes in response to comments we received.

(Comment 9) Several comments suggest that the terminology of the major statement, as well as the language used, should be readily understandable by consumers. Some comments say that

the risk language in DTC ads is often cumbersome, confusing, and difficult for most consumers to understand. One comment says that most people will not really listen to this information, and a different comment says that ambiguous terms are problematic. One comment also notes that using scientific language in ads may mislead consumers by creating a false impression that the drug has been more rigorously tested and is thus safer than has actually been shown. Another comment requests that the proposed standards mimic FTC phone ad requirements, which require that the disclosure of risk information use the same language (e.g., Spanish) as the presentation of benefit or other parts of the ad.

(Response 9) We generally agree with these comments—both the language and terminology used in the major statement should be readily understandable by consumers. We note that there seemed to be some confusion regarding the meaning of the word “language” in the proposed rule. FDA did not intend to focus on foreign language requirements through this rulemaking. To help clarify our intent, we added “consumer-friendly” and “terminology” to this standard. These revisions are intended to clarify that the major statement must use consumer-friendly language and terminology that is readily understandable, rather than medical or technical jargon or terms usually more familiar to HCPs.

(Comment 10) One comment states that the neutrality requirement should mean that the risks and benefits presented in DTC ads in TV/radio format are presented at a uniform literacy level with minimum technical jargon and that the information is relayed in a uniform typeface and uniform speed of speaking to minimize the under-comprehension of risks and the distortion of benefits.

Several comments request that FDA define specific criteria for assessing whether the major statement is “readily understandable by consumers,” such as in terms of a standard acceptable reading level. The comments suggest a variety of standards: (1) the Flesch-Kincaid Grade Level readability score; (2) the Agency for Healthcare Research and Quality’s Effective Health Care Program guides, which are written at a sixth-grade literacy level; (3) the least informed person of limited literacy likely to view and be influenced by an ad; or (4) a general sixth-grade reading level.

(Response 10) FDA agrees that final standard #1 is part of the evaluation of whether a major statement is presented in a neutral (as well as clear and

conspicuous) manner. As discussed above, the regulation requires consumer-friendly language and terminology that is readily understandable. However, FDA declines to limit this standard through this rulemaking to language associated with a particular grade level of reading or similar criterion as it may be necessary to include certain terms (e.g., reference a disease like “tuberculosis”) in the major statement that could result in a relatively high grade level rating. This final standard requires that the language used to provide the major statement’s risk information is understandable to the ordinary consumer while providing manufacturers with flexibility in designing their ads.

(Comment 11) Several comments seem to respond to our suggestion in the proposed rule that vague terms subject to more than one interpretation should be avoided (e.g., say “more than half” rather than “some patients”) (75 FR 15376 at 15379). One comment suggests that safety information should be described in ways that are similar to the full FDA-approved product labeling. Another comment expresses concern about the potential for the example used in the proposed rule to evolve toward a general requirement to use more quantitative descriptors (e.g., frequency of risk, such as “more than half”) and the impact it might have on comprehension of risk information. Instead of a general requirement to use more quantitative descriptors, the comment requests a more case-specific approach applied on an ad-by-ad basis that could be objectively tested with the target audience to assess whether risk information is comprehended and understood.

Another comment recommends that FDA include clarification of appropriate threshold levels for quantifying risks for bothersome, significant, serious, or life-threatening risks attributable to the drug. The comment suggests that these thresholds be based on research in the field of risk communication to ensure that patients can interpret risk at the optimal level. The comment also notes that describing risks in quantitative terms may increase the conspicuousness of the risk information by drawing a consumer’s attention to the reality of the risk described and may provide consumers with an evidence-based presentation that is scientifically justifiable, increasing the neutrality of the ad.

(Response 11) We did not intend to propose, and have not included in the final rule, a general requirement that the major statement use quantitative descriptors. As we stated in the

preamble of the proposed rule, “The major statement should also avoid the use of vague terms or explanations that are readily subject to different interpretations,” such as “some” (emphasis in original) (75 FR 15376 at 15379). Although this example involved quantitative terminology (“more than half”), we did not intend to require that the major statement always include quantitative descriptors but rather to clarify that to be “readily understandable,” the major statement must avoid language or terminology that is so vague as to be readily subject to different interpretations.

H. Proposed Standard #2 (Final Standard #2) (Audio)—Comments and FDA Response

FDA proposed in § 202.1(e)(1)(ii)(B) that audio information in the major statement must be understandable in terms of the volume, articulation, and pacing used. This standard remains important for consumers to notice, attend to, and understand a drug’s risk and benefits. We modified this standard in the final rule to clarify that the audio information presented during the major statement, in terms of the volume, articulation, and pacing used, must be at least as understandable as the audio information presented in the rest of the ad (standard #2).

(Comment 12) We received several comments supporting this proposed standard but also containing suggestions for improvement. One comment notes that proposed standard #2 is especially important to older adults or to consumers who, as a result of their literacy level or of visual or other limitations, may rely more heavily on the audio portions of an ad. Several comments note that the speed at which risk information in the major statement is presented in broadcast ads often makes it difficult to understand the information. One comment states that it is unacceptable for risk information to be “raced through as if being uttered by an auctioneer” and suggests that the pace of risk information should be identical to the pace of benefit information.

Two comments express concern that the proposed standards would increase the length of ads. One of these comments states that proposed standards #2 (audio information) and #3 (textual information) could impact the duration of an ad for a drug with substantial risk information.

(Response 12) We agree with the comments stating that this standard is especially important to consumers who may rely on the audio portion of an ad to understand the major statement,

particularly older adults, as older adults watch more television (Ref. 41) and are more likely to take prescription drugs (Refs. 42 and 43). As such, this standard in the final rule clarifies that the audio information presented during the major statement, in terms of the volume, articulation, and pacing used, must be at least as understandable as the audio information presented in the rest of the ad. The intention of this final standard is to ensure that the volume, pacing, and articulation of risk information presented in audio allow the information to be understood. Firms have an incentive to present the benefits of a drug in audio using volume, articulation, and pacing that ensure that those benefits are understood. Therefore, requiring that, in terms of these same attributes, the audio presentation of the major statement must be at least as understandable as the rest of the ad, will help ensure that the risk information in the major statement is similarly likely to be understood. This final standard provides a concrete way for firms to help meet the requirement that the major statement be presented in a clear, conspicuous, and neutral manner.

We disagree with the comments that assert that the rule will necessarily lengthen DTC TV/radio ads. As discussed in section V.K of this document (see comment 21), no comments, including those from industry, provided specific data, information, or examples of how the rule would require an increase in the length of these ads. FDA concludes that the rule will not require DTC TV/radio ads to be longer.

(Comment 13) One comment notes that the focus on volume, articulation, and pacing is important but overlooks the existing regulatory framework for the disclosure of risk information in DTC ads that results in a long disclosure of numerous risks, some of which are more relevant to the physician and to the patient-physician interaction once the decision has been made by the physician to prescribe a prescription drug product. This comment requests that FDA consider how much information is appropriate for the format.

(Response 13) The manner of presentation of the major statement is the focus of this rule. Neither the proposed rule nor this final rule changes the content of the major statement.

I. Proposed Standard #3 (Final Standard #4) (Presentation of Text)—Comments and FDA Response

The third proposed standard for presenting the major statement in a

clear, conspicuous, and neutral manner includes requirements for “[t]extual information [to] be placed appropriately and . . . presented against a contrasting background for sufficient duration and in a size and style of font that allows the information to be read easily.” (See proposed § 202.1(e)(1)(ii)(C)). We revised proposed standard #3 (named final standard #4 in this final rule, codified as revised in § 202.1(e)(1)(ii)(D)) in response to comments, to clarify that the standard applies to the text portion of the major statement in TV ads and not to textual information in the TV ad generally. We have also removed the requirement for duration of display of text from this standard and address that topic in final standard #3, the dual modality standard. We also reorganized the remaining information in this standard for clarity. Like the corresponding standard of the proposed rule, final standard #4 is informed by relevant social science research as well as by the common themes seen in standards of other Federal agencies for “clear and conspicuous” disclosures (see Refs. 40, 44–50; 75 FR 15376 at 15377–15379).

(Comment 14) One comment is concerned that proposed standard #3 (final standard #4) could be interpreted to require that all major statements in all DTC ads in TV format include textual information. The comment recommends that FDA clarify the proposed standard for the manner of presentation of text in the major statement by inserting “if included” after “[t]extual information.” If information from the major statement is presented visually in text, the comment also questions how it should be presented with other information, such as “Available by prescription” or “See our ad in. . . .”

(Response 14) Proposed standard #3 (final standard #4) addressed how to present textual information as part of the major statement, without requiring that any textual information be included. However, in this final rule, we require a dual modality presentation of the major statement for ads in TV format, through a separate standard. See section V.K of this document and § 202.1(e)(1)(ii)(C). We therefore decline to add the suggested phrase, “if included.” We agree that this final standard #4 does not alone create an obligation to present the major statement using text, but we consider it applicable to any text used to present the major statement. We also revised language to clarify that this standard applies only to the text portion of the major statement in TV ads and not to other text. (Regarding the presentation of other information, see also section V.J

of this document discussing final standard #5 (proposed standard #4) and addressing other audio or visual elements during the presentation of the major statement.)

(Comment 15) One comment says that the standard should take into account that many patients seeing broadcast ads, such as older adults and those with diseases that affect vision, may need larger letters or other accommodations. Two comments state that text placed in the lower portion of the TV screen is so small and rapidly displayed as to make information illegible. A few other comments request that FDA require firms to present risks in large, clear text, while another comment quantifies the preferred size of the text to be at least as large as 7 percent of the screen.

(Response 15) We agree that text used in presenting the major statement, including the font used, should allow the information to be read easily. We disagree that it is necessary to dictate a specific font size or other similar criterion. After considering comments, we conclude that this level of detail is unnecessary because there is more than one way to present the textual information that will allow the text to be read easily. Different presentational elements may interact and must be considered together, with more than one combination allowing for the textual information to be read easily. For example, increasing the amount of contrast between the font and the background may improve readability. And, even at a smaller size, some styles of font are more easily read compared to others. Duration of text is addressed in the final rule as an aspect of dual modality. (See discussion in section V.K of this document.)

(Comment 16) One comment expresses concern that proposed standard #3 is overly prescriptive and does not adequately take into account the limitations of using text in audio-visual media such as TV. The comment recommends that textual information be used as secondary support to audio disclosure for the purpose of emphasizing particular risks when necessary. The comment further recommends a more objective, data-oriented approach to determine if information is understood and when text information might be useful to emphasize a specific point, rather than ensuring compliance with a specified text format.

(Response 16) We disagree with the portion of the comment stating that proposed standard #3 is “overly prescriptive.” Like its counterpart in the proposed rule, this standard in the final rule does not dictate particular font

colors, sizes, placements, or backgrounds but instead requires that these aspects of text together result in an easily readable presentation. As suggested in comments, FDA intends these regulations to be flexible enough to allow for a variety of techniques firms may choose.

We disagree with the comment's suggestion that text should be used to emphasize only particular risks rather than all risks contained in the major statement. We note that the major statement, to which the standards in this rule apply, is a selected presentation of the major side effects and contraindications of the drug and not a listing of every risk. In this final rule, we require a dual modality presentation (audio and text) of the major statement for ads in TV format, for reasons explained in section V.K of this document.

(Comment 17) One comment states that the proposed language about textual information being placed appropriately and being presented against a contrasting background is not consistent with the draft Risk Guidance. The comment asserts that the draft guidance recommends that risk information have a "comparable background." The comment also requests alignment with the draft Risk Guidance or clarification regarding why there is a difference in opinion between the draft guidance and the proposed rule for presenting risk information in TV/radio ads versus through other media.

(Response 17) We conclude that the final rule's requirement (that placement on the screen and contrast with the background, as well as size and style of font, enable the text portion of the major statement to be read easily) provides better assurance that the manner of the presentation is clear, conspicuous, and neutral than the comment's proposed requirement of a "comparable background." Furthermore, contrary to the comment, we believe these aspects of the standard are consistent with the draft Risk Guidance, which was cited in the proposed rule as describing factors and supportive research consistent with the proposed rule's standards. Specifically, with respect to the recommendations for non-print promotion such as TV ads and video, the draft Risk Guidance discusses the comparable presentation of risk and benefit information, not "comparable background" (Ref. 26, p. 15, line 528). In fact, in its specific discussion of visual elements in non-print promotions, the draft guidance also recommends that risk disclosures presented in SUPERS contrast with

background visuals (Ref. 26, p. 20, line 676).

With regard to the comment's question about distinctions in presentation based on the medium used for the promotional communication, we note that the draft Risk Guidance addresses communications in the whole range of media; whereas, this rule is specific to DTC TV/radio ads. Characteristics of effective communication, including how consumers receive and understand information, can be impacted by different factors for each type of media, as reflected in the draft Risk Guidance recommendations and the research that guidance cites, as well as in the final standards established by this rule.

J. Proposed Standard #4 (Final Standard #5) (Elements That Interfere)—Comments and FDA Response

FDA proposed in § 202.1(e)(1)(ii)(D) that for a major statement to be presented in a clear, conspicuous, and neutral manner, the major statement must not include distracting representations (including statements, text, images, or sounds or any combination thereof) that detract from the communication of the major statement.

As described in section III.B of this document, in proposing this standard, FDA noted that the presence of distracting elements during the disclosure was one of several common themes addressed by standards of other Federal agencies to ensure that disclosures were "clear and conspicuous" (75 FR 15376 at 15378). FDA also noted that this standard (and the other proposed standards) was consistent with the factors described and discussed in the draft Risk Guidance (75 FR 15376 at 15379). The standard we finalize in this rule is generally consistent with these approaches. We have modified this standard slightly from the proposed rule as a result of the comments received (and to help ensure effective communication).

In this final rule, we revised proposed standard #4, now final standard #5 (codified as revised in § 202.1(e)(1)(ii)(E)), to clarify that the standard is intended to preclude the use of audio or visual elements during the presentation of the major statement that are likely to interfere with comprehension of the major statement, but the standard does not address elements during other portions of the ad. Audio or visual elements may include, for example, music or other sounds, statements, text, and images. The standard does not categorically

prohibit particular types of elements during the major statement but will be applied by considering the facts and circumstances presented by specific ads.

(Comment 18) Several comments support limiting distractions during the presentation of the major statement. One comment states that presenting the major statement without distraction is the key to improving audience understanding. Another comment says that distracting images or sounds can seriously undermine the clarity and conspicuousness of the presentation of risk information. One comment goes further and states that the major statement cannot be allowed to compete with distracting text, images, or sounds because it disrupts comprehension.⁶

Several comments say that implementing proposed standard #4 is particularly important because the visual depiction of benefits distracts from any simultaneous verbal presentation of risks, especially when the risk information is listed in a monotone or reassuring tone of voice. One comment argues that allowing positive scenes to be shown while presenting risk information has an adverse effect on a consumer's perception of the drug's risks. The comment suggests that FDA require a more restrictive standard limiting drug manufacturers from inserting the ads in an overly positive environment or cheery setting and instead require that the text be displayed simultaneously with visual scenes that reinforce the risk.

Other comments express reservations about proposed standard #4. One comment states that proposed standard #4 could be misinterpreted to suggest that all representations are "distracting" and detract from communication of the major statement. The comment suggests that FDA revise this standard to clarify that it does not intend to prohibit all "representations," including text, images, or sounds, during communication of the major statement. The comment suggests adding "certain" before "statements" and adding "significantly" before "detract."

One comment states that it does not generally oppose the proposed standard but seeks clarification. In general, the comment interprets the proposed standard as intending to require "neutral" imagery. The comment opines that the concept of image neutrality is vaguely defined and subjective,

⁶ The comment provided reference to Sorqvist, P., et al., "Individual Differences in Susceptibility to the Effects of Speech on Reading Comprehension," *Applied Cognitive Psychology* 24: 67–76, 2010, which concluded that irrelevant speech presented in audio disrupted reading comprehension.

requiring further definition in a final standard to avoid the risk it could be interpreted in an unnecessarily restrictive manner that would make DTC advertising impractical for pharmaceutical firms. More specifically, the comment understands the proposed standard to be intended to limit visuals that may be distracting during the major statement and interprets this to include specifically the types of positive images tested in the Distraction Study; however, it concludes that the study did not support the position that such images would impede the understanding of the safety information presented during the major statement. The comment also says that a restriction on positive imagery during the major statement could lead to a sterile “public service” style presentation of the messaging and limit its efficacy. The comment says that patient retention of messaging and motivation to learn more could be decreased because, the comment asserts, such messages would be less engaging and be ignored. The comment also says it is unclear to what degree “positive” imagery before and after the major statement would be allowable.

Another comment similarly expresses concern that proposed standard #4 could require firms to begin presenting risk information in a very bland manner that would be inconsistent with the overall flow and tone of an ad, such that viewers may become disengaged with the ad when risk information is being communicated. The comment encourages FDA to study the impact of removing creative elements employed during communication of risk information and how it affects comprehension. This comment opposes including proposed standard #4 because, the comment opines, it is too subjective and likely inadequate as a surrogate for whether the target audience understands the risks communicated. The comment expresses concern that FDA would apply an overly prescriptive approach to evaluating proposed standard #4 and suggests instead an objective, science-based approach to evaluating audience understanding and comprehension of risk information.

(Response 18) We agree with comments that support the proposal to limit distractions during presentation of the major statement. Final standard #5 requires that during the presentation of the major statement, the ad does not include audio or visual elements (music, sounds, text, images, etc.) that, alone or in combination, are likely to interfere with comprehension of the major statement of risk information.

Several of the comments suggest a desire for clarification of the focus or scope of proposed standard #4 (final standard #5). Some are concerned that this standard precludes any elements during the presentation of the major statement at all, while others appear to equate this standard narrowly with the specific topics of study in the Distraction Study or the concept of “neutral” alone—none of which aligns with FDA’s intention. In response, in the final rule, we revised the wording to emphasize that in order to be presented in a clear, conspicuous, and neutral manner, during the presentation of the major statement, the ad must not include audio or visual elements that, alone or in combination, are likely to interfere with comprehension of the major statement. We conclude that the revised wording of this provision better captures the standard for determining whether an element or a combination of elements distracts from the mandatory presentation of the major statement. The changes to the wording of final standard #5 also clarify that this requirement applies during the limited part of the ad that presents the major statement, not to other portions of the ad. This standard independently contributes to achieving a clear, conspicuous, and neutral manner of presentation of the major statement, adding to the effect of other standards in this rule.

We do not conclude that all audio or visual elements are likely to interfere with comprehension of the major statement. In fact, as addressed in section V.K of this document, in the final rule, by requiring dual modality—the concurrent use of both text (a visual element) and audio to present the major statement in ads in TV format—we acknowledge that multiple elements can actually be used to reinforce risk information.

This standard does not categorically prohibit use of other creative elements during the major statement, nor does it prohibit narrower categories of such elements (e.g., it does not bar music, sound effects, or drawings). The standard does not even categorically prohibit any subtypes of elements (e.g., it does not bar upbeat music or amusing drawings). Notably, the standard does not categorically prohibit visual depictions of benefits or positive imagery during presentation of the major statement in TV ads.

It is not our intent that the major statement be presented in a bland manner such that the audience becomes disengaged during this part of the ad, nor do we intend to require a “tombstone” presentation of the major statement. Rather, final standard #5 is a

common-sense measure that adds to the others to help ensure that consumers notice, attend to, and understand the major statement by prohibiting the simultaneous presentation of other audio or visual elements, alone or in combination, that are likely to interfere with comprehension of the major statement. This requirement applies only during the limited portion of the ad that presents the major statement and places no restrictions on any other part of the ad.

(Comment 19) Several comments discuss what effect the results of the Distraction Study should have on FDA policy regarding proposed standard #4 (final standard #5). One comment argues that design flaws resulted in the failure of the Distraction Study to detect any significant effects upon risk comprehension resulting from various forms of distraction; therefore, the results must be disregarded. Another comment states that the Distraction Study did not appear to provide an adequate factual or rational basis upon which FDA can rely to augment FDA’s authority with respect to final standard #5 and the entire rule. One comment states that certain design characteristics of and results from the Distraction Study raise significant questions about its utility to support regulatory decision making. Another comment states that after reviewing the results of the Distraction Study, any additional restrictions imposed on the clear, conspicuous, and neutral standard would only “muddy the waters” and that a broad requirement, with as little nuance as possible, would enable the Agency to determine, unhindered, that a particular ad committed a violation of the clear, conspicuous, and neutral requirement. One comment says that in light of the results of the Distraction Study, it seems that the only way to present the risk information is to require a standard format for conveying risks. Experts could then continuously evaluate the standard format and determine whether it was the most effective method to convey the risk information.

(Response 19) Final standard #5 rests on a well-established principle that presenting more than one element during the same period of time, in some cases, interferes with comprehension of information. This is often referred to as “distraction.” As manifested in numerous other Federal disclosure standards (see 75 FR 15376 at 15377), in order to support the effective presentation of required disclosures, it is important to avoid distractions.

Addressing this concern is especially important in the ads in TV/radio format

that are subject to this rule because these ads are fleeting—appearing for a brief interval in the midst of other content—and within each ad’s overall running time, consumers typically do not control how much time they have to absorb the information from the major statement. For example, the average length of ads in TV format is between 30 and 60 seconds overall.⁷ In prescription drug ads, the presentation of the major statement occupies only a part of the ad, so in a 30- or 60-second ad, consumers are not given much time to notice and understand that important information. If, during the presentation of the major statement, the consumer’s attention is instead focused on other elements of the ad, the major statement may be relayed without being understood.

The possibility of distraction interfering with comprehension is apparent from ordinary experience, and it is also amply supported by social science research. For example, visual and auditory elements that have been shown to detract from or interfere with the communication of information and viewer comprehension include noise, loud music, and rapid scene changes (Refs. 34, 35, 38, 39, 51–53). The reasonable approach embodied by final standard #5 is to assess, case-by-case, the particulars of a specific ad to determine whether, during the presentation of the major statement, it includes audio or visual elements that, alone or in combination, are likely to interfere with comprehension of the major statement.

We rely on the existing substantial body of literature regarding distraction as the basis for final standard #5, not FDA’s Distraction Study, contrary to the implication of some comments. As previously addressed (see section V.C of this document), FDA’s Distraction Study was not an investigation of all elements or factors that can contribute to distraction. The Distraction Study was designed only to examine the effects of three particular, pre-defined factors: (1) the presence or absence of SUPERS that concurrently presented verbatim, key words and phrases from the audio presentation of risk; (2) variations in the positive (affective) tone of visual images; and (3) visual information that was either inconsistent or consistent with the audio risk information. With

regard to factor 2, this research investigated a hypothesis that the visual depiction of positively toned imagery during the simultaneous audio presentation of risk information would interfere with comprehension of the risk information. Although study participants in the strongly positive tone conditions showed lower risk comprehension than participants in the mildly positive tone conditions, this difference was not statistically significant. As a result, the Distraction Study did not find support for the hypothesis that the visual depiction of positively toned imagery interferes with the comprehension of risk information in the major statement. Therefore, conclusions about the effect of positively toned imagery on risk comprehension cannot be drawn from this study.

Nonetheless, FDA’s Distraction Study did not call into question the substantial body of literature on different and more obvious types of distractions (e.g., noise, loud music, rapid scene changes); this study did not include and was not designed to test these well-known types of interferences. Thus, we rely on the existing substantial body of literature on this topic to support standard #5 in the final rule.

We also disagree with the comment that suggests FDA might use the Distraction Study to “augment” its authority. Congress passed a law requiring that the major statement relating to side effects and contraindications in DTC TV/radio ads be presented in a “clear, conspicuous, and neutral” manner, and Congress directed FDA to issue standards for determining whether a major statement is presented in this manner. Final standard #5 (as well as the other final standards in this regulation) is consistent with this grant of statutory authority.

K. Dual Modality (Final Standard #3)—Comments and FDA Response

In the proposed rule, FDA solicited public comment on whether to require that the major statement in ads in TV format be included in both the audio and visual parts of the presentation (dual modality) (75 FR 15376 at 15380). We referenced the FTC standard for determining whether an affirmative disclosure in a television commercial is clear and conspicuous, which states that for disclosures in a television advertisement to be clear and conspicuous, they should be presented simultaneously in both the audio and video (75 FR 15376 at 15377, 15380). In addition, we referenced research specifically conducted on the subject of

dual modality in advertising that supported the use of simultaneous presentations of key words or full sentences in text with the corresponding key words or full sentences in audio to aid in processing (75 FR 15376 at 15383), as well as a broader body of research that supports the use of dual modality in a wide variety of situations (75 FR 15376 at 15383–15384).⁸ We also reopened the docket in 2012 to include the report of the Distraction Study that investigated dual modality presentation of the major statement in TV ads (among other things) and we requested comments on the results of that study as those results related to the proposed standards. As summarized in the document reopening the comment period—and further detailed in the study report in the docket—the study indicated that presenting the same risk information at the same time in text and in audio improves consumer understanding of the risk information (see 77 FR 4273–74; Ref. 27). Thus, the results of FDA’s Distraction Study regarding the effects of dual modality on comprehension of risk information were in line with the studies described in the 2010 proposed rule. Not only did the Distraction Study find that presenting the same risk information at the same time in text and in audio improved risk comprehension, but it also found that presenting risk information in dual modality was not associated with any reduction in comprehension of benefits (Ref. 27). Subsequent research (Refs. 53–56) corroborates the evidence—originally discussed in the proposed rule and again in the Distraction Study report that was made available for public comment—that presenting information in both audio and visual (dual modality) improves comprehension of the information provided. The comments we received helped inform our decision to require dual modality in this final rule, supported by the Distraction Study research and subsequent research and literature.

The majority of comments on this topic support dual modality, while a few comments opposed it.

(Comment 20) Overall, the comments addressing dual modality favor the implementation of this standard. Comments note that dual modality will

⁷ A 5-year study by DRMetrix included data from 2015 to 2018 and captured a total of 50 million DTC TV ad presentations. The study evaluated the frequency with which different lengths of TV ads were run. Ads of 30 seconds in length were run the most. See “5 × 5 Industry Study,” DRMetrix, 2019, available at https://www.drmetrix.com/public/5_x_5_Industry_Study_Oct_2019.pdf.

⁸ For additional corroboration, also see Murray, N.M., L.A. Manrai, and A.K. Manrai, “Public Policy Relating to Consumer Comprehension of Television Commercials: A Review and Some Empirical Results,” *Journal of Consumer Policy*, 16(2):145–170, 1993; Tindall-Ford, S., P. Chandler, and J. Sweller, “When Two Sensory Modes Are Better Than One,” *Journal of Experimental Psychology: Applied*, (3):257–287, 1997.

help improve consumer understanding of the risk information and help make a lasting impression on consumers. Comments also noted that dual modality would account for consumers with different learning styles and pointed out that research supports dual modality. Additionally, comments noted that FTC has a similar standard and that including the dual modality standard would provide firms with direction on how to properly adhere to the “clear, conspicuous, and neutral” requirements. One comment gives certain critiques of the Distraction Study’s methodology but ultimately supports a dual modality requirement.

Comments that oppose dual modality assert that it is unnecessary and could distract consumers or have potentially negative consequences. One of these comments states that presenting complex clinical risk information simultaneously in both the audio and text could prevent consumers from effectively receiving this crucial information from either mode of communication. This comment says that viewers who focus on the audio component might assume that the text qualifies the audio message, leaving them to question the veracity of whatever portion of the major statement they processed and understood.

One comment says that even though the Distraction Study suggests that in some contexts it may be possible to improve comprehension of benefit and risk information through a dual modality requirement, there are significant questions regarding the interpretability of that data. Consequently, the comment claims that the Distraction Study was not robust enough to support imposing a dual modality requirement in FDA’s regulation. The comment argues that although the difference in risk comprehension between the no SUPERS cohort and the combined large and small SUPERS cohorts in the Distraction Study appears to be statistically significant, there is no indication that it is significant from a clinical or regulatory point of view. The comment states that even if FDA’s study showed that consumers had better risk comprehension when SUPERS were used, it does not follow that ads that do not use SUPERS are: (1) false, misleading, or otherwise lacking in fair balance or (2) not clear, conspicuous, or neutral. The comment argues that ads both with and without SUPERS could be legally acceptable. Therefore, according to the comment, the Distraction Study may provide useful information regarding optimal advertising practices, but it does not provide information that

is relevant from a regulatory perspective.

The comment also states that the Distraction Study does not foreclose the possibility that other advertising techniques, either alone or in combination, may be as effective or even more effective than a dual modality requirement in optimizing comprehension of risks and benefits and rendering the major statement “clear, conspicuous, and neutral.” The comment states that advertisers should have regulatory flexibility in designing DTC TV ads in a manner that complies with applicable requirements to communicate risks, without FDA imposing a dual modality requirement.

One comment opposes dual modality, arguing that it does not improve consumer recall or understanding of important risk information in DTC ads. The comment describes research that the submitting firm undertook in 2005, the results of which suggest that recall of risk and benefit information does not vary in consistent or systematic ways according to ad risk presentation or execution, including when dual modality is used to present major risk terms. The comment also states that the limitations of this study may have affected observed results. The same firm subsequently submitted the results of additional research it undertook several years later, described further in the response to this comment, which do support a dual modality requirement.

(Response 20) We have included a dual modality requirement in this final rule (§ 202.1(e)(1)(ii)(C)) after consideration of comments we received, as well as research and literature supporting the positive impacts of dual modality on risk comprehension and recall that existed at the time of the proposed rule. Notably, as detailed further in section V.K of this document, subsequent research corroborates these earlier findings on the positive impact of dual modality on recall and comprehension of risk. Under this standard, for the major statement of an ad presented in TV format to be presented in a clear, conspicuous, and neutral manner, it must be presented concurrently using both audio and text (dual modality). To achieve dual modality, the regulation establishes further specific standards for the display of text. First, either the text displays the verbatim key terms or phrases from the corresponding audio, or the text displays the verbatim complete transcript of the corresponding audio. Second, the text must be displayed for a sufficient duration to allow it to be read easily. Under the final regulation, for purposes of this standard, duration

of the text display is sufficient if it begins at the same time and ends at approximately the same time as the corresponding audio. These duration and display characteristics are supported by the research studies that evaluated concurrent text and audio presentations (dual modality), discussed in the proposed rule and in section V.C of this document. Moreover, as discussed in section V.K of this document, other research subsequently corroborated these research findings regarding the positive impact of dual modality on consumer recall and comprehension.

We do not agree with the comment suggesting that dual modality could prevent consumers from effectively receiving risk information. No references were provided to support this assertion. To the contrary, as discussed in the preamble of the proposed rule (75 FR 15376 at 15383–15384), research shows that using audio and visual presentations to present the same information at the same time increases comprehension compared to using only one mode (See also Refs. 57 and 58). Research demonstrates improved recall when reinforcing SUPERS are used, and suggests that a dual mode of presenting information results in greater recall and comprehension in a wide variety of situations (Refs. 53, 59, and 60–64). The positive impact of dual modality on recall and comprehension has been further demonstrated through subsequent research (Refs. 54–56).

FDA’s Distraction Study examined, in part, how an ad’s SUPERS might influence understanding of the risk information in the audio portion of the ad. As summarized in the **Federal Register** document reopening the docket to solicit comments on the results of this study as related to the proposed standards (77 FR 4273–74) and further detailed in the study report in the docket (Ref. 27), we found that presenting the same risk information at the same time in text and in audio improves consumers’ understanding of that risk information compared to audio alone. This finding is statistically significant and consistent with prior research. The Distraction Study also found that there was no tradeoff to the presentation of risk using dual modality in regard to comprehension of benefit; the increase in risk comprehension was not associated with any reduction in benefit comprehension (Ref. 27).

As noted previously, research results submitted by a firm had similar findings about use of dual modality. The firm undertook research to determine how dual modality might affect consumers’ recall and comprehension of

information in the major statement of prescription drug TV ads. The firm's research results demonstrated that dual modality increased risk recall and understanding of risks. The results also demonstrated that dual modality did not decrease consumer recall and understanding of product benefits. Whether the full text of the risk statement or keywords were presented visually did not affect recall and comprehension of risk information. This submitted research corroborates other research in the record.

(Comment 21) One comment asserts that the proposed rule was unclear regarding "what specific information from the major statement should be presented visually or how that visual information should be presented with other information, such as 'Available by prescription' or 'See our ad in Health magazine.' " The same comment questions whether FDA would require "a simultaneous, verbatim presentation" of the major statement in the audio and video or only require the firm to use each mode to present the major statement at some point in the ad. It further asserts that regardless of whether dual modality requires simultaneous presentation of the major statement in both audio and text, a visual presentation of the major statement would need to appear on screen for a significant portion of many ads to allow consumers of all abilities sufficient time to read and absorb the risk information, which in turn might overemphasize risk information and thus result in the non-neutral presentation of that risk information. That comment also suggests that to meet a dual modality requirement, TV ads would necessarily grow in length to accommodate required additional text. However, another comment says that fulfilling a dual modality requirement would not require more ad time, and in fact, requiring audio and visual presentation of the major statement to occur at the same time might even reduce ad length. A third comment expresses the view that, to improve consumer risk awareness, the regulation should require that the major statement be presented in dual modality, using text that is either identical to the audio track or an abbreviated, easily processed bullet point type of text, using only words that occur in the audio track.

(Response 21) To reinforce the presented risk information and consequently help improve its comprehension, the final rule requires the concurrent presentation of the major statement in the audio and in text. This is consistent with the proposed rule, which reflected the expectation that

where text was used, it would appear "concurrently with any directly related audio information" (75 FR 15376 at 15379) as well as with the research cited in the proposed rule (75 FR 15376 at 15383). This is also consistent with the FTC standard, cited in the proposed rule, for determining whether an affirmative disclosure in a television commercial is clear and conspicuous, which states that for disclosures in a television advertisement to be clear and conspicuous, they should be presented simultaneously in both the audio and video (Ref. 65) (75 FR 15376 at 15377 and 15380). Further, the final rule provides additional clarity on how to achieve a dual modality presentation of the major statement regarding what text must appear, when the text must appear in relation to the audio, and for what duration—consistent with research cited in the proposed rule (75 FR 15376 at 15383) and the approach used in the Distraction Study, the report of which was placed in the docket and the comment period reopened expressly to solicit comment on the results of that study in relation to the proposed standards (77 FR 4273–74; Ref. 27). The provisions in the final rule collectively provide considerable flexibility to firms and do not necessitate that the textual presentation of the major statement remain on screen throughout the ad.

We agree with the comment noting that the text used to achieve dual modality should present words that the corresponding audio uses, rather than synonyms, and also agree that dual modality can be achieved using text in an abbreviated form. This is consistent with the approaches used in research that was cited in the proposed rule and that supported dual modality (75 FR 15376 at 15383), as well as the approach used in the Distraction Study (Ref. 27). Accordingly, the final rule specifies that dual modality can be achieved either by displaying the verbatim key words or phrases from the corresponding audio or by displaying the verbatim complete transcript of the corresponding audio. This provides firms flexibility to choose from various presentation options. For example, if the audio states, "The most common side effects of DRUGX are dry mouth, headache, and heartburn," instead of presenting a complete verbatim transcript of that statement, the accompanying text could present bullets stating "• dry mouth • headache • heartburn."

The final rule also addresses the duration of text display. Like proposed standard #3 (which alone would not have required text, but addressed how to present text if it were used in addition to the already-required audio

to present the major statement), the final rule requires that text used to present the major statement be displayed for a duration that allows it to be read easily. Discussion of proposed standard #3 also indicated our intention to require that visually-presented text information from the major statement appear "concurrently with any directly related audio information" (75 FR 15376 at 15379). These elements of proposed standard #3 regarding the display of text are now picked up as part of the dual modality requirement (final standard #3). Final standard #3 clarifies their relationship to each other and to the audio presentation requirements of the rule, stating that the duration of display of text is sufficient if it starts at the same time and ends at approximately the same time as the corresponding audio. This approach is similar to that required for the presentation of closed captioning under Federal Communication Commission regulations. See 47 CFR 79.1(j)(2)(ii). In turn, the pace of the audio component of the major statement is determined by the requirement that the audio information be at least as understandable as the audio information presented in the rest of the ad—something that the firm chooses. (See final standard #2 (§ 202.1(e)(1)(ii)(B)) and section V.H of this document.) With this flexibility, we believe the presentation of risk information will not be overemphasized. None of the standards of the final rule that impact duration of text display, including the dual modality standard, either separately or together, require that the textual presentation of the major statement remain on screen throughout the ad or generally require increasing the length of ads in order to present the major statement. At the same time, we think the methods of achieving dual modality described by the rule will contribute to presenting the major statement in a clear, conspicuous, and neutral manner.

L. First Amendment Freedom of Speech—Comments and FDA Response

Two comments question whether the proposed rule is consistent with First Amendment protections for freedom of speech. One addresses the major statement's requirement to disclose side effects generally; the other focuses on the proposal for presenting the major statement using dual modality.

(Comment 22) One comment asserts that the overall requirement for the major statement to disclose side effects is unconstitutional under the Supreme Court's decision in *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557 (1980), regarding commercial

speech restrictions, but the comment does not address any specific elements of the proposed manner of presentation that are the subject of this rulemaking. This comment asserts that, for the Government to restrict advertising, among other things, the advertising must be misleading, and the comment states without elaboration that “lack of disclosure or lack of clarity” of side effects does not make advertising misleading. The comment also asserts that the Government has no substantial interest in mandating disclosure of risk information in DTC ads in TV/radio format and, consequently, that no requirements for a major statement in a DTC ad could satisfy the First Amendment. The comment states that the Government interest implicated by requiring disclosure of side effects in DTC prescription drug advertising is one intended to protect consumer safety but that this interest “cannot be proven as substantial” because it is already addressed by the requirement to obtain a prescription to access a prescription drug. The comment further suggests that the information is unnecessary in ads because all prescription orders explain drug side effects.

Another comment raises concerns that a dual modality requirement would violate the First Amendment. The comment suggests that the proposed dual modality requirement is subject to First Amendment analysis under *Central Hudson* and under *Thompson v. Western States Medical Center*, 535 U.S. 357 (2002), and also suggests that “a regulatory scheme that formats the style and content of advertising in advance of its presentation to the public” might impose an unlawful prior restraint on advertising. In addition, the comment asserts that to hold a firm liable for failing to use dual modality, FDA would have to prove that absent dual modality, the ad would be false or misleading to the consumer, noting that a consumer cannot obtain a prescription for an advertised drug without consulting a physician. The comment suggests that, unless FDA can establish in advance that all ads that lack dual modality would be false or misleading, the dual modality requirement is not constitutional.

(Response 22) We disagree that the major statement requirement as a whole, the dual modality requirement in particular, or any other aspect of this rule’s standards for presenting the major statement in a clear, conspicuous, and neutral manner violates the First Amendment.

As the Supreme Court has explained, Government mandates for “health and safety warnings” have been “long

considered permissible,” and these warnings as well as “purely factual and uncontroversial disclosures about commercial products” are legal under the First Amendment (*Nat’l Inst. of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361, 2376 (2018)). The presentation of the major statement addressed in this rule, as well as the underlying requirement to provide the important side effects and contraindications of the drug, fall squarely within these categories.

Specifically, the major statement is quintessential health and safety warning information, reflecting the contraindications and side effects of a prescription drug as described in the prescription drug’s approved labeling. The content of the major statement is not changed by this rulemaking. As explained in section III of this document, there is a long history of requirements to provide health and safety warnings about a prescription drug’s risks, including in its advertising, and to ensure that understanding of required disclosures about these products is not undermined by an inadequate manner of presentation of the information.

More generally, the major statement is a factual disclosure about a commercial product to be included in its advertising. The Supreme Court examines factual disclosures about products and services in commercial speech under the analysis in *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985). See *Nat’l Inst. of Family and Life Advocates*, 138 S. Ct. 2361, 2377–2378; *Milavetz, Gallop & Milavetz, P.A. v. United States* 559 U.S. 229, 250, 252–253 (2010). Under the approach articulated in *Zauderer*, courts have upheld required disclosures of factual and uncontroversial information about a product or service in commercial speech about that product or service. See, e.g., *American Hosp. Ass’n*, 983 F.3d 528, 540 (posting negotiated rates for hospital services); *American Meat Inst. v. Dept. of Agric.*, 760 F.3d 18 (D.C. Cir. 2014) (en banc) (country of origin labeling for meat); *N.Y. State Restaurant Ass’n v. N.Y.C. City Bd. of Health*, 556 F.3d 114 (2d Cir. 2009) (calorie information on menus); *Nat’l Elec. Mfrs. Ass’n*, 272 F.3d 104 (labeling identifying presence of mercury in light bulbs). Where such disclosures are not unjustified or unduly burdensome, their imposition does not offend the First Amendment. See, e.g., *Nat’l Inst. of Family and Life Advocates*, 138 S. Ct. 2361, 2377–2378; *American Hosp. Ass’n*, 983 F.3d 528, 541 (required publication of standard charges is not unduly burdensome in a way that chills

commercial speech as it “neither requires hospitals to endorse a particular viewpoint nor prevents them from adding their own message on the same website or even in the same file”; alleged financial burden of compliance with the disclosure requirement not established to be burden on speech); *Spirit Airlines, Inc. v. United States Dep’t of Transp.*, 687 F.3d 403, 414 (D.C. Cir. 2012) (requirement for airlines to make total price the most prominent cost figure does not significantly burden airlines’ ability to advertise); *Discount Tobacco City & Lottery, Inc.*, 674 F.3d 509, 524 (size of required tobacco warnings is not unduly burdensome where remaining portions of their packaging are available for other information).

The provisions of this rule likewise satisfy the requirements of *Zauderer* and subsequent cases. First, the required information about the drug’s side effects and contraindications presented in the major statement is factual and uncontroversial. As already noted, it is derived from the drug’s FDA-approved labeling, which is based on data and information about the product submitted by the drug’s sponsor and evaluated by FDA.

Second, requiring that this information be presented in DTC TV/radio ads in a clear, conspicuous, and neutral manner is justified by the interests described in section III of this document. Contrary to the implications of both comments, the substantial Government interests supporting these measures are not limited to preventing consumers from being misled or protecting consumer safety. Rather, the substantial Government interests underlying this rule also include helping to ensure consumers are better informed when they participate in healthcare decision making, including when no HCP is present (see discussion in section III.A). Communicating risk information in a manner that improves the likelihood that consumers notice, attend to, and comprehend that information is instrumental to advancing this purpose of including risk information in the first place. See *Discount Tobacco City & Lottery, Inc.*, 674 F.3d 509, 561–564 (enhanced warnings on tobacco products advance the interests in promoting greater public understanding of the risks of those products; “A warning that is not noticed, read, or understood by consumers does not serve its function”).

Third, this rule is not unduly burdensome. The final rule’s requirements for the manner of presenting the major statement—including the requirement for dual

modality—do not threaten to drown out or chill the firm's other messages. Indeed, the firm not only remains free to present other messages in the ad; under this rule, it retains substantial ability to choose how to present the major statement.

For example, the major statement has long been required to be presented in audio. This rule provides more direction on how to do so but leaves many implementation details up to the firm. With regard to this audio presentation, the final standard requires that the volume, articulation, and pacing make the audio presentation of the major statement “at least as understandable as the audio presented in the rest of the advertisement” (§ 202.1(e)(1)(ii)(B))—leaving it substantially up to the firm how it wants to use audio for all the content in the ad. To fulfill the dual modality requirement for ads in TV format, the display of text is sufficient if it begins at the same time and ends at approximately the same time as the corresponding audio and displays the verbatim key terms or phrases from the corresponding audio

(§ 202.1(e)(1)(ii)(C)). Ultimately, then, this final rule, including dual modality, retains the firm's substantial control of the overall presentation and duration of the major statement and preserves the firm's opportunity to present the advertised drug's benefits or any other messages in other parts of the ad. And, as discussed in section V.K of this document, the use of dual modality does not decrease the recall or comprehension of benefit information even while it improves consumer comprehension and recall of the risk information, advancing the Government interests discussed in section III.A.1 of this document.

While we conclude that *Zauderer* provides the relevant framework for analysis of the mandatory risk disclosure provisions of this rule and that its requirements are satisfied, we also conclude that this rulemaking is consistent with the First Amendment if analyzed under more exacting scrutiny, including *Central Hudson*, a case mentioned by both comments. Contrary to the implication of both comments, FDA's authority to regulate prescription drug advertising is not limited to cases in which that speech is misleading (or false). Rather, under the *Central Hudson* framework, even if commercial speech is truthful, is not inherently or actually misleading, and relates to lawful activity, the Government may impose restrictions that directly advance a “substantial” Government interest and are no “more extensive than is necessary to serve that interest” (*Central*

Hudson Gas & Elec. Corp., 447 U.S. 557, 566).

In cases examining limitations on commercial speech, the Supreme Court has endorsed “the principle that disclosure of truthful, relevant information is more likely to make a positive contribution to decisionmaking than is concealment of such information” (*Peel v. Attorney Registration and Disciplinary Comm'n of Illinois*, 496 U.S. 91, 108 (1990)). As a result, the Court has favored use of disclosures over restrictions on speech to advance the substantial interests in preventing consumers from being misled and in making a positive contribution to informed decision making (id. at 109–110); *Shapiro v. Kentucky Bar Ass'n*, 486 U.S. 466, 477–478 (1988); *In re R.M.J.*, 455 U.S. 191, 203 (1982); *Bates v. State Bar of Arizona*, 433 U.S. 350, 375 (1977); *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 770 (1976).

Similarly, the FD&C Act and FDA implementing regulations require disclosures of risk information where prescription drug ads promote the product's benefits to directly advance the substantial Government interests previously described in section III of this document. The requirements in this rule to ensure that important facts about the risks of an advertised drug are presented in a clear, conspicuous, and neutral manner in its DTC TV/radio ads are reasonable in proportion to these interests and thus present no constitutional infirmity under any potentially applicable First Amendment standard.

Three of the standards for presenting the major statement address basic techniques for any communication targeting a broad consumer audience: that it uses consumer-friendly language and terminology, rather than technical language; that its audio be at least as understandable as other audio in the same ad; and that the visual aspects of text used to present the major statement allow that text to be read easily. (See § 202.1(e)(1)(ii)(A), (B), and (D).) The two remaining standards likewise are appropriately tailored to the interests behind the rule and do not unreasonably burden speech. Dual modality has already been discussed, and as noted, research indicates that using this technique to present risk information improves consumer risk comprehension and recall—advancing the Government interest—without decreasing the recall or comprehension of benefit information, thus reinforcing the reasonableness of this requirement. (See § 202.1(e)(1)(ii)(C).)

The last standard, in § 202.1(e)(1)(ii)(E), is a common-sense measure that adds to the others to help ensure that consumers notice, attend to, and understand the major statement by prohibiting the simultaneous presentation of other audio or visual elements, alone or in combination, that are likely to interfere with comprehension of the major statement. This requirement applies only during the limited part of the ad that presents the major statement, placing no restrictions on any other part of the ad. Even during the presentation of the major statement, it does not categorically prohibit other audio or visual elements. In sum, these measures to advance the substantial Government interests in communicating the major side effects and contraindications of a prescription drug advertised to consumers satisfy the framework for analysis described in *Central Hudson* and are consistent with the First Amendment.

FDA has considered and rejects the suggestion in the comments that the Government interests that justify this rule are adequately advanced by the requirement to obtain a prescription from an HCP to access a prescription drug. The comments do not recognize consumers as active participants in their own healthcare, and do not address the Government interest in helping to ensure that consumers are better informed when they participate in healthcare decision making. This Government interest is not completely or sufficiently addressed by the requirement to obtain a prescription or visit an HCP before accessing a prescription drug. Both before and after contact with an HCP, consumers are frequently exposed to DTC TV/radio ads describing the drug's benefits. Requiring that such ads also convey the advertised product's risks better advances the substantial Government interests than reliance on the HCP alone. For example, for a patient already taking a prescribed drug, certain side effects may occur at any time, and presenting information about that drug's risks in DTC ads provides the patient with information about the side effects each time they encounter the ad. Providing this information helps ensure that consumers are better informed about side effects that they may experience in connection with their use of the drug. Furthermore, the assumption in comments that HCPs or “prescription orders” will communicate prescription drug risks to consumers does not dispute that consumers should be informed of those risks. Rather, it

appears to suggest that it is appropriate for a pharmaceutical firm to benefit from advertising its prescription drug's positive attributes directly to consumers while placing the entire burden of informing consumers about that advertised drug's risks on other members of the healthcare system. The First Amendment does not compel us to adopt that policy.

One of the comments also cited *Western States*, in which the Court applied the *Central Hudson* test to evaluate the advertising restriction at issue (535 U.S. 375 at 368–77). In an analysis that broke no “new ground” (id. at 368), the Court explained that, in general, the Government should not restrict the communication of truthful and non-misleading information for the sole purpose of preventing members of the public from making bad decisions with the information (id. at 374). That holding and rationale has no application to this rule, where formatting and presentation requirements help ensure the effective disclosure of information to the public.

Finally, with regard to the mention of prior restraint in the context of the comment on dual modality, we disagree that this rule presents any constitutional infirmity under that analysis. The fundamental concern of the prior restraint doctrine is with Government censorship in advance of publication. See *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 553 (1975). Here, however, neither the dual modality requirement nor any other aspect of this rule requires a firm to seek any permission from FDA before running an ad or otherwise enjoins speech before it occurs, and therefore the regulation does not impose a prior restraint. See, e.g., *Alexander v. United States*, 509 U.S. 544, 549–553 (1993).

M. Role of Healthcare Professional—Comments and FDA Response

(Comment 23) One comment asserted that too much information in the major statement can make it difficult for the audience to comprehend the information and that the role of the prescribing HCP as a learned intermediary is an important consideration in determining the relevancy of risk information to be included in a DTC broadcast ad.

Another comment says that because doctors are responsible for their patient's care and well-being, prescription drug ads should be required to include—“instead of a clear, conspicuous, and neutral statement of effects and contraindications”—a statement “that only a patient's doctor

can fully provide this vital information.”

(Response 23) This rulemaking does not change the content of the major statement, but focuses on the manner of presenting it in DTC TV/radio ads. Further, FDA acknowledges the role of HCPs regarding prescription drugs; however, as discussed in section III.A of this document, that role does not completely address the reasons to require prescription drug firms to communicate risk information about their products in a clear, conspicuous, and neutral manner in DTC TV/radio ads that communicate the benefits of such products.

N. Costs—Comments and FDA Response

(Comment 24) One comment states that the specific dollar estimates to revise any ad with a life cycle extending beyond the compliance date of the final rule were optimistically low and questions how FDA or its industry sources arrived at these estimates. Furthermore, the comment requests that FDA revisit the cost estimates (and publish a more detailed analysis) to make certain that they accurately reflect the costs that firms will incur in bringing their existing campaigns into compliance. As part of addressing costs, the comment requests that FDA consider a longer effective date.

(Response 24) No comments included quantified costs that firms will incur in bringing their existing campaigns into compliance. With regard to the request for an updated estimate of costs, we direct readers to the Regulatory Impact Analysis (Ref. 66), which evaluates the anticipated costs to firms for complying with this rule. In light of concerns regarding costs, FDA has agreed to a compliance date of 365 days after the date of the final rule publication for all ads. (See section VI of this document.)

O. Enforcement—Comments and FDA Response

(Comment 25) One comment suggests that FDA should enforce these standards through civil monetary penalties (CMPs) for misleading DTC advertising, as authorized under 21 U.S.C. 333(g)(1).

(Response 25) Failure to follow this rule will render a drug misbranded under 21 U.S.C. 352(n). The Agency will have all compliance tools associated with its authority available to enforce these provisions; see generally the FD&C Act sections 301 (prohibited acts), 302 (21 U.S.C. 332) (injunction proceedings), and 303 (penalties), including, as applicable, CMPs for false or misleading DTC ads authorized under section 303(g)(1) of the FD&C Act (21 U.S.C. 333(g)(1)).

VI. Effective/Compliance Dates

This rule is effective May 20, 2024. The compliance date is November 20, 2024.

As described in the proposed rule, in accordance with FDAAA, the statutory requirement that the major statement in human prescription drug advertisements presented directly to consumers in television or radio format and stating the name of the drug and its conditions of use be presented in a clear, conspicuous, and neutral manner has been in effect since March 25, 2008 (75 FR 15376 at 15380). In the proposed rule, FDA proposed that the standards in the final rule would become effective 90 days after the publication of the final rule in the **Federal Register**.

(Comment 26) One comment supports the 90-day proposal. Two comments request the earliest possible implementation of the proposed standards. Another comment agrees that 90 days is reasonable for DTC ads that have not already begun production. However, the comment suggests 180 days for ads that are already in production or circulation because it allows time for modifications if required.

(Response 26) Based on comments, FDA agrees that it is appropriate to provide a longer period for implementation than originally proposed. We therefore make the effective date 180 days after publication. Affected firms are encouraged to comply as soon as possible after the effective date. However, we recognize that this rule could impact existing ads, ads in production, and distribution agreements. Accordingly, we now conclude that a compliance date of 365 days after the date of publication of the final rule is appropriate to enable firms to bring all ads subject to this rule into compliance without undue burden. One schedule of 365 days after publication of the final rule for compliance is clearer and easier to administer than having two different schedules depending on where the ad is in production or on other factors. While we did not receive data to support an alternative estimate of costs, given the complexities of distribution agreements and concerns raised with costs, we have also determined that a longer time for implementation is appropriate.

VII. Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 14094, the Regulatory Flexibility Act (5 U.S.C. 601–612), the Congressional

Review Act/Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801, Pub. L. 104–121), 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 final rule is not a significant regulatory action under Executive Order 12866, section 3(f)(1).

Because this rule is likely to result in an annual effect on the economy of \$100 million or more or meets other criteria specified in the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act, OIRA has determined that this rule does fall within the scope of 5 U.S.C. 804(2).

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the estimated costs of compliance in the first year could exceed 1 percent of sales revenues for

the smallest affected entities, we find that the final rule will have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$177 million, using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

Under section 502(n) of the FD&C Act, as amended by section 901(d)(3)(A) of FDAAA, Congress has mandated that the disclosure of the major side effects and contraindications of the advertised product (known as the “major statement”) in human prescription drug ads presented directly to consumers in TV or radio format stating the name of the drug and its conditions of use be presented in a “clear, conspicuous, and neutral manner.” Section 901(d)(3)(B) of FDAAA mandates that FDA issue regulations that establish standards for determining whether a major statement is presented in such a manner. In accordance with this legislation, this final rule requires that the major statement in such ads be presented in a clear, conspicuous, and neutral manner and provides standards for determining whether this is the case.

B. Summary of Costs and Benefits

The costs of this final rule include the cost to read and understand the rule, to

revise a firm’s standard operating procedures, and to revise DTC TV/radio ads during the transition period leading up to the compliance date. These activities and their associated costs will occur during the first year. We also expect there to be modest ongoing costs for industry to review future DTC TV/radio ads to ensure that these ads comply with this final rule and an ongoing opportunity cost related to a potential change in the relative allocation of time within the ad between the presentation of the major statement and the presentation of other content. The total present value of costs over a 10-year time horizon ranges from \$104.8 million to \$331.8 million, with a primary estimate of \$218.3 million, at a 7 percent discount rate; the present value ranges from \$123.8 million to \$393.0 million, with a primary estimate of \$258.4 million, at a 3 percent discount rate. Annualized costs over a 10-year time horizon range from \$14.9 million to \$47.2 million, with a primary estimate of \$31.1 million at a 7 percent discount rate; annualized costs over a 10-year time horizon range from \$14.5 million to \$46.1 million, with a primary estimate of \$30.3 million at a 3 percent discount rate.

The benefits of this final rule stem from and include helping consumers notice, attend to, and understand the major statement in DTC TV/radio ads. The standards in the final rule help to ensure that DTC TV/radio ads convey a truthful and non-misleading net impression about the advertised drug and help ensure that consumers are better informed when they participate in healthcare decisionmaking.

Table 1 summarizes the annualized costs and describes the benefits of this final rule.

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

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized Monetized \$millions/year .....	.....	.....	.....	.....	7	.....	
Annualized Quantified .....	.....	.....	.....	.....	3	.....	
Qualitative	Helping consumers notice, attend to, and understand the major statement in DTC TV/radio ads					.....	
Costs:							
Annualized Monetized \$millions/year	31.1	14.9	47.2	2020	7	10	
Annualized Quantified	30.3	14.5	46.1	2020	3	10	
Qualitative .....	.....	.....	.....	.....	7	.....	
Transfers:	.....	.....	.....	.....	3	.....	

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

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
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.

Small Business: Compliance costs in the first year may exceed 1 percent of revenues for the smallest affected entities.

Wages: None.

Growth: None.

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (docket number FDA–2009–N–0582) (Ref. 66) 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 action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The title, description, and respondent description of the information collection provisions are shown in the following paragraphs with an estimate of the annual third-party disclosure burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Prescription Drug Advertisements.

Description: Under § 202.1, FDA has established requirements for ads for human prescription drug and biological products and ads for animal prescription drugs. The regulations

apply to ads including those published in journals, magazines, other periodicals, and newspapers and those broadcast through media, such as radio, TV, and telephone communication systems. Under § 202.1(e)(1), FDA's regulations describe when a true statement of information in brief summary relating to side effects, contraindications, and effectiveness is required. In this final rule, the Agency amends these regulations. Specifically, under § 202.1(e)(1)(ii), FDA implements section 502(n) as amended, which requires that in human prescription drug advertisements presented directly to consumers in television or radio format and stating the name of the drug and its conditions of use, the major statement relating to side effects and contraindications must be presented in a clear, conspicuous, and neutral manner. The rule also includes standards for determining whether the major statement is presented in a clear, conspicuous, and neutral manner.

General requirements for prescription drug ads to include a true statement of information in brief summary relating to side effects, contraindications, and effectiveness are located in the opening paragraph of § 202.1(e), and specific provisions for prescription drug ads broadcast through media such as radio, TV, or telephone communications systems addressing inclusion of the major statement and adequate provision of the approved labeling are located in § 202.1(e)(1)(i). These provisions were already in effect and approved under OMB control number 0910–0686. The requirements of § 202.1(e)(1), including these existing requirements and new requirements imposed by this final rule in § 202.1(e)(1)(ii)—which address only

the manner of presentation of the major statement in certain ads while retaining the pre-existing content requirements—collectively mandate that ads disclose information to the public and thus are subject to the Paperwork Reduction Act of 1995.

Description of Respondents:

Respondents to the collection of information are manufacturers, packers, and distributors; application holders and their representatives with approved new drug applications (NDAs), abbreviated new drug applications (ANDAs), and biologics licensing applications (BLAs) for human prescription drugs; and those that market prescription drugs for human use without an approved application.

Based on a recent review of data collected via FDA Form 2253 advertisement submissions, we revised our previously estimated burden of this information collection. Specifically, relying on data from calendar year 2020 Form 2253 submissions, we increased the number of corresponding disclosures and recalculated the burden as an increase to the existing burden, using the most recent numbers for that burden estimate, under the approved OMB control number 0910–0686 collection covering the regulations under § 202.1. The collections of information pertaining to FDA Form 2253 (“Transmittal of Advertisements and Promotional Labeling for Drugs and Biologics for Human Use,” located on the FDA website at <https://www.fda.gov/about-fda/reports-manuals-forms/forms>) are approved under OMB control numbers 0910–0001 and 0910–0338.

FDA estimates the burden of the collections of information as follows:

TABLE 2—ESTIMATED BURDEN RESULTING FROM REVISING TV/RADIO ADS TO COMPLY WITH 21 CFR 202.1(e)(1)

21 CFR 202.1—Prescription drug marketing	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Hourly burden per disclosure	Total hours
One-time activities: reading and understanding rule, revising company SOPs, modifying existing ads (if necessary)	57	3	171	2.5	427.5
202.1(e)(1)(ii): Ongoing implementation of revised requirements for future TV and radio ads	57	11.02	628	5	3,140
Total			799		3,567.5

According to this 2020 submission data from the Center for Drug Evaluation and Research (CDER), we estimate 564 DTC TV ads for prescription drugs will be prepared by 37 firms under § 202.1(e)(1)(ii) annually. Likewise, based on data from the Center for Biologics Evaluation and Research (CBER), we estimate that six DTC TV ads will be prepared by three firms annually. Our total estimated number of DTC TV ads under § 202.1(e)(1)(ii), then, is 570. Based on our experience with reviewing DTC TV ads, we believe an expenditure of approximately 5 hours per disclosure should be sufficient to ensure that the major statement in DTC TV ads is presented in a clear, conspicuous, and neutral manner in accordance with the requirements of this final rule.

Also based on data from CDER, we estimate 56 DTC radio ads for prescription drugs will be prepared by 16 firms under § 202.1(e)(1)(ii) annually. Based on data from CBER, we estimate two DTC radio ads will be prepared by one firm annually. The total estimated number of DTC radio ads subject to disclosures under § 202.1(e)(1)(ii), then, is 58. Based on our experience reviewing DTC radio ads, we believe an expenditure of approximately 5 hours per disclosure should satisfy the requirements in § 202.1(e)(1)(ii).

In sum, as shown in table 2, FDA estimates that, annually, 57 respondents will submit DTC TV or radio ads, resulting in 628 disclosures. FDA estimates 5 hours per disclosure will satisfy the requirements, resulting in an estimated annual expenditure of 3,140 hours. In addition, as noted in the table, FDA estimates that, for those 57 respondents, there will be a one-time burden of 427.5 hours.

The information collection provisions in this final rule have been submitted to OMB for review as required by section 3507(d) of the Paperwork Reduction Act of 1995.

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

may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

X. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the 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 rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive order and, consequently, a tribal summary impact statement is not required.

XII. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at <https://www.regulations.gov>. References without asterisks are not on public display at <https://www.regulations.gov>

because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

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List of Subjects in 21 CFR Part 202

Advertising, Prescription drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 202 is amended as follows:

PART 202—PRESCRIPTION DRUG ADVERTISING

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 352, 355, 360b, 371.

■ 2. In § 202.1, add introductory text and revise paragraph (e)(1) to read as follows:

§ 202.1 Prescription-drug advertisements.

Prescription drug as used in this section means any drug defined in section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act or § 201.105 of this chapter, applicable to drugs intended for use by humans and to veterinary drugs, respectively.

* * * * *

(e) * * *

- (1) *When required.* All advertisements for any prescription drug, except advertisements described in paragraph (e)(2) of this section, must present a true statement of information in brief summary relating to side effects, contraindications (when used in this section, “side effects, contraindications” include side effects, warnings, precautions, and contraindications and include any such information under such headings as cautions, special considerations, important notes, etc.), and effectiveness.
- (i) *Broadcast advertisements.* Advertisements broadcast through media such as radio, television, or telephone communications systems must:
- (A) Include information relating to the major side effects and contraindications (“major statement”) of the advertised drugs in the audio or audio and visual parts of the presentation, unless required by paragraph (e)(1)(ii)(C) of this section to present the major statement using audio and text; and
- (B) Contain a brief summary of all necessary information related to side effects and contraindications, unless adequate provision is made for dissemination of the approved or permitted product labeling in connection with the broadcast presentation.
- (ii) *Human drug advertisements in television or radio format—Clear, conspicuous, and neutral manner.* For advertisements for prescription drugs intended for use by humans presented directly to consumers in television or radio format, the major statement must be presented in a clear, conspicuous, and neutral manner. The major statement is presented in a clear, conspicuous, and neutral manner if the following are met:
- (A) It is presented in consumer-friendly language and terminology that is readily understandable.

- (B) Its audio information, in terms of the volume, articulation, and pacing used, is at least as understandable as the audio information presented in the rest of the advertisement.
- (C) In advertisements in television format, it is presented concurrently using both audio and text (dual modality). To achieve dual modality:
- (1) Either the text displays the verbatim key terms or phrases from the corresponding audio, or the text displays the verbatim complete transcript of the corresponding audio; and
 - (2) The text is displayed for a sufficient duration to allow it to be read easily. For purposes of the standard in this paragraph (e)(1)(ii)(C)(2), the duration is considered sufficient if the text display begins at the same time and ends at approximately the same time as the corresponding audio.
- (D) In advertisements in television format, for the text portion of the major statement, the size and style of font, the contrast with the background, and the placement on the screen allow the information to be read easily.
- (E) During the presentation of the major statement, the advertisement does not include audio or visual elements, alone or in combination, that are likely to interfere with comprehension of the major statement.

* * * *

Dated: November 8, 2023.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2023-25428 Filed 11-20-23; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[TD 9982]

RIN 1545-BQ26

User Fees Relating to Enrolled Actuaries; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains a correction to Treasury Decision 9982, which was published in the **Federal Register** for Friday, October 20, 2023. Treasury Decision 9982 issued final

regulations amending existing regulations relating to user fees for enrolled actuaries.

DATES: This correction is effective on November 21, 2023.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Lee at (202) 317-6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9982) that are the subject of this correction are under 26 CFR part 300—User Fees.

Corrections to Publication

Accordingly, the final regulations (TD 9982) that are the subject of FR Doc 2023-23301, published on October 20, 2023, are corrected on page 72370, in the first column, in the second line under the heading “List of Subjects in 26 CFR Part 300” by removing “Use fees” and adding “User fees” in its place.

Oluwafunmilayo A. Taylor,

Section Chief, Publications & Regulations Section, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2023-25438 Filed 11-20-23; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 13G, 74, 75, and 76.

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury’s Office of Foreign Assets Control (OFAC) is publishing four general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GLs 13G, 74, 75, and 76, each of which were previously made available on OFAC’s website.

DATES: GLs 13G, 74, 75, and 76 were issued on November 2, 2023. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC’s website: <https://ofac.treasury.gov>.

Background

On November 2, 2023, OFAC issued GLs 13G, 74, 75, and 76 to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. Each GL was made available on OFAC’s website (<https://ofac.treasury.gov>) when it was issued and has an expiration date of January 31, 2024. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 13G

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

(a) Except as provided in paragraph (b) of this general license, U.S. persons, or entities owned or controlled, directly or indirectly, by a U.S. person, are authorized to pay taxes, fees, or import duties, and purchase or receive permits, licenses, registrations, certifications, or tax refunds to the extent such transactions are prohibited by Directive 4 under Executive Order 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation*, provided such transactions are ordinarily incident and necessary to the day-to-day operations in the Russian Federation of such U.S. persons or entities, through 12:01 a.m. eastern standard time, January 31, 2024.

(b) This general license does not authorize:

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

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

(c) Effective November 2, 2023, General License No. 13F, dated August

10, 2023, is replaced and superseded in its entirety by this General License No. 13G.

Bradley T. Smith,
Director, Office of Foreign Assets Control.
Dated: November 2, 2023.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 74

Authorizing the Wind Down and Rejection of Transactions Involving East-West United Bank

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the wind down of transactions involving East-West United Bank, or any entity in which East-West United Bank owns, directly or indirectly, a 50 percent or greater interest, are authorized through 12:01 a.m. eastern standard time, January 31, 2024, provided that any payment to a blocked person is made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR).

(b) Except as provided in paragraph (c) of this general license, U.S. persons are authorized to reject, rather than block, and return to the originator or originating financial institution or their successor-in-interest, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to the processing of funds involving East-West United Bank, or any entity in which East-West United Bank owns, directly or indirectly, a 50 percent or greater interest, as an originating, intermediary, or beneficiary financial institution, through 12:01 a.m. eastern standard time, January 31, 2024.

(c) This general license does not authorize:

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

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

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other

than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Bradley T. Smith,
Director, Office of Foreign Assets Control.
Dated: November 2, 2023.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 75

Authorizing Certain Transactions Related to Debt or Equity of, or Derivative Contracts Involving, Certain Entities Blocked on November 2, 2023

(a) Except as provided in paragraphs (d) and (e) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the divestment or transfer, or the facilitation of the divestment or transfer, of debt or equity of the following blocked entities (“Covered Debt or Equity”) to a non-U.S. person are authorized through 12:01 a.m. eastern standard time, January 31, 2024:

(1) Sistema Public Joint Stock Financial Corporation;

(2) East-West United Bank;

(3) Limited Liability Company Arctic LNG 2; or

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

(b) Except as provided in paragraph (e) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of Covered Debt or Equity that were placed prior to 4:00 p.m. eastern daylight time, November 2, 2023 are authorized through 12:01 a.m. eastern standard time, January 31, 2024.

(c) Except as provided in paragraph (e) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to 4:00 p.m. eastern standard time, November 2, 2023 that (i) include a blocked person described in paragraph (a) of this general license as a counterparty or (ii) are linked to Covered Debt or Equity are authorized through 12:01 a.m. eastern standard time, January 31, 2024, provided that any payments to a blocked person are made into a blocked account in accordance with the Russian Harmful

Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR).

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

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

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

(e) This general license does not authorize:

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

(2) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation*; or

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

Bradley T. Smith,
Director, Office of Foreign Assets Control.
Dated: November 2, 2023.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 76

Authorizing the Wind Down of Transactions Involving Certain Entities Blocked on November 2, 2023

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the wind down of any transaction involving one or more of the following blocked entities (collectively, the “Blocked Entities”) are authorized through 12:01 a.m. eastern standard time, January 31, 2024, provided that any payment to a Blocked Entity is made into a blocked account in accordance with the Russian Harmful

Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR):

- (1) Sistema Public Joint Stock Financial Corporation;
- (2) Saint Petersburg Stock Exchange;
- (3) Limited Liability Company Arctic LNG 2; or
- (4) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(b) This general license does not authorize:

- (1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions*;
- (2) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation*; or
- (3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the Blocked Entities described in paragraph (a) of this general license, unless separately authorized.

Bradley T. Smith,
Director, Office of Foreign Assets Control.

Dated: November 2, 2023.

Bradley T. Smith,
Director, Office of Foreign Assets Control.

[FR Doc. 2023-25642 Filed 11-20-23; 8:45 am]

BILLING CODE 4810-AL-P

POSTAL SERVICE

39 CFR Part 20

International Competitive Services Price Changes

AGENCY: Postal Service™.

ACTION: Final action.

SUMMARY: The Postal Service is revising Notice 123, *Price List*, to reflect the price changes to Competitive Services as established by the Governors of the United States Postal Service.

DATES: The revisions to Notice 123 are effective January 21, 2024.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy at 202-268-6592 or Kathy Frigo at 202-268-4178.

SUPPLEMENTARY INFORMATION: This final action describes new prices established by the Governors of the United States

Postal Service and submitted for review by the Postal Regulatory Commission in Docket Number CP2024-52 (see <https://prc.gov>).

This final action describes the international price changes for the following international competitive services:

- Global Express Guaranteed®.
- Priority Mail Express International®.
- Priority Mail International® (PMI).
- First-Class Package International Service.
- International Priority Airmail®.
- International Surface Air Lift®.
- Direct Sacks of Printed Matter to One Addressee (Airmail M-Bag®).
- The following competitive international extra services and fees:
 - International Insurance.
 - Certificate of Mailing.
 - International Registered Mail.
 - International Return Receipt.
 - Customs Clearance and Delivery Fee.

For pricing, see the Postal Explorer website at <https://pe.usps.com>.

Global Express Guaranteed

Global Express Guaranteed (GXG) service provides fast international shipping, with international transportation and delivery provided through an alliance with FedEx Express®. The price increase for GXG service averages 5.4 percent.

The Postal Service provides Commercial Base® pricing to online customers who prepare and pay for GXG shipments via USPS-approved payment methods (other than Click-N-Ship® service), with a discount below the published retail prices for GXG service. Customers who prepare GXG shipments via Click-N-Ship service will continue to pay retail prices. Commercial Plus® prices are set to match the Commercial Base prices.

Priority Mail Express International

Priority Mail Express International (PMEI) service provides fast service to approximately 180 countries in 3–5 business days for many major markets, although the actual number of days may vary based upon origin, destination, and customs delays. PMEI with Money-Back Guarantee service is available for certain destinations. (Due to COVID-19 service impacts, PMEI with Money-Back Guarantee service has been suspended for several destinations until further notice. For more information, see the USPS Service Updates page on www.usps.com.) The price increase for PMEI service averages 5.4 percent. The Commercial Base price provides a discount below the published retail

prices for customers who prepare and pay for PMEI shipments via permit imprint, online at USPS.com®, or as registered end-users using an authorized PC Postage vendor (with the exception of Click-N-Ship service). Customers who prepare PMEI shipments via Click-N-Ship service pay retail prices. Commercial Plus will be equivalent to Commercial Base; however, deeper discounting may still be available to customers through negotiated service agreements.

The Postal Service will continue to include PMEI service in customized contracts offered to customers who meet certain revenue thresholds and are willing to commit a larger amount of revenue to the USPS® for PMEI service and PMI service.

PMEI flat rate pricing continues to be available for Flat Rate Envelopes.

Priority Mail International

Priority Mail International (PMI) is an economical way to send merchandise and documents to approximately 180 countries in 6–10 business days for many major markets, although the actual number of days may vary based upon origin, destination, and customs delays. The price increase for PMI service averages 5.4 percent. The Commercial Base price provides a discount below the published retail prices for customers who prepare and pay for PMI items via permit imprint, online at USPS.com, or as registered end-users using an authorized PC Postage vendor (with the exception of Click-N-Ship). Customers who prepare PMI shipments via Click-N-Ship pay retail prices. Commercial Plus prices will be equivalent to Commercial Base; however, deeper discounting may still be made available to customers through negotiated service agreements.

The Postal Service will continue to include PMI service in customized contracts offered to customers who meet certain revenue thresholds and are willing to commit to a larger amount of revenue to the USPS for PMEI and PMI.

PMI flat rate pricing continues to be available for Flat Rate Envelopes, Small Flat Rate Boxes, and Medium and Large Flat Rate Boxes.

First-Class Package International Service

First-Class Package International Service (FCPIS) is an economical international service for small packages not exceeding 4 pounds in weight and \$400 in value. The price increase for FCPIS averages 6.4 percent. The Commercial Base price provides a discount below the published retail prices for customers who prepare and

pay for FCPIS items via permit imprint or by USPS-approved online payment methods. Customers who prepare FCPIS shipments via Click-N-Ship service pay retail prices. Commercial Plus prices will be equivalent to Commercial Base; however, deeper discounting will be made available to customer through negotiated service agreements.

Electronic USPS Delivery Confirmation International service (E-USPS DELCON INTL®) is a tracking service available at no charge for FCPIS items to select destination countries.

International Priority Airmail and International Surface Air Lift

International Priority Airmail (IPA) service, including IPA M-bags, is a commercial service designed for volume mailings of all First-Class Mail International postcards, letters, and large envelopes (flats), and for volume mailings of FCPIS packages (small packets) weighing up to a maximum of 4.4 pounds. IPA shipments are typically flown to foreign destinations (exceptions apply to Canada) and are then entered into that country's air or surface priority mail system for delivery. The price increase for IPA is 5.5 percent. International Surface Airlift (ISAL) is like IPA except that once flown to the foreign destination, ISAL is entered into that country's air or surface nonpriority mail system for delivery. The price increase for ISAL is 3.5 percent.

Direct Sacks of Printed Matter to One Addressee (Airmail M-Bags)

An Airmail M-bag is a direct sack of printed matter sent to a single foreign addressee at a single address. Prices are based on the weight of the sack. The price increase for Airmail M-bag service averages 5.4 percent.

International Extra Services and Fees

Depending on country destination and mail type, customers may add a variety of extra services to their outbound shipments and pay a variety of fees. The Postal Service proposes to increase fees for certain competitive international extra services as follows:

- **GXG insurance:** There is no charge for GXG insurance for coverage up to \$100. The fee for GXG insurance will increase by \$2.50 for each additional \$100 or fraction over \$100, up to a maximum indemnity of \$2,499 per shipment (the maximum indemnity varies by country).

GXG insurance	Fee
Up to \$100	\$0.00
Each additional \$100 or fraction over \$100	2.50

Maximum insurance \$2,499 (varies by country).

- **PMEI and PMI merchandise insurance:** There is no charge for PMEI and PMI merchandise insurance coverage up to \$200. The fee for PMEI and PMI merchandise insurance will increase by \$3.50 for each additional \$100 or fraction over \$300 as set forth in the table below, up to a maximum indemnity of \$5,000 (the maximum indemnity varies by country).

Indemnity limit not over	Fee
Up to \$200	\$0.00
\$200.01–\$300.00	13.15
\$300.01–\$400.00	16.65
\$400.01–\$500.00	20.15
\$500.01–\$600.00	23.65
\$600.01–\$700.00	27.15
\$700.01–\$800.00	30.65
\$800.01–\$900.00	34.15

\$34.15 plus \$3.50 per \$100 or fraction thereof over \$900 in declared value. Maximum insurance \$5,000 (varies by country).

- **Certificate of mailing service:** Prices for competitive international certificate of mailing service will be as follows:

CERTIFICATE OF MAILING

	Fee
Individual pieces	
Individual article (PS Form 3817)	\$2.00
Duplicate copy of PS Form 3817 or PS Form 3665 (per page)	2.00
Firm mailing sheet (PS Form 3665), per piece (minimum 3), All other qualifying classes of mail	0.58
Bulk quantities	
For first 1,000 pieces (or fraction thereof)	11.10
Each additional 1,000 pieces (or fraction thereof)	1.45
Duplicate copy of PS Form 3606	2.00

- **International Registered Mail service:** The fee for competitive international registered mail will increase to \$20.75.

- **International return receipt service:** The fee for competitive international return receipt service will increase to \$5.80.

- **Customs clearance and delivery fee:** The competitive customs clearance and delivery fee per dutiable item will increase to \$8.55.

Sarah Sullivan,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–25654 Filed 11–20–23; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 423

[Docket No. BOR–2022–0001; RR83570000, 24XR0680A4, RX.19520003.9WOD502]

RIN 1006–AA58

Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: We, the Bureau of Reclamation (Reclamation), are revising regulations that govern public access to and conduct on Reclamation facilities, lands, and waterbodies. The revisions clarify the regulations that maintain law and order and protect persons and property on Reclamation facilities, lands, and waterbodies while bringing the rulemaking into compliance with updated laws and regulations.

DATES: This rulemaking is effective December 21, 2023.

ADDRESSES: This final rule is available on the internet at <https://www.regulations.gov> and <https://www.usbr.gov/fedreg/rules>. Comments we received are available for public inspection at <https://www.regulations.gov> in Docket ID: BOR–2022–0001.

FOR FURTHER INFORMATION CONTACT: James Bingham, Security Division, Bureau of Reclamation, at (303) 445–2239, or via email at jbingham@usbr.gov. 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.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 2001, Congress enacted Public Law 107–69, which provides for law enforcement authority within Reclamation projects and on Reclamation lands. Section 1(a) of this law requires the Secretary of the Interior to “issue regulations necessary to maintain law and order and protect persons and property within Reclamation projects and on Reclamation lands.” The Secretary of the Interior delegated this authority to the Commissioner of Reclamation.

On December 11, 2008, after a few minor revisions, Reclamation published an update to 43 CFR part 423, Public Conduct on Bureau of Reclamation

Facilities, Lands and Waterbodies, as the final rule (73 FR 75347).

Since the publication of the 2008 final rule, technology, especially of unmanned or uncrewed aircraft systems (UAS) commonly referred to as “drones,” has developed rapidly. With this technology came new regulations from the Federal Aviation Administration (FAA), specifically regarding the use of UAS (14 CFR part 107, Small Unmanned Aircraft Systems). Reclamation is revising 43 CFR part 423 to apply consistency with the FAA’s regulations. Reclamation is also modernizing and updating regulations impacting firearms possession, and access and occupancy of Reclamation facilities, lands, and waterbodies. This will allow local, State, and other recreation partners to manage their facilities and sites using their regulations unburdened by conflicting Federal regulations that they have no jurisdiction to enforce. And finally, Reclamation is easing the absolute prohibition regarding reburials of Native American ancestors and will allow an application process to obtain permits for this activity.

Summary of and Response to Public Comments

Reclamation published a proposed rule in the **Federal Register** on February 16, 2023 (88 FR 10070) soliciting public comments for a 60-day period. The public comment period ended on April 17, 2023. During the public comment period, Reclamation received 14 comment submissions from members of the public including State park managers, aviation enthusiasts, wildlife observers, hikers, and Native American Tribes. Each public comment received consideration in the development of the final rule.

Comments similar in nature have been categorized by subject, and in some instances have been combined with related comments. The following discussion addresses substantive information provided during the comment period, by topic, and includes comments and responses that were made in the final rule based on comment analysis and other considerations.

Comment: The Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California, the Ak-Chin Indian Community, the Confederated Tribes of the Umatilla Indian Reservation, and The Osage Nation provided comments in support of allowing reburial of Native American ancestors, funerary objects, sacred objects, and objects of cultural patrimony as defined by the Native

American Graves Protection and Repatriation Act (NAGPRA). Additionally, the Confederated Tribes of the Umatilla Indian Reservation requested addressing animal remains and human burials separately, as well as requesting reburial of ancestral human remains and NAGPRA cultural items that originated on lands other than Reclamation managed lands.

Response: Reclamation appreciates Tribal support for implementing a permit process to allow reburial of ancestral human remains and NAGPRA cultural items on Reclamation land and will implement the process as expeditiously and simply as practicable. We agree with the Confederated Tribes of the Umatilla Indian Reservation to address animal remains and human burials separately and have made changes to the final rule accordingly. However, we did not implement the suggestion to allow reburial of Native American ancestors and NAGPRA cultural items from lands managed by agencies other than Reclamation as other agencies may have their own reburial implementation processes and/or authorities.

Comment: We received two comments regarding a suggested prohibition on the use of speakers and short-range wireless technology (e.g., Bluetooth®) over a concern for wildlife and the enjoyment of our lands by the public.

Response: We considered this comment and feel the issue of unreasonable noise is already addressed in 43 CFR 423.22(e)(3). This section of the rule prohibits unreasonable noise. In addition, many sites are operated by managing recreation partners such as a State park; their rules for noise would apply. Trying to regulate all speakers and Bluetooth® technology would be burdensome and impractical to enforce.

Comment: We received several comments regarding our proposed revision to 43 CFR 423.35, specifically involving the restraining of animals when at a Reclamation facility. One commentator suggested we should focus on education with the public and add prohibitions regarding animals chasing wildlife and that animals must be vaccinated. Two State park management officials commented that they already have rules in their parks regarding animals being restrained, and that their rules are more restrictive.

Response: We recognize that our managing partners have different regulations regarding the restraining and control of animals and pets. After consideration of these comments, we are removing this proposed revision. Under 43 CFR part 423, subpart E, authorized officials may establish special use areas

which can prohibit certain activities if they pose a risk to the public. If a particular Reclamation facility needs specific prohibitions for a certain activity, such as restraining animals, subpart E can be used for that purpose.

Comment: We received one comment asking where Reclamation retains the authority to issue 43 CFR part 423, specifically as it relates to aircraft.

Response: Public Law 107–69 states in pertinent part, “The Secretary of the Interior shall issue regulations necessary to maintain law and order and protect persons and property within Reclamation projects and on Reclamation lands.” This is the authority from the U.S. Congress to promulgate this rule. Since 2006, Reclamation’s public conduct rules have addressed aircraft to include reckless operations and seaplane activities. Reclamation regularly collaborates with the FAA on a variety of matters, including enforcement. Reclamation collaborated with the FAA on the development of their flight restrictions at Reclamation’s five largest dams. The risk from inadvertent accidents or maligned attacks on our infrastructure is real. Having aircraft or UAS flying at ground level through a recreation area or across the top of a dam crowded with tourists poses a risk to the visiting public. Using FAA’s regulations as a guide, we incorporated their definitions and language into this rule.

Comment: We received one comment recommending the prohibition of all motorized use on lands and waters. The comment referenced people in Europe and Ukraine not having enough fuel while Americans are using fossil fuels for recreation.

Response: In hundreds of circumstances across the west, public highways and even railroads cross Reclamation lands and facilities. Reclamation would be unable to prohibit the use of fossil fuels on our own. Reclamation has hundreds of sites managed by other entities, such as State parks, through contracts or agreements, and other sites managed directly by Reclamation. States, not Reclamation, regulate boating and motor vehicle use. Reclamation and our managing partners such as municipal water districts, Tribal water authorities, and State parks, operate thousands of motor vehicles and boats in the performance of our missions. Our facilities use combustion engines for generators, cranes, tractors, and water delivery systems to accomplish our mission. And finally, many of our facilities, lands, waterbodies, and projects are spread across multiple states. Regulating

commerce between the States is the purview of the Congress.

Comment: We received one comment asking for permission to use metal detectors for the casual collection of items such as fishing lures, weights, and coins.

Response: Reclamation already allows for use and possession of metal detectors under 43 CFR 423.29(f) with the issuance of a permit.

Comment: We received one comment asking if we were giving the “all-clear for unrestricted recreational activity on land use.” In addition, the commentor stated this rule did not explicitly set aside lands to be undisturbed by recreation activity. There was also the perception we were removing restrictions or standoff distances from dams and other infrastructure.

Response: Section 423.10 states in pertinent part that all Reclamation facilities, lands, and waterbodies are open to lawful use by the public unless they are closed to public use under subpart B of part 423, or as provided by 43 CFR part 420. Section 420.2 prohibits off-road vehicle use unless the area is specifically designated for that purpose. Reclamation has 11 National Wildlife Refuges and numerous other State wildlife management areas overlaid across our lands, projects, and reservoirs. This rule change will not change the status of these locations. There may be areas that will be periodically closed to all use due to an identified threat to the environment or wildlife using our existing authorities.

This rule change does not remove the restrictions for access to critical infrastructure. We are revising this rule to allow local managers to designate standoff distances using signs, fencing, buoys, and other means where not already addressed in this rule.

Comment: We received a comment from one respondent regarding firearms safety, specifically that firearms be unloaded unless they are in use for hunting and/or self-defense purposes. In addition, the respondent recommended signage be posted in parks and at trailheads advising the public where firearms are allowed, dates for hunting seasons, and suicide prevention hotline numbers.

Response: Reclamation has 247 managing recreation partner sites across the 17 western States. Those partner agencies with management responsibility for the area administer recreation at those sites. This includes signs at trailheads, parking lots, and other public areas. State wildlife authorities manage hunting on Reclamation land. Our rule currently requires the public to comply with

Federal, State, and local laws regarding firearms possession and transportation. Since Reclamation does not have its own law enforcement capability, we depend on our managing partners and local law enforcement to maintain the peace and public order at our facilities and the lands and waters they manage. The suicide prevention signage recommendation has merit and is being referred to our lands and recreation programs.

Comment: We received one comment from a State park management official expressing concern that the proposed revision in 43 CFR 423.30 regarding enforcement of this rule would be the responsibility of park managers.

Response: We are adopting the definition of firearm found in 18 U.S.C. 921(a)(3). We recognize our definition may differ from that of our numerous managing partners. We also recognize that State and local laws and ordinances regarding firearm use and possession may differ from what is found between the States and even at individual sites. Since Reclamation does not have its own law enforcement capability, we depend on local and State law enforcement entities to maintain the peace and public order in their communities. Therefore, we are proposing to let those authorities such as State park managers and sheriffs enforce their laws and ordinances on lands, facilities, and waterbodies where they have assumed administration without the circumstance of them being in conflict with this rule. Taking this park management official's concerns into consideration, we are clarifying the language to more clearly explain that the public must follow the laws and ordinances of the managing recreation partner.

Comment: There was a concern that park managers may not have the flexibility to issue use authorizations or permits for certain aviation related activities such as a hot air balloon rally.

Response: How Reclamation interacts with our managing partners is different than how we interact with the general public. Interactions with our managing partners through contracts and cooperative agreements are guided by the contract between Reclamation and the partner, 43 CFR part 429, and other applicable laws. Under 43 CFR 429.4, managing partners can issue limited use authorizations for certain activities, including aviation activities.

Comment: We received one comment from a State park management official asking us to consider adding “rent” as a prohibited activity in 43 CFR 423.27.

Response: We agree with this comment and will add “rent” as a prohibited activity in 43 CFR 423.27.

Comment: We received one comment from a State park management official expressing concern over the language in 43 CFR 423.37, “Winter activities,” regarding vehicle use near our infrastructure, specifically the prohibition for driving a vehicle within 100 yards of a facility.

Response: We recognize that our southern and western waterbodies are in areas that do not freeze and we did not explain our intent for managing standoff distances on iced-over waterbodies very well. We took this comment into consideration and will change the heading of this section from “Winter activities” to “Activities on iced waterbodies.”

Comment: We received one comment from a State park management official expressing concern that our proposed definition of off-road vehicles would cause confusion for the public and managing partners and suggested removing the definition.

Response: We considered this comment but will leave the definition in the rule to be consistent with what exists in 43 CFR part 420.

Comment: We received comments from two State park management officials in support of the proposed revisions in 43 CFR 423.33 and 423.21(f) regarding camping and stay limits, and requirements for the visiting public to pay applicable fees for recreation activities.

Response: We appreciate these comments and value the relationship that exists with our Federal, State, and local recreation and wildlife management partners across our 17 western states.

Summary of Changes From the Proposed Rule

After taking the public comments into consideration and after additional review, Reclamation implemented some requested changes, such as refining the NAGPRA reburial language and separating the animal burials and human burials into different sections of this final rule. Additionally, we removed the requirement for restraining animals, changed the heading of 43 CFR 423.37 to better address activities on iced-over or frozen waterbodies, revised the definition of *aircraft* for simplicity and consistency with the FAA, revised the definition of firearms to be consistent with what is codified in Federal law, and added a requirement that visitors must pay required fees in our recreation areas.

Section 423.2 Definitions of terms used in this part. During the drafting of the proposed rule, it was discovered that the definition of model aircraft had been removed from the FAA definitions. We are removing the definition of *model aircraft* and incorporating “model aircraft” into the overall definition of aircraft.

Section 423.27 Advertising and public solicitation. We are adding the word “rent” next to “sell” as a prohibited activity.

Section 423.28 Memorials and Native American Graves Protection and Repatriation Act (NAGPRA) reburials. After reviewing comments regarding the burial of animal and human remains, we are separating animals and humans into subparts and revising the heading of this section.

Section 423.30 Weapons, firearms, explosives, and fireworks. We are adding language similar to what already exists in 43 CFR 423.3(d) regarding firearms which states: “. . . However, Reclamation retains the authority to take necessary actions to safeguard the security and safety of the public and such Reclamation facilities, lands, and waterbodies.”

Section 423.33 Camping. Like § 423.30, we are adding language similar to what already exists in 43 CFR 423.3(d) which states: “. . . However, Reclamation retains the authority to take necessary actions to safeguard the security and safety of the public and such Reclamation facilities, lands, and waterbodies.”

Section 423.35 Animals. As a result of public comments, we are removing the reference to a leash or restraint requirement for animals. This does not preclude an authorized officer from establishing a special use area as identified in 43 CFR part 423, subpart E, for certain activities, such as managing animals in highly populated tourist areas. In addition, we are adding § 423.35(e) to include information on animal remains.

Section 423.37 Winter activities. Through comments and internal discussion, we felt the heading “Winter activities” is not appropriate for the circumstances we are trying to address, which occur on ice. Therefore, we are changing the heading of this section to “Activities on iced waterbodies.”

Compliance With Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866, as amended by Executive Order 14094, provides that

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

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

Regulatory Flexibility Act

This rule will not have a significant regulatory effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Congressional Review Act

When is a rule major? The Congressional Review Act (CRA) defines a rule as major if it meets any of three criteria. The three criteria are:

(a) Does the rule have an annual effect on the economy of \$100 million or more?

(b) Will the rule cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions?

(c) Does the rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises?

This rule is not a major rule under the CRA.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing information required by the Unfunded Mandates

Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. This rule is not a Government action capable of interfering with constitutionally protected property rights. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

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

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

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

Consultation With Indian Tribes (Executive Order 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department of the Interior’s consultation policy and under the criteria in Executive Order 13175 and although there are no substantial direct effects on federally recognized Indian Tribes, Reclamation notified the 287 Tribes with interests in the 17 western States in which Reclamation has a presence of the intent to revise the rule, offering opportunity for Tribal consultation during three online consultation webinars, as well as upon request. Reclamation has fully considered Tribal views in this final rule, implementing recommendations offered by the Confederated Tribes of

the Umatilla Indian Reservation. With the unique relationship between the Federal Government and Indian Tribal governments, Reclamation aims to ensure Tribal governments are engaged, particularly, in the discussion about permitting for reburial of their ancestors and NAGPRA cultural items on Reclamation managed lands.

Paperwork Reduction Act of 1995

This rule does not contain information collection requirements and does not require a submission to the Office of Management and Budget under the Paperwork Reduction Act.

National Environmental Policy Act

This rule is categorically excluded from National Environmental Policy Act of 1969 (NEPA) analysis under Department of the Interior categorical exclusion 43 CFR 46.210(i), which covers “Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively, or case-by-case.” This rule does not change the existing allowances regarding public access to and conduct on Reclamation facilities, lands, and waterbodies except in instances where additional permits may be needed that could be subject to NEPA. Pursuant to 43 CFR 46.205(c), Reclamation has reviewed its reliance upon this categorical exclusion against the list of extraordinary circumstances at 43 CFR 46.215 and has found that none are applicable for this rule. Therefore, neither an environmental assessment nor an environmental impact statement is required for this rulemaking.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211 and does not require a Statement of Energy Effects.

List of Subjects in 43 CFR Part 423

Law enforcement, Public conduct, Reclamation lands, Reclamation projects.

Promulgation of Final Rule

For the reasons stated in the preamble, Reclamation is amending part 423 of title 43 of the CFR as follows:

PART 423—PUBLIC CONDUCT ON BUREAU OF RECLAMATION FACILITIES, LANDS AND WATERBODIES

- 1. Revise the authority citation for part 423 to read as follows:

Authority: 43 U.S.C. 373a and 373b.

- 2. Amend § 423.2 by:
 - a. Revising the definitions of “Aircraft” and “Firearm”; and
 - b. In the definition of “Off-road vehicle”:
 - i. Removing the word “and” at the end of paragraph (6);
 - ii. Removing the period at the end of paragraph (7) and adding “; and” in its place; and
 - iii. Adding paragraph (8).

The revisions and addition read as follows:

§ 423.2 Definitions of terms used in this part.

Aircraft means a device that is:

- (1) Used or intended to be used for flight in the air;
- (2) Capable of carrying a pilot, a payload, and/or passengers;
- (3) Controlled either by onboard crew or remotely; and/or
- (4) Identified by the Federal Aviation Administration as: general aviation aircraft, bush planes, seaplanes, float planes, ski planes, gliders, and helicopters, including those that are float/ski-equipped, variations of model aircraft, and unmanned or uncrewed aircraft systems.

* * * * *

Firearm means:

- (1) Any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive;
- (2) The frame or receiver of any such weapon; and
- (3) Any firearm muffler or firearm silencer.

* * * * *

Off-road vehicle * * *

- (8) *Electric bikes* as defined and codified at 43 CFR part 420.

* * * * *

- 3. Amend § 423.21 by adding paragraph (f) to read as follows:

§ 423.21 Responsibilities.

* * * * *

- (f) You must pay applicable fees established by Federal, State, or local government recreation management entities, or contracted vendors for activities on Reclamation facilities, lands, and waterbodies such as, but not limited to, camping, boating, parking, day-use, or visitor tours.

- 4. Revise § 423.27 to read as follows:

§ 423.27 Advertising and public solicitation.

(a) You must not engage in advertising or solicitation on Reclamation facilities, lands, or waterbodies except as allowed under valid contract with Reclamation, or as allowed by a permit issued pursuant to subpart D of this part.

(b) It is prohibited to sell or rent private goods, including personal property, or represent others in the selling or renting of personal property, on Reclamation property unless specifically authorized under permit issued pursuant to subpart D of this part.

- 5. Revise § 423.28 to read as follows:

§ 423.28 Memorials and reburials.

(a) *Memorials.* You must not bury, deposit, or scatter human remains (except as noted in paragraph (b) of this section), or place memorials, markers, vases, or plaques on or in Reclamation facilities, lands, or waterbodies. See § 423.35 for information on animal remains.

(b) *Native American Graves Protection and Repatriation Act (NAGPRA) reburials.* You must not rebury human remains on or in Reclamation facilities, lands, or waterbodies unless permitted under subpart D of this part. An Indian Tribe official or the lineal descendants of federally recognized Tribes may apply for a permit issued pursuant to subpart D of this part to rebury NAGPRA (25 U.S.C. 3001–3013) human remains or cultural items (funerary objects, sacred objects, or objects of cultural patrimony) on or in Reclamation facilities, lands, or waterbodies.

- 6. Amend § 423.30 by adding paragraph (d) to read as follows:

§ 423.30 Weapons, firearms, explosives, and fireworks.

* * * * *

(d) In recreation facilities or areas operated through contracts or other agreements by a managing recreation partner agency from another Federal, State, local, or Tribal governmental entity, such as a State park, the laws, ordinances, and regulations of those partner agencies pertaining to possession and use of firearms shall be enforced by those partner agencies. However, Reclamation retains the authority to take necessary actions to safeguard the security and safety of the public and such Reclamation facilities, lands, and waterbodies.

- 7. Amend § 423.33 by:

- a. Revising paragraph (b);
- b. Removing the semicolon at the end of paragraph (c) and adding a period in its place;

- c. Removing “; and” at the end of paragraph (d) and adding a period in its place; and
- d. Adding paragraph (f) to read as follows:

§ 423.33 Camping.

* * * * *

(b) Camping stay limits are as follows:

(1) You must not camp on Reclamation lands at any single Reclamation recreation facility such as a campground for more than 14 days during any period of 30 consecutive days, except as allowed by permit issued under subpart D of this part.

(2) You must not camp in a single location on Reclamation lands, including undeveloped project lands or open range for more than 14 days during any period of 30 consecutive days, and must move at least 10 miles after each 14-day period is reached, except as allowed by permit issued under subpart D of this part.

* * * * *

(f) Where recreation facilities or other areas of Reclamation lands and waterbodies are operated through a contract or other agreement by a managing recreation partner of another Federal, State, local, or Tribal governmental entity, such as a State park, the laws, ordinances, and regulations of those partner agencies pertaining to camping shall be enforced by those partner agencies. However, Reclamation retains the authority to take necessary actions to safeguard the security and safety of the public and such Reclamation facilities, lands, and waterbodies.

- 8. Amend § 423.35 by adding paragraphs (e) and (f) to read as follows:

§ 423.35 Animals.

* * * * *

(e) You must not bury, deposit, or scatter animal remains, or place memorials, markers, vases, or plaques on or in Reclamation facilities, lands, or waterbodies. This section does not apply to the burial of parts of fish or wildlife taken in legal hunting, fishing, or trapping.

(f) Where recreation facilities or other areas of Reclamation lands and waterbodies are operated through a contract or other agreement by a managing recreation partner of another Federal, State, local, or Tribal governmental entity, such as a State park, the laws, ordinances, and regulations of those partner agencies pertaining to animals and pets shall be enforced by those partner agencies. However, Reclamation retains the authority to take necessary actions to safeguard the security and safety of the

public and such Reclamation facilities, lands, and waterbodies.

- 9. Amend § 423.36 by revising paragraph (a) to read as follows:

§ 423.36 Swimming.

(a) You may swim, wade, snorkel, scuba dive, raft, or tube at your own risk in Reclamation waters, except:

(1) You may not swim past signs, fences, buoys, or barriers marking public access limits to, or within, 100 yards of Reclamation structures including, but not limited to, dams, powerplants, pumping plants, spillways, water conveyance gates, intake structures, stilling basins, and outlet works;

(2) In canals, laterals, siphons, tunnels, and drainage works;

(3) At public docks, launching sites, and designated mooring areas; or

(4) As otherwise delineated by signs or other markers.

* * * * *

- 10. Amend § 423.37 by revising the section heading and paragraph (b) to read as follows:

§ 423.37 Activities on iced waterbodies.

* * * * *

(b) On iced-over Reclamation waterbodies, you must not ice skate, ice fish, ice sail, walk, ride, drive a vehicle, or otherwise move past buoys or barriers marking public access limits to, or come within 100 yards of, Reclamation structures including, but not limited to, dams, powerplants, pumping plants, spillways, water conveyance gates, intake structures, stilling basins, and outlet works.

* * * * *

- 11. Amend § 423.41 by:

- a. Revising paragraphs (b), (c), (e), (f) introductory text, and (f)(2); and

- b. Removing paragraph (g).

The revisions read as follows:

§ 423.41 Aircraft.

* * * * *

(b) Aircraft flight altitudes are as follows:

(1) You must not operate any aircraft within 400 feet near or over dams, powerplants, electrical switchyards, pumping plants, spillways, stilling basins, gates, intake structures, outlet works, warehouses, offices, maintenance facilities, campgrounds, gate houses, control houses, or other occupied recreation or operations facilities without prior approval by an authorized official.

(2) You must not operate any aircraft on or above Reclamation facilities, lands, and waterbodies in a careless, negligent, or reckless manner so as to

endanger or harass persons or wildlife or pose a risk to infrastructure or natural or cultural resources.

- (c) Temporary flight restrictions are as follows:

(1) You must not operate an aircraft on or above Reclamation facilities, lands, and waterbodies in violation of a temporary flight restriction established by the Federal Aviation Administration (FAA) without prior approval by an authorized officer.

(2) This section does not provide authority to deviate from Federal or State regulations, or prescribed standards, including, but not limited to, regulations and standards concerning pilot certifications or ratings and airspace requirements.

* * * * *

(e) You must comply with all applicable FAA and U.S. Coast Guard regulations (14 CFR parts 1, 61, and 91 and 33 CFR part 104, respectively) when operating a float/ski-equipped aircraft, including seaplanes, on Reclamation waterbodies.

(f) You must securely moor any float/ski-equipped aircraft, including seaplanes, remaining on Reclamation waterbodies in excess of 24 hours at mooring facilities and locations designated by an authorized official. Float/ski-equipped aircraft, including seaplanes, may be moored for periods of less than 24 hours on Reclamation waterbodies, except in special use areas otherwise designated by an authorized official, provided:

* * * * *

(2) The operator remains in the vicinity of the float/ski-equipped aircraft, including seaplanes, and is reasonably available to relocate the aircraft if necessary.

- 12. Amend § 423.50 by revising paragraph (a) to read as follows:

§ 423.50 How can I obtain permission for prohibited or restricted uses and activities?

(a) Authorized officials may issue permits to authorize activities on Reclamation facilities, lands, and waterbodies otherwise prohibited or restricted by §§ 423.16(a)(3), 423.26, 423.27, 423.28(b), 423.29(f), 423.30(c), 423.33(d), 423.35(d)(1), and 423.41, and may terminate or revoke such permits for non-use; noncompliance with the terms of the permit; violation of any applicable law; or to protect the health, safety, or security of persons, Reclamation assets, or natural or cultural resources.

* * * * *

- 13. Amend § 423.60 by revising paragraph (a)(1) to read as follows:

§ 423.60 How special use areas are designated.

(a) * * *

(1) Establish special use areas within Reclamation facilities, lands, or waterbodies for application of reasonable schedules of visiting hours; public use limits; and other conditions, restrictions, allowances, or prohibitions on particular uses or activities that vary from the provisions of subpart C of this part, except § 423.28(a); and

* * * * *

■ 14. Revise § 423.63 to read as follows:

§ 423.63 Existing special use areas.

Areas where rules were in effect on April 17, 2006, that differ from the rules set forth in subpart C of this part are considered existing special use areas, and such differing rules remain in effect to the extent allowed by subpart A of this part, and to the extent they are consistent with § 423.28(a). For those existing special use areas, compliance with §§ 423.60 through 423.62 is not required until the rules applicable in those special use areas are modified or terminated.

Michael Brain,

Principal Deputy Assistant Secretary for Water and Science.

[FR Doc. 2023–25466 Filed 11–20–23; 8:45 am]

BILLING CODE 4332–90–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MB Docket No. 23–287; RM–11961; DA 23–1055; FR ID 184580]

**Television Broadcasting Services
Idaho Falls, Idaho**

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking issued in response to a Petition for Rulemaking filed by NPG of Idaho, Inc. (Petitioner), the licensee of station KIFI–TV (KIFI or Station), channel 8, Idaho Falls, Idaho (Idaho Falls). The Petitioner has requested the substitution of UHF channel 18 for VHF channel 8 in the Table of TV Allotments. The Petitioner filed comments in support of the petition, as required by the Commission's rules (rules), reaffirming its commitment to apply for channel 18.

DATES: Effective November 21, 2023.

FOR FURTHER INFORMATION CONTACT:

Joyce Bernstein, Media Bureau, at (202) 418–1647 or Joyce.Bernstein@fcc.gov.

SUPPLEMENTARY INFORMATION: The proposed rule was published at 88 FR 60612 on September 5, 2023. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel 18. No other comments were received.

The Bureau believes the public interest would be served by substituting channel 18 for channel 8 at Idaho Falls, Idaho. In support of its channel substitution request, the Petitioner states that KIFI has received numerous complaints about reception of its channel 8 facility since the end of the DTV transition in 2009, and that the channel substitution will serve the public interest by resolving the reception issues currently experienced by viewers in the Station's service area and expanding the availability of reliable, free over-the-air network television service within the Station's market. In this regard, the Petitioner notes that the Commission has recognized that VHF channels pose challenges in providing digital television service, including propagation characteristics in the band that allow undesired signals and noise to interfere at relatively farther distances compared to UHF channels, and for nearby electrical devices to cause interference. Therefore, many current viewers within the Station's noise limited service contour who do not currently receive the Station will be able to do so once the channel substitution is implemented. Moreover, when using the Commission's *TVStudy* software tool, the proposed channel 18 facility will create a predicted service loss of only 327 persons, which the Petitioner asserts is *de minimis*.

As proposed, channel 18 can be substituted for channel 8 at Idaho Falls in compliance with the principal community coverage requirements of section 73.625(a) of the rules, at coordinates 43°30'04.0" N and 112°39'46.0" W. In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules with the following specifications. Although the Petitioner's proposal would result in a loss of programming to a limited number of viewers, we find that the overall benefits of the proposed channel change in resolving reception issues outweighs any possible harm to the public interest. When taking into account terrain, the Petitioner's proposal would result in a loss of service to 327 persons, which the

Commission considers to be a *de minimis* loss of service.

This is a synopsis of the Commission's *Report and Order*, MB Docket No. 23–287; RM–11961; DA 23–1055, adopted November 7, 2023, and released November 7, 2023. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

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

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

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

PART 73—RADIO BROADCAST SERVICES

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

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

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

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * *	*
Idaho	
* * * *	*
Idaho Falls	18, 20, 36.
* * * *	*
* * * *	*
[FR Doc. 2023–25393 Filed 11–20–23; 8:45 am]	
BILLING CODE 6712–01–P	

DEPARTMENT OF COMMERCE**National Telecommunications and Information Administration****47 CFR Part 300**

[Docket Number 230921–0231]

RIN 0660–AA39

Manual of Regulations and Procedures for Federal Radio Frequency Management

AGENCY: National Telecommunications and Information Administration (NTIA), Department of Commerce.

ACTION: Final rule.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is making certain changes to its regulations relating to the public availability of the Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual). NTIA has the authority, delegated by the president, to assign frequencies to radio stations or classes of radio stations belonging to and operated by the United States. NTIA's manual reflects this authority and provides for the coordination of Executive branch agencies' spectrum management and coordination. Specifically, NTIA is releasing a revised edition of the NTIA Manual, with which Federal agencies must comply when requesting use of radio frequency spectrum.

DATES: *Effective:* November 21, 2023. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of November 21, 2023.

ADDRESSES: A reference copy of the NTIA Manual, including all revisions in effect, is available in the Office of Spectrum Management, 1401 Constitution Avenue NW, Room 1087, Washington, DC 20230 and online at <https://ntia.gov/publications/redbook-manual>.

FOR FURTHER INFORMATION CONTACT:

Alan Fable, Office of Spectrum Management, at (202) 482–1670 or afable@ntia.gov.

SUPPLEMENTARY INFORMATION:**I. Background and Incorporation by Reference**

NTIA authorizes the U.S. Government's use of radio frequency spectrum. 47 U.S.C. 902(b)(2)(A). As part of this authority, NTIA developed the NTIA Manual to provide further guidance to applicable Federal agencies on the use of the radio frequency spectrum for radio transmissions for telecommunications or for other purposes. The NTIA Manual is the compilation of policies and procedures that govern the use of the radio frequency spectrum by the U.S. Government. Federal Government agencies are required to follow these policies and procedures in their use of spectrum. Part 300 of title 47 of the Code of Federal Regulations (CFR) provides information about the process by which NTIA regularly revises the NTIA Manual and makes public this document and all revisions. Federal agencies are required to comply with the specifications in the NTIA Manual when requesting frequency assignments. See 47 U.S.C. 901 *et seq.*, Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR, 1978 Comp., p. 158. This rule updates § 300.1 of title 47 of the Code of Federal Regulations to specify the edition of the NTIA Manual with which Federal agencies must comply when requesting frequency assignments. This rule amends the section by incorporating by reference the 2023 edition of the NTIA Manual. Upon the effective date of this rule, Federal agencies must comply with the requirements set forth in the 2023 edition of the NTIA Manual. The NTIA Manual is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, by referring to Catalog Number 903–008–00000–8, and online at <https://ntia.gov/publications/redbook-manual>. The material is available from: Commerce Department, National Telecommunications and Information Administration, Office of Spectrum Management, 1401 Constitution Avenue NW, Washington, DC 20230, <https://ntia.gov/publications/redbook-manual>; and Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, <https://bookstore.gpo.gov/> (reference Catalog Number 903–008–00000–8).

II. Paperwork Reduction Act

This action does not contain collection of information requirements subject to the Paperwork Reduction Act (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget (OMB) Control Number.

III. Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

IV. Administrative Procedure Act and Regulatory Flexibility Act

NTIA finds good cause under 5 U.S.C. 553(b)(3)(B) to waive prior notice and opportunity for public comment as it is unnecessary. This action merely amends the regulations to include the date of the most current edition of the NTIA Manual. These changes do not impact the rights or obligations to the public. The NTIA Manual applies only to Federal agencies. Because these changes impact only Federal agencies, and has no other substantive impact, NTIA finds it unnecessary to provide for the notice and comment requirements of 5 U.S.C. 553. NTIA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the same reasons provided above. Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

V. Executive Order 13132

This rule does not contain policies having federalism implications as that term is defined in Executive Order 13132.

List of Subjects in 47 CFR Part 300

Communications, Incorporation by reference, Radio.

For the reasons set forth in the preamble, NTIA amends 47 CFR part 300 as follows:

PART 300—MANUAL OF REGULATIONS AND PROCEDURES FOR FEDERAL RADIO FREQUENCY MANAGEMENT

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 47 U.S.C. 901 *et seq.*, Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp., p. 158.

■ 2. Revise § 300.1(b) to read as follows:

§ 300.1 Incorporation by reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management.

* * * * *

(b) The material listed in this paragraph (b) is incorporated by reference into this section with approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at National Telecommunications and Information Administration (NTIA) and the National Archives and Records Administration (NARA). Contact NTIA at: National Telecommunications and Information Administration, Office of Spectrum Management, 1401 Constitution Avenue NW, Room 1087, Washington, DC 20230, telephone: (202) 482-1670. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. The material is available from: Commerce Department, National Telecommunications and Information Administration, Office of Spectrum Management, 1401 Constitution Avenue NW, Washington, DC 20230, <https://ntia.gov/publications/redbook-manual>; and Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, <https://bookstore.gpo.gov/> (reference Catalog Number 903-008-00000-8).

(1) Manual of Regulations and Procedures for Federal Radio Frequency Management, January 2023 Revisions to the January 2021 Edition, approved September 7, 2023.

(2) [Reserved]

Stephanie Weiner,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2023-25649 Filed 11-20-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 1206013412-2517-02; RTID 0648-XD526]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2024 Commercial Accountability Measure for Gulf of Mexico Greater Amberjack

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

ACTION: Temporary rule; commercial accountability measure.

SUMMARY: NMFS implements an accountability measure (AM) for commercial greater amberjack in the Gulf of Mexico (Gulf) exclusive economic zone (EEZ) reef fish fishery for the 2024 fishing year through this temporary rule. NMFS has determined that Gulf greater amberjack landings in 2023 exceeded the commercial annual catch limit (ACL). Therefore, NMFS reduces both the commercial ACL and commercial annual catch target (ACT) for greater amberjack in the Gulf EEZ during the 2024 fishing year. This commercial ACL and ACT reduction is necessary to protect the Gulf greater amberjack resource.

DATES: This rule is effective 12:01 a.m., local time, January 1, 2024, until 12:01 a.m., local time, January 1, 2025.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: Kelli.ODonnell@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the reef fish fishery of the Gulf, which includes greater amberjack, under the Fishery Management Plan for the Reef Fish Resources of the Gulf (FMP). The Gulf of Mexico Fishery Management Council (Council) prepared the FMP and NMFS approved and implements the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

All greater amberjack weights described in this temporary rule are in round weight.

The 2024 commercial ACL for Gulf greater amberjack is 101,000 lb (45,813 kg), as specified in 50 CFR 622.41(a)(1)(iii). The 2024 commercial quota (equivalent to the commercial ACT) is 93,930 lb (42,606 kg), as

specified in 50 CFR 622.39(a)(1)(v). However, NMFS has determined that in 2023, the commercial harvest of greater amberjack exceeded the 2023 commercial ACL of 101,000 lb (45,813 kg) by 35,280 lb (16,003 kg). As described in 50 CFR 622.41(a)(1)(ii), NMFS is required to reduce both the commercial ACL and the commercial ACT for greater amberjack in the year following an overage of the commercial ACL, by the amount of any commercial ACL overage. Consistent with the commercial AM, for the 2024 fishing year, NMFS reduces both the commercial ACL and the commercial ACT to 65,720 lb (29,810 kg) and 58,650 lb (26,603 kg), respectively.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.41(a)(1)(ii), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations associated with the commercial AM and the commercial ACL and ACT reductions have already been subject to notice and public comment, and all that remains is to notify the public of the updated commercial ACL and ACT for the 2024 fishing year. Prior notice and opportunity for public comment are contrary to the public interest because there is a need to immediately implement this action to protect the greater amberjack stock. Prior notice and opportunity for public comment would require time and could result in a harvest well in excess of the reduced commercial ACL and ACT.

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

Dated: November 15, 2023.

Kelly Denit,

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

[FR Doc. 2023-25658 Filed 11-20-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679****[Docket No. 230306–0065; RTID 0648–XD525]****Fisheries of the Exclusive Economic Zone Off Alaska; Two Groundfish Species in the Bering Sea and Aleutian Islands Management Area**

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

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve to the initial total allowable catch (ITAC) of Alaska plaice and skates in the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to allow the fisheries to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the BSAI management area.

DATES: Effective November 20, 2023, through 2400 hours, Alaska local time, December 31, 2023. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, December 5, 2023.

ADDRESSES: You may submit comments on this document, identified by docket number NOAA–NMFS–2022–0094, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2022–0094 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

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

The 2023 ITAC of Alaska plaice in the BSAI was established as 14,875 metric tons (mt) and the 2023 ITAC of skates in the BSAI was established as 23,325 mt by the final 2023 and 2024 harvest specifications for groundfish of the BSAI (88 FR 14926, March 10, 2023), correction (88 FR 18258, March 28, 2023), and revision (88 FR 66296, September 27, 2023). In accordance with § 679.20(a)(3) the Regional Administrator, Alaska Region, NMFS, has reviewed the most current available data and finds that the ITACs for Alaska plaice and skates in the BSAI need to be supplemented from the non-specified reserve to promote efficiency in the utilization of fishery resources in the BSAI and allow fishing operations to continue.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions from the non-specified reserve of groundfish to ITACs in the BSAI management area as follows: 3,000 mt to Alaska plaice and 4,000 mt to skates. These apportionments are consistent with § 679.20(b)(1)(i) and do not result in overfishing of any target species because the revised ITACs and total allowable

catches (TACs) are equal to or less than the specifications of the acceptable biological catch in the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023), correction (88 FR 18258, March 28, 2023), and revision (88 FR 66296, September 27, 2023).

The harvest specification for the 2023 ITACs and TACs included in the harvest specifications for groundfish in the BSAI are revised as follows: 17,875 mt for Alaska plaice and 27,325 mt for skates in the BSAI.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the apportionment of the non-specified reserves of groundfish to Alaska plaice and skates in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 7, 2023.

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

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until December 5, 2023.

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

Dated: November 15, 2023.

Kelly Denit,

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

[FR Doc. 2023–25728 Filed 11–20–23; 8:45 am]

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Proposed Rules

Federal Register

Vol. 88, No. 223

Tuesday, November 21, 2023

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 135, and 136

[Docket No. FAA–2023–2250; Notice No. 24–02]

RIN 2120–AL37

Use of Supplemental Restraint Systems

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would prohibit civil aircraft operations conducted with supplemental restraint systems (SRS) unless operators meet certain requirements for ensuring passenger safety during all phases of the operation. The FAA expects these proposed requirements would increase the safety of passengers during civil aircraft operations conducted with SRS. This proposal addresses recommendations from the National Transportation Safety Board and the Department of Transportation Office of Inspector General. Additionally, this proposed rule would codify, with updates, an Emergency Order currently in effect addressing safety concerns regarding the use of supplemental restraints. The proposed rule would apply to all civil aircraft operations conducted with use of SRS. The rule as proposed would not apply to parachute operations or rotorcraft external-load operations. Additionally, the proposed rule would not apply to operations conducted as public aircraft operations.

DATES: Send comments on or before January 22, 2024.

ADDRESSES: Send comments identified by docket number FAA–2023–2250 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://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.

Docket: Background documents or comments received may be read at <https://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: Raymond Plessinger, General Aviation and Commercial Division, Flight Standards Service, AFS–830, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–1100; email Raymond.Plessinger@faa.gov.

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List of Abbreviations and Acronyms Frequently Used in This Document

AAIB—Danish Accident Investigation Board
 FMVSS—Federal Motor Vehicle Safety Standards
 FOIA—Freedom of Information Act
 FSOL—Fuel Shutoff Lever
 ICR—Information Collection Request
 InFO—Information for Operators
 IRFA—Initial Regulatory Flexibility Analysis
 LOA—Letter of Authorization
 NAICS—North American Industry Classification System
 NPRM—Notice of Proposed Rulemaking
 NTSB—National Transportation Safety Board
 OMB—Office of Management and Budget
 PIC—Pilot in Command
 RFA—Regulatory Flexibility Act
 SBA—Small Business Administration
 SOPs—Standard Operating Procedures
 SPRS—Supplemental Passenger Restraint System(s)
 SRS—Supplemental Restraint System(s)

I. Executive Summary

This proposed rule addresses the use of supplemental restraint systems (SRS) in civil aircraft operations. On March 22, 2018, the FAA issued an Emergency Order of Prohibition titled “Operators and Pilots of ‘Doors Off’ Flights for Compensation or Hire”¹ to all operators and pilots of flights for compensation or hire with the doors open or removed in the United States or using aircraft registered in the United States for doors-off flights. The Emergency Order of Prohibition prohibits the use of supplemental passenger restraint systems (SPRS) that cannot be released quickly in an emergency.² This was in

¹ Emergency Order of Prohibition, “Operators and Pilots of ‘Doors Off’ Flights for Compensation or Hire” available at <https://www.regulations.gov/document/FAA-2018-0243-0001>.

² The term “supplemental passenger restraint system,” as defined in the March 22, 2018,

Continued

response to an open door helicopter accident on March 11, 2018, in which passengers were secured with SPRS and were unable to exit the aircraft before they drowned. At the time of the accident, no rules specifically addressed civil aircraft operations conducted with the use of SRS,³ including during operations with doors opened or removed. As a result of preliminary information discovered during the investigation of this accident, on March 19, 2018, the National Transportation Safety Board (NTSB) issued Urgent Safety Recommendation A-18-012, which recommended that the FAA prohibit all open-door aircraft operations using passenger harness systems, unless the harness system allows passengers to rapidly release the harness with minimal difficulty and without having to cut or forcefully remove the harness.⁴

An SRS is a device used to secure an individual inside an aircraft when that person is not properly secured by an FAA-approved seat belt and, if installed, shoulder harness or an approved child restraint system. SRS are not installed on the aircraft pursuant to a Type Certificate, Supplemental Type Certificate, approved major alteration (FAA Form 337), or other FAA approval. An SRS consists of a harness secured around the torso of the individual using the SRS and a lanyard that connects the harness to an approved airframe attachment point inside the aircraft.

To mitigate identified risks and ultimately prevent future fatalities, the FAA proposes to issue regulations regarding the use of SRS, including during operations with doors opened or removed. This proposed rule would establish requirements for use of SRS. This proposed rule would also prohibit flight operations with doors opened or removed except under two scenarios. The first scenario is when each individual⁵ occupies an FAA-approved

seat or berth with a safety belt and, if installed, shoulder harness properly secured about them or an approved child restraint system properly secured to an approved seat or berth with a safety belt and, if installed, shoulder harness in accordance with § 91.107(a)(3)(iii) or § 135.128(a)(2), during the entire flight. The second scenario is if each individual occupies an FAA-approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about them during movement on the surface, takeoff, and landing; during other phases of flight, if permitted by the pilot in command (PIC),⁶ the passenger may use an SRS that meets all requirements proposed in this rule. The operator generally will provide the SRS to individuals who seek to use the SRS during the flight, but in some cases, an individual may opt to provide their own SRS as long as it meets the requirements proposed in this rule and the PIC approves the SRS.

This proposed rule would require the SRS to have a release mechanism that can be operated quickly by the passenger using the SRS with minimal difficulty. As proposed, the release mechanism must be located on the front or side of the harness in a place easily accessible to and visible by the passenger using the SRS and must prevent inadvertent release. Also, as proposed, the release mechanism cannot require the use of a knife to cut the restraint, the use of any other additional tool, or the assistance of any other individual to release the SRS.

As explained in section IV.E.2 of this preamble, the FAA proposes that the SRS must be connected to an aircraft attaching point or points with a rated strength equal to or greater than the combined weight of all the passengers using an SRS attached to that same point, but it cannot be connected to any airframe attachment point located in the flightdeck. Additionally, as proposed, the rule requires the SRS to have a lanyard that ensures the torso of the passenger using the SRS remains inside the aircraft at all times.

This proposed rule would also require operators conducting flight operations where passengers use an SRS to provide an enhanced passenger safety briefing.

passenger. In this proposal, the agency uses that distinction when referring specifically to a crewmember or passenger. When the distinction between a crewmember and a passenger is not applicable, the agency uses the word "individual" when referring to anyone who occupies an SRS.

⁶ Under 14 CFR 91.3, the PIC is the final authority as to the operation of the aircraft. The PIC may determine it is unsafe to allow the use of SRS during a phase of flight that would otherwise be allowed.

Further, this proposal would require passengers who seek to use an SRS during flight operations to demonstrate their ability to occupy, secure, and release the FAA-approved seat belts and, if installed, shoulder harnesses, as well as the ability to release quickly the SRS with no assistance, and with minimal difficulty. A passenger who could not meet the demonstration requirements of the enhanced safety briefing would be prohibited from using an SRS; however, they would be permitted to participate in the flight if they occupy an FAA-approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about them during operations when the doors are opened or removed or when otherwise required by regulations. Only those passengers who have reached their fifteenth birthday could use an SRS during flight operations, and no individual using an SRS could occupy a seat in the flightdeck. In addition to prohibiting individuals who occupy a child restraint system from also using an SRS, this proposed rule would prohibit a child from being held by an adult who is using an SRS. This proposed rule would also prohibit a child from being held when the aircraft doors are opened or removed.

This proposed rule would mitigate identified safety risks to passengers who use an SRS and would help ensure safety of the operation, including when the doors of the aircraft are opened or removed.

II. Authority for This Proposed Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (49 U.S.C.). Subtitle I of 49 U.S.C., specifically section 106, describes the authority of the FAA Administrator. Subtitle VII of 49 U.S.C., Aviation Programs, describes in more detail the scope of the agency's authority.

The FAA promulgates this rulemaking under the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules, and 49 U.S.C. 44701(a)(5), which requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and setting minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

Emergency Order of Prohibition, means any passenger restraint that is not installed on the aircraft pursuant to an FAA approval, including (but not limited to) restraints approved through a Type Certificate, Supplemental Type Certificate, or as an approved major alteration using FAA Form 337.

³ The FAA uses the term supplemental restraint system (SRS) to refer to the device in general, but, for the purposes of this rulemaking document, uses the term supplemental passenger restraint system (SPRS) when quoting or referring to documents that use the term "SPRS" (e.g., The Emergency Order of Prohibition). The FAA considers the two terms to be synonymous.

⁴ NTSB Safety Recommendation A-18-012, <https://data.ntsb.gov/carol-main-public/sr-details/A-18-012>.

⁵ The FAA uses two categories to define those who travel on airplanes: crewmember and

III. Background

A. Statement of the Problem

The FAA operational regulations pertaining to passenger restraints currently address only FAA-approved seat belts and, if installed, shoulder harnesses and child restraint systems approved for use on aircraft. They require individuals to be secured during movement on the surface, takeoff, and landing, or as instructed by the flight crew. Current regulations do not address passenger safety in operations conducted with doors opened or removed, except for parachute operations and rotorcraft external-load operations.

The proposed rule would mitigate the risk of harm to an individual using an SRS, including during operations with doors opened or removed. Specifically, the proposed rule is expected to mitigate the risk that an individual could fall out of the aircraft when the doors are opened or removed if they are not occupying an FAA-approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about them during the entire flight. It also mitigates the risk that a passenger cannot quickly egress after an accident because the SRS they use is difficult to release. By limiting where the passenger can sit when using an SRS and where the attachment point to which the SRS is attached is located, this rule proposes to mitigate the risk that a component of the SRS may inadvertently move a flight control mechanism, which could impact the operation of the aircraft. The proposed rule would provide minimum requirements for all flight operations when an SRS is used, including those with doors opened or removed. If adopted, this proposed rule will result in safer flight operations and reduce the risk of harm to individuals, whether passengers or crewmembers.

B. History

1. Liberty Helicopters Accident

On March 11, 2018, an Airbus Helicopters AS350 B2 lost engine power during cruise flight, and the pilot performed an autorotative descent and ditching on the East River in New York, New York. The pilot sustained minor injuries, the five passengers drowned, and the helicopter was substantially damaged. The FlyNYON-branded flight was operated by Liberty Helicopters Inc. (Liberty), per a contractual agreement with NYONair.⁷

⁷ *Inadvertent Activation of the Fuel Shutoff Lever and Subsequent Ditching, Liberty Helicopters Inc., Operating a FlyNYON Doors-Off Flight, Airbus Helicopters AS350 B2, N350LH, New York, New*

Liberty operated the accident flight as a FlyNYON-branded, doors-off helicopter flight that allowed the five passengers (one in the front seat, four in the rear seats) to take photographs of various landmarks while extending their legs outside the helicopter during portions of the flight. For the accident flight (and other FlyNYON flights that Liberty operated), Liberty configured its Airbus AS350 B2 helicopter with the two right and the front left doors removed and the left sliding door locked open. Before departure, each passenger was fitted with a NYONair-provided harness/tether system that NYONair developed with the intent to prevent passengers from falling out of the helicopter. The harness/tether system used on the accident flight consisted of a full-body, workplace fall-protection harness that was secured (with a locking carabiner) to a tether, the other end of which was secured (with another locking carabiner) to an anchor point in the cabin. Each passenger also used the helicopter's installed, FAA-approved restraints. The pilot (who was seated in the front right seat) used only an installed, FAA-approved restraint.⁸

Under normal circumstances, at the conclusion of each flight, operator personnel would unscrew a locking carabiner located on the back of each passenger's harness so that the passenger could exit the helicopter. The operator provided each individual secured by an SPRS with a cutting tool, stored in a pouch attached to the harness, for use in freeing themselves from the harness/tether system in case of an emergency.⁹ Prior to flight, each passenger viewed a passenger safety video that addressed general safety topics and emergency safety procedures, such as cutting-tool use.¹⁰ The video narrative for releasing from the harness/tether system in the event of an emergency stated that "the harness can be released by opening the quick release clip in the back of the harness" and the visual that accompanied the narrative showed one person releasing another person's carabiner. The video also instructed passengers that "a cutter [cutting tool] is also secured to one of your chest straps and will allow you to quickly cut through the harness if you are unable to reach the quick release clip."¹¹

York, March 11, 2018. Aircraft Accident Report, December 10, 2019. Available at <https://www.nts.gov/investigations/AccidentReports/Reports/AAR1904.pdf>.

⁸ *Id.* at ix.

⁹ *Id.* at 19.

¹⁰ *Id.* at 44.

¹¹ *Ibid.*

Consistent with the standard operating procedures (SOPs) used for FlyNYON flights, the passengers were allowed (when instructed by the pilot) to position themselves to extend their legs outside the helicopter. The two passengers who had been seated in the rear inboard seats removed their installed, FAA-approved restraints and sat on the cabin floor, wearing their harness/tether systems. The passengers seated in the outboard seats were allowed to rotate outboard in their seats. To enable such freedom of movement, the SOPs allowed the passengers to wear their installed, FAA-approved restraint with the lap belt adjusted loosely and the shoulder harness routed under the arm.¹²

During the flight, the aircraft lost engine power and the pilot conducted an emergency landing on the East River. The helicopter's floats did not fully inflate, and the helicopter rolled right in the water and became fully inverted and submerged about 11 seconds after it touched down. Despite receiving a briefing on how to self-egress from the SPRS using the provided cutting tool, none of the passengers were able to egress. All five passengers drowned. The pilot was able to release his installed, FAA-approved restraint after he was under water and successfully egress from the helicopter.¹³

2. National Transportation Safety Board Reports and Recommendations

The NTSB investigated the accident.¹⁴ On March 19, 2018, the NTSB issued an Urgent Safety Recommendation Report, *Additional Harness Systems that Allow for Rapid Egress*, ASR-18-02, to "prohibit all open-door commercial passenger-carrying aircraft flights that use passenger harness systems, unless the harness system allows passengers to rapidly release the harness with minimal difficulty, and without having to cut or forcefully remove the harness."¹⁵

The NTSB published its final accident report, *Inadvertent Activation of the Fuel Shutoff Lever and Subsequent Ditching, Liberty Helicopters Inc., Operating a FlyNYON Doors-Off Flight*, following a board meeting held on

¹² *Id.* at ix.

¹³ *Id.* at x.

¹⁴ *Inadvertent Activation of the Fuel Shutoff Lever and Subsequent Ditching, Liberty Helicopters Inc., Operating a FlyNYON Doors-Off Flight, Airbus Helicopters AS350 B2, N350LH, New York, New York, March 11, 2018. Aircraft Accident Report, December 10, 2019. Available at <https://www.nts.gov/investigations/AccidentReports/Reports/AAR1904.pdf>.*

¹⁵ NTSB Urgent Recommendation, ASR-18-02, accessed at <https://data.nts.gov/carol-main-public/sr-details/A-18-012> on February 23, 2021.

December 10, 2019, in which the Board issued additional safety recommendations.¹⁶ The accident docket includes a detailed summary of the pilot interview.¹⁷ The pilot reported that when he reached down for the emergency fuel shutoff lever, he realized that it was in the off position. He also noted that a portion of the front seat passenger's tether was underneath the lever.¹⁸ A review of radar data and onboard video showed that when the flight was proceeding northwest over Manhattan toward Central Park at an altitude of 1,900 feet mean sea level, the front passenger, who was facing outboard in his seat with his legs outside the helicopter, leaned back several times to take photographs using a smartphone. The onboard video showed that each time he leaned back, the tail of the tether attached to the back of his harness hung down loosely near the helicopter's floor-mounted controls. At one point, when he pulled himself up to adjust his seating position, the tail of his tether remained taut but appeared to pop upward. Two seconds later, the helicopter's engine sounds decreased, and the helicopter began to descend.¹⁹ The NTSB determined the probable cause of this accident was Liberty Helicopters Inc.'s use of a NYONair-provided passenger harness/tether system, which caught on and activated the floor-mounted engine fuel shutoff lever (FSOL) and resulted in the in-flight loss of engine power and the subsequent ditching.²⁰ NTSB also stated that Liberty and NYONair's use of the harness and tether system hindered passenger egress and contributed to the severity of the accident.²¹

¹⁶ *Inadvertent Activation of the Fuel Shutoff Lever and Subsequent Ditching, Liberty Helicopters Inc., Operating a FlyNYON Doors-Off Flight, Airbus Helicopters AS350 B2, N350LH, New York, New York, March 11, 2018.* Aircraft Accident Report, December 10, 2019. Available at <https://www.nts.gov/investigations/AccidentReports/Reports/AAR1904.pdf>.

¹⁷ Factual Report—Attachment 1, Interview Summaries, Operational Factors, accessed at <https://data.nts.gov/Docket/Document/docBLOB?ID=40476009&FileExtension=.PDF&FileName=Operations%20Attachment%201%20-%20Interview%20Summaries-Master.PDF> on February 23, 2021.

¹⁸ *Id.* at 6.

¹⁹ *Inadvertent Activation of the Fuel Shutoff Lever and Subsequent Ditching, Liberty Helicopters Inc., Operating a FlyNYON Doors-Off Flight, Airbus Helicopters AS350 B2, N350LH, New York, New York, March 11, 2018.* Aircraft Accident Report, December 10, 2019. Available at <https://www.nts.gov/investigations/AccidentReports/Reports/AAR1904.pdf>.

²⁰ *Id.* at x.

²¹ *Id.* at x, xii, 67, 83, 85.

3. FAA Actions

The FAA carefully considered the information and recommendations from the NTSB. Following the issuance of the NTSB Urgent Safety Recommendation Report ASR-18-02, the FAA concluded that the SPRS each passenger wore, while intended as a safety measure when the aircraft was in flight, might have prevented the passengers' quick egress from the aircraft. Although the fatalities that occurred on March 11, 2018, involved an aircraft ditching on the water, the FAA determined that other situations, such as smoke and fire emergencies, might also result in injuries and fatalities unless passengers can release quickly their SPRS. Under 49 U.S.C. 46105(c), the Acting Administrator of the FAA determined that an emergency existed related to safety in air commerce based on the threat to passenger safety presented by the use of SPRS not approved by the FAA, which may prevent a passenger from exiting the aircraft quickly in an emergency. To address this emergency, on March 22, 2018, the FAA issued Emergency Order of Prohibition No. FAA-2018-0243 to all operators and pilots of flights for compensation or hire with the doors open or removed in the United States or using aircraft registered in the United States for doors-off flights.²² The Emergency Order of Prohibition prohibits the use of SPRS that cannot be released quickly in an emergency in doors-off flight operation. The Emergency Order of Prohibition provides that persons may operate doors-off flights for compensation or hire involving SPRS if the Administrator has determined that the restraints to be used can be quickly released by a passenger with minimal difficulty and without impeding egress from the aircraft in an emergency, and provides information for operators to apply to seek such approvals. The Emergency Order of Prohibition also prohibits passenger-carrying doors-off flight operations unless the passengers are at all times properly secured using FAA-approved restraints.²³

The FAA also posted to its website FAA Notice N 8900.456, Emergency Order of Prohibition Pertaining to "Doors Off" Flight Operations for Compensation or Hire, which provides guidance to FAA Aviation Safety Inspectors (ASIs) and others regarding the Emergency Order of Prohibition and

its implementation.²⁴ Notice N 8900.456 directed ASIs to coordinate with the FAA's Aircraft Certification Service to ensure a restraint system, previously granted an approval by an FAA Form 337, is properly evaluated prior to use.²⁵ That notice was subsequently revised to FAA Notice N 8900.457²⁶ and then FAA Notice N 8900.506,²⁷ before finally being established as FAA Order 8900.4.²⁸ That order sets out the application process to request a Letter of Authorization (LOA) from the FAA's Flight Standards Service to conduct operations using an SPRS. As a part of that process, the applicant must demonstrate that the restraints can be released quickly by a passenger with minimal difficulty and without impeding egress from the aircraft in an emergency. In reviewing a request for an LOA, the FAA reviews the design, manufacture, installation, and operations.

In addition, the Agency published Information for Operators (InFO) 18003, *Supplemental Passenger Restraint Systems (SPRS) for "Doors-Off" Flight Operations Conducted for Compensation or Hire*, on May 9, 2018, which informs operators of the procedure for obtaining an LOA for use of an SPRS for "Doors-Off" flight operations conducted for compensation or hire.²⁹

In evaluating whether to authorize an operation with SPRS, the FAA requires the applicant to submit to the FAA the following items: a completed and signed FAA Form 7711-2, Certificate of Waiver or Authorization Application; a completed Attachment A, Request for FAA Letter of Authorization, Supplemental Passenger Restraint System—Supporting Information; a link to a video that shows an occupant demonstrating the method of release from the device; and, if the operator has been issued a Motion Picture and Television Filming certificate of waiver, a signed FAA Form 7711-1. In reviewing the request, the FAA also evaluates the applicant's preflight

²⁴ https://www.faa.gov/regulations_policies/orders_notices/index.cfm/go/document.information/documentID/1032926.

²⁵ *Id.* at 2.

²⁶ http://www.faa.gov/documentLibrary/media/Notice/N_8900.457.pdf.

²⁷ http://www.faa.gov/documentLibrary/media/Notice/N_8900.506.pdf.

²⁸ Although FAA orders typically serve as guidance material for FAA personnel only, FAA Order 8900.4 provides information to individuals, pilots, and operators. http://www.faa.gov/documentLibrary/media/Order/FAA_Order_8900.4.pdf.

²⁹ https://www.faa.gov/sites/aa.gov/files/other_visit/aviation_industry/airline_operators/airline_safety/InFO18003.pdf.

²² Emergency Order of Prohibition, "Operators and Pilots of "Doors Off" Flights for Compensation or Hire" available at <https://www.regulations.gov/document/FAA-2018-0243-0001>.

²³ *Id.*

briefing procedures and/or step-by-step instructions, which must clearly and convincingly demonstrate that the SPRS can be released quickly by the SPRS user with minimal difficulty and without impeding egress from the aircraft in an emergency.

Additionally, the evaluation includes confirmation that the components (harness and lanyard) were manufactured in accordance with credible certification standards.³⁰ The FAA recognizes that acceptable and established minimum standards for supplemental restraints already exist and are in use in other FAA evaluation scenarios and in many occupations. The FAA accepts these standards since there is no single certification standard that is best for every SPRS, due to the unique activities in which the applicant seeks to engage during doors opened flight operations. The FAA considers these existing standards when reviewing submission packages. Credible certification standards include TSO-167 (for personnel carrying device systems), OSHA 1926.502 (fall protection), NFPA 1983-2017 (life safety rope and equipment), and EN 361:2002 (full body harness). Further discussion about credible certification standards can be found in section IV.D. of this proposal.

Non-certificated individuals may also request authorization to use SPRS. For example, passengers seeking to use SPRS may seek FAA authorization of their own equipment. They may include but are not limited to net gunners or aerial photographers. The FAA issues an LOA specific to that individual, the identified components of the SPRS, and the submitted operational procedures when the individual is a passenger on a doors opened/removed flight operated for compensation or hire.

The FAA reviews each submission to ensure the submitted documentation adequately demonstrates the ability of a user to release quickly the SPRS with minimal difficulty. Consistent with the Emergency Order of Prohibition, the ability for rapid release and egress must be inherent in the design of the SPRS. Additionally, each SPRS must not require the use of a cutting tool, or any other additional tool, or the assistance of any other person to release the restraint. The FAA also considers whether a user would have the ability to release the SPRS without any additional training beyond what would be provided in a preflight briefing, as

discussed in the Emergency Order of Prohibition.

Once issued, the pilot or operator must ensure the LOA is available on the aircraft whenever any SPRS is used on any flight operation with doors opened or removed for compensation or hire. If issued to a non-certificated individual, the LOA requires that individual to provide a copy of the LOA to the pilot or operator prior to participating in a flight operation conducted with doors off for compensation or hire using an SPRS. The pilot or operator makes the final decision as to whether to accept the LOA and whether to permit the passenger to use the authorized SPRS on that flight.

Between March 26, 2018, and October 15, 2019, the FAA issued 41 LOAs to operators and 13 LOAs to non-certificated individuals. Through the application process, the FAA learned SPRS could be used on both fixed wing and rotorcraft aircraft.

If this rule is finalized as proposed, it would supersede existing processes for authorizing SPRS.

4. Department of Transportation Office of Inspector General Report and Recommendations

Following the fatal Liberty Helicopters crash, the Department of Transportation (DOT) Office of the Inspector General (OIG), in consultation with the NTSB, reviewed FAA's oversight of helicopter air tours and how FAA approved the supplemental passenger restraint systems used during the crash.³¹ The OIG objectives were to assess FAA's processes for (1) review and approval of supplemental restraints for open-door helicopter operations, and (2) oversight of company use of supplemental restraints.³² The OIG findings included that the FAA did not maintain effective and consistent oversight of open-door helicopter operations to maintain the safety of air tour passengers. The OIG issued recommendations to the FAA to improve the SPRS authorization process and oversight regarding SPRS use and to increase the safety of helicopter air tour passengers. Specifically, the OIG recommended the FAA issue a notice of proposed rulemaking and a final rule, if found to be in the public interest, that address operations using SPRS. This

³¹ The FAA notes that both the NTSB and OIG used the term "supplemental passenger restraint system" (SPRS).

³² *Weaknesses in FAA's Supplemental Passenger Restraint System Authorization Process Hinder Improvements to Open-Door Helicopter Operations*, Audit Report AV2021010, issued December 8, 2020. Available at <https://www.oig.dot.gov/library-item/38140>.

proposed rule addresses the OIG recommendation.

IV. Discussion of the Proposed Rule

A. Identified Safety Gaps

Although the Emergency Order of Prohibition fills safety gaps that existed prior to the Liberty Helicopters accident, the FAA identified residual safety gaps that still exist and that this proposed rule seeks to address. Discussed below are the primary residual safety gaps the FAA identified.

1. Limited Regulatory Oversight

Prior to March 11, 2018, no rules specifically addressed civil aircraft operations conducted with the use of SRS, including during operations with doors opened or removed. The Emergency Order of Prohibition sought to address this issue by imposing SPRS requirements; however, it only addresses doors-off operations for compensation or hire. This proposed rule would apply to all civil aircraft operations conducted in the U.S. with the use of SRS, including during operations with doors opened or removed and regardless of whether they are for compensation or hire. Moreover, the Emergency Order of Prohibition did not address operations where doors remain closed but where individuals use SRS. This proposed rule addresses those operations as well.

2. Ability To Release and Inadvertent Release of the Supplemental Restraint System

As explained above, the NTSB stated that the passengers' inability to release from the SPRS hindered their egress from the aircraft and contributed to the severity of the accident.³³ The Emergency Order of Prohibition sought to address this concern by imposing certain SPRS release mechanism design requirements; however, the FAA determined after the Emergency Order of Prohibition was put into place that there is no requirement to prevent inadvertent release of the mechanism. Although quick release is vital, it is equally important to ensure an SRS does not inadvertently release, particularly during operations where doors are opened or removed. This proposed rule addresses that concern.

3. Lap-Held Children

Current regulations permit a person to be held by an adult who is occupying an approved seat or berth, provided that the person being held has not reached his or her second birthday and does not occupy or use any restraining device.

³³ See *id.* at x, xii, 67, 83, 85.

³⁰ For the purposes of this evaluation, the FAA considers a certification standard to be credible when it ensures that materials, products, processes, and services are fit for their purpose.

See 14 CFR 91.107(a)(3)(i) and 135.128(a)(1). The Emergency Order of Prohibition does not address lap-held children, leaving an unacceptable risk of children falling out of an aircraft with doors opened or removed or otherwise being injured when an adult is holding a lap-held child while using only an SRS. This proposed rule seeks to eliminate that risk to lap-held children.

B. How This Rule Enhances the Emergency Order of Prohibition

This proposed rule would enhance safety for individuals who use an SRS during all flight operations. As mentioned above, no regulations existed regarding the use of supplemental restraints prior to March 22, 2018. After the Liberty Helicopters accident, the NTSB found “that minimally trained passengers would have great difficulty extricating themselves from the harness/tether system, each of which was equipped with locking carabiners and an ineffective cutting tool, during an emergency requiring a rapid egress.”³⁴ The FAA issued Emergency Order of Prohibition No. FAA–2018–0243 to all operators and pilots of flights for compensation or hire with the doors

open or removed in the United States or using aircraft registered in the United States for doors-off flights.

The Emergency Order of Prohibition prohibits the use of SPRS that cannot be released quickly in an emergency in doors-off flight operations. The Emergency Order of Prohibition provides that persons may operate doors-off flights for compensation or hire involving SPRS if the Administrator has determined that the restraints to be used can be quickly released by a passenger with minimal difficulty and without impeding egress from the aircraft in an emergency, and provides information for operators to apply to seek such authorization. The Emergency Order of Prohibition also prohibits passenger-carrying doors-off flight operations unless the passengers are at all times properly secured using FAA-approved restraints.

The term “supplemental passenger restraint system,” as defined in the March 22, 2018, Emergency Order of Prohibition, means any passenger restraint that is not installed on the aircraft pursuant to an FAA approval, including (but not limited to) restraints approved through a Type Certificate,

Supplemental Type Certificate, or as an approved major alteration using FAA Form 337. For this rulemaking, the FAA uses the term supplemental restraint system (SRS) instead of supplemental passenger restraint system (SPRS) used in the Emergency Order of Prohibition. The FAA finds the terms “supplemental restraint system” (SRS) and “supplemental passenger restraint system” (SPRS) to be synonymous, except “supplemental restraint system” is more precise as the restraint could be worn by either a passenger or a crew member. Therefore, for accuracy, the FAA uses the term “supplemental restraint system” (SRS) throughout this document, except when quoting or referring to documents that use the term “SPRS.”

Below is a table showing (1) the regulatory landscape after the FAA issued the Emergency Order of Prohibition, (2) identified safety gaps the Emergency Order did not address, and (3) a brief summary of the proposed § 91.108 requirements, including the requirements that seek to close the gaps identified after the Emergency Order of Prohibition was issued.

TABLE 1—COMPARISON OF REQUIREMENTS FOR OPERATIONS USING SUPPLEMENTAL RESTRAINT SYSTEMS

Emergency order of prohibition (current) Letter of authorization process	Identified safety gaps	Performance-based requirements (proposed) 91.108—Use of supplemental restraint systems
Emergency Order of Prohibition No. FAA–2018–0243, issued March 22, 2018, applies to operations for compensation or hire with doors open or removed. It prohibits the use of SPRS that cannot be released quickly and prohibits doors-off operations unless passengers are at all times secured using FAA-approved restraints or restrained by an authorized SPRS. The supplemental restraint must have a release mechanism that: • Can be released quickly by the person using the SPRS with minimal difficulty, without excessive force and without impeding egress from the aircraft; • Is located on the front or side of the harness, easily accessible to and visible by the person using the SPRS; • Does not require the use of a knife to cut the restraint, any other additional tool, or the assistance of any other person to release the SPRS.	Emergency Order of Prohibition did not address: • Flight operations not conducted for compensation or hire; or • Operations where the doors remain closed, but passengers use an SRS. In addition, the Emergency Order of Prohibition only applies to passengers and does not address crew members. Emergency Order of Prohibition did not address inadvertent release of the SRS.	The SRS proposed rule applies to: • All operations where the doors are opened or removed, regardless of whether they are for compensation or hire; • All operations, regardless of whether the doors are opened or removed, where passengers use an SRS; and • Passengers and crew members. <i>Proposed Requirement:</i> Flight operations with doors opened or removed are prohibited unless each individual either occupies: • An FAA-approved seat or berth with a safety belt/shoulder harness or an approved child restraint system during all phases of flight; or • An approved seat or berth with a safety belt/shoulder harness during critical phases of flight and is secured during the cruise portion of flight with an SRS. The SRS proposed rule includes the same design requirements for the SRS release mechanism as the Emergency Order of Prohibition but adds a requirement about inadvertent release. <i>Proposed Requirement:</i> The supplemental restraint must have a release mechanism that: • Can be quickly operated with minimal difficulty; • Is attached to the front or side of the harness in a location easily accessible to and visible by the individual using the SRS; • Prevents inadvertent release; and • Does not require the use of a knife to cut the restraint, any other additional tool, or the assistance of any other individual to release the SRS.

³⁴ *Inadvertent Activation of the Fuel Shutoff Lever and Subsequent Ditching, Liberty Helicopters Inc., Operating a FlyNYON Doors-Off Flight, Airbus*

Helicopters AS350 B2, N350LH, New York, New York, March 11, 2018 at x. Aircraft Accident Report, December 10, 2019. Available at <https://www.nts.gov/investigations/AccidentReports/Reports/AAR1904.pdf>.

www.nts.gov/investigations/AccidentReports/Reports/AAR1904.pdf.

TABLE 1—COMPARISON OF REQUIREMENTS FOR OPERATIONS USING SUPPLEMENTAL RESTRAINT SYSTEMS—Continued

Emergency order of prohibition (current) Letter of authorization process	Identified safety gaps	Performance-based requirements (proposed) 91.108—Use of supplemental restraint systems
Operators, pilots, or individuals desiring authorization to use an SPRS must submit the following items for evaluation: • Completed FAA Form 7711–2, Certificate of Waiver or Authorization Application; • Completed ATTACHMENT A, Request for FAA Letter of Authorization; and • A link to at least one video that shows an occupant demonstrating the method of release from the SPRS. If the submitter seeks to use authorized SPRS for Motion Picture and Television Filming (MP/TF) operations, the submission must also include a scanned copy of the operators or pilot's issued FAA Form 7711–1, Certificate of Waiver or Authorization.	Other than addressing the release mechanism, the Emergency Order of Prohibition did not address detailed design or operational requirements. The Emergency Order of Prohibition did not address other requirements outlined in the right-hand column, "additional proposed requirements." The Emergency Order of Prohibition did not address individuals who are prohibited from using an SRS or lap-held children during certain operations.	The SRS proposed rule adds more detailed design and operational requirements and other requirements/prohibitions not addressed in the Emergency Order of Prohibition: <i>Proposed Design Requirements:</i> The supplemental restraint system must: • Have a harness that secures around the individual's torso; • Have a lanyard that connects the harness to the airframe attachment point and that ensures the individual's torso remains inside the aircraft; • Not impede egress from the aircraft in an emergency after being released; and • Identify the sizing criteria for which the SRS is rated. <i>Proposed Operational Requirements:</i> • A qualified person must: ◦ Connect the SRS to an attachment point with rated strength for the individual using the SRS; and ◦ Not connect the SRS to an attachment located in the flightdeck. <i>Additional Proposed Requirements:</i> The proposed rule adds requirements for: • Individuals providing their own SRS; • Pilot in Command's responsibilities and authority; • Passenger briefings; • Passengers demonstrating their ability to occupy FAA-approved safety belt/shoulder harness and accomplish actions required for SRS quick release without assistance. <i>Proposed Prohibitions:</i> • The proposed rule prohibits the following individuals from using an SRS: ◦ Passengers who cannot demonstrate their ability to occupy a safety belt/shoulder harness or to release quickly their SRS; ◦ Individuals under 15 years of age; ◦ Individuals seated in flightdeck; ◦ Passengers occupying a CRS; • The proposed rule also prohibits lap-held children from being held by an adult using an SRS or during doors-open or -removed operations.

C. Prohibitions Applicable to SRS and Doors Opened or Removed Flight Operations (§ 91.108(a) and (b))

The FAA is proposing to add a new § 91.108 to address the use of supplemental restraint systems. Proposed § 91.108(a) establishes the general prohibition against using SRS. Specifically, paragraph (a) would prohibit any operations in a registered civil aircraft if any individual is secured with an SRS except as described in § 91.108. This is a change from the status quo. The FAA determined that, even after the issuance of the Emergency Order of Prohibition following the Liberty Helicopters accident, safety gaps continue to exist. This proposal intends to eliminate these safety gaps for all individuals who use an SRS. For example, the Emergency Order of Prohibition prohibits operations with passengers using an SPRS unless certain conditions exist, including authorization from the FAA. Proposed paragraph (a) would apply the prohibition to everyone on board, including crew members. In addition, currently, an individual can use an SRS without FAA authorization both during operations conducted with doors closed

and operations conducted not for compensation or hire. Proposed paragraph (a) would extend the prohibition to these additional types of operations as well. Proposed § 91.108(b) builds on the prohibition in paragraph (a). Paragraph (b) would prohibit operations with doors opened or removed with two exceptions. The first exception, under § 91.108(b)(1)(i), is when each individual on board is properly secured in an approved seat or berth or in an approved child restraint system during all phases of flight. The second exception, under § 91.108(b)(1)(ii), is when an individual is properly secured in an approved seat or berth during movement on the surface, takeoff, and landing, and is secured during other phases of flight using an SRS in accordance with, and that meets the requirements of, § 91.108.

The FAA proposes these requirements to ensure that during operations with doors opened or removed, all individuals are at all times properly secured using restraints that meet the requirements of the proposed rule and at no time are unrestrained during operations. As proposed, all SRS would be required to be properly secured on

each individual and properly secured to an FAA-approved airframe attaching point prior to the removal of the FAA-approved seat belt and, if installed, shoulder harness. The proposed rule requires the attachment point(s) to be rated at a strength equal to or greater than the total combined weight of the occupants secured to the attachment point to ensure that the attachment point has adequate strength.

To ensure each individual is properly secured at all times during flight operations in which doors are opened or removed, operators may choose to require compliance with procedures that ensure both the FAA-approved aircraft seat belt and, if installed, shoulder harness and the SRS are secured prior to ground movement or that the SRS is secured after takeoff. In either case, the proposed rule requires each person to be properly secured by the SRS before releasing the FAA-approved seat belt and, if installed, shoulder harness. The FAA reiterates that an individual must be secured by an FAA-approved seat belt and, if installed, shoulder harness during movement on the surface, takeoff, and landing. Moreover, the FAA proposes

that an individual cannot release their safety belt and shoulder harness until the PIC authorizes them to do so. As discussed in more detail in Section IV.G., the PIC is the final authority on whether SRS may be used during flight operations. In addition, the PIC is in the best position to know when flight conditions are appropriate to authorize SRS use.

Finally, the FAA notes that proposed § 91.108 compliments the safety belt provisions in §§ 91.107 and 135.128. Each of these regulations requires individuals to be properly secured in FAA-approved safety belts and, if installed, shoulder harnesses during critical phases of flight (*i.e.*, movement on the surface, takeoff, and landing). Section 91.108 simply allows individuals to release their safety belts and shoulder harnesses during the cruise portion of flight if they are appropriately harnessed by an SRS and as authorized by the PIC.

D. SRS Design Requirements (§ 91.108(c)(1) Through (4))

As the FAA determined the possible scope of this rulemaking, the FAA considered developing certification requirements for SRS. Specifically, the FAA considered a requirement that the SRS be installed pursuant to an FAA approval or that the SRS be separately approved by the FAA. However, the FAA's development of the current LOA review process based on the safety concerns identified by the NTSB following the Liberty Helicopters' accident has not indicated that a physical review of the SRS itself is necessary. In the minutes before the Liberty Helicopters accident, the passengers disconnected their FAA-approved lap belts and shoulder harnesses and moved about the helicopter's interior, secured only by their SRS, which kept them secured within the opened door cabin. The SRS does not need to meet restraint crashworthiness standards because it is intended as a fall protective device, and the proposed rule requires the use of restraints installed pursuant to an FAA approval during critical phases of flight only. For these reasons, the FAA determined that requiring that the SRS be installed pursuant to an FAA approval based on a new set of certification standards would create an unnecessary burden when the approach in this proposed rule would achieve the safety objectives.

The SRS is intended as a fall protective device and not as a crashworthy restraint as mentioned previously. The FAA is aware that standards currently exist that ensure

SRS component materials will maintain their integrity and efficacy when used during cruise phases of flight. For instance, the FAA determined that components that meet National Fire Protection Association, Occupational Safety and Health Administration, or American Society for Testing and Materials standards are adequate to prevent an individual using the SRS from falling out of an aircraft being operated with doors opened or removed. Although these standards help ensure an SRS provides adequate fall protection, they do not address whether a particular SRS is designed and operated in a way that ensures the ability to rapidly egress from an aircraft during an emergency. Therefore, this proposed rule does not recommend or require one standard over another.³⁵

This proposed rule would establish minimum requirements for the utilization of an SRS to ensure that each SRS has an appropriately designed harness and lanyard, as well as an appropriately designed release mechanism that can be released quickly, and will not impede egress in an emergency. Specifically, these minimum requirements include a quick release mechanism that must be operated without the use of a cutting tool, any other tool, or the assistance of another person, and require that the device, when released, does not impede egress from the aircraft as described in section IV, D, 2 below.

This proposed rule would also allow operators flexibility in determining which make or model of SRS to permit for their operations, as long as the SRS meets the requirements in the proposed rule. Moreover, the proposed performance-based design requirements would allow innovation in design and manufacturing for manufacturers to develop new SRS components to meet aviation-specific needs. Each SRS design requirement is discussed in more detail below.

1. Harness and Lanyard (§ 91.108(c)(1) and (2))

The FAA proposes that each SRS have a harness that secures around the individual's torso and a lanyard that connects the harness to an airframe attachment point or points, ensuring that the individual's torso remains

inside the aircraft. An SRS consists of two components: a body harness secured around a person's torso; and a lanyard that connects to the harness and to an airframe attachment point in the aircraft that is not within the flightdeck. The harness is attached to a lanyard through the use of a quick release mechanism. As proposed, an SRS lanyard would be required to meet specific criteria to ensure the safety of the occupant using the SRS. This proposed rule would require the lanyard's length ensures the person's torso remains inside the aircraft at all times to prevent the person from becoming human external cargo and, thus, an external load. Pursuant to the definition in 14 CFR 1.1, an external load means a load that is carried, or extends, outside of the aircraft fuselage. The pertinent regulations for human and nonhuman external cargo, which pertain to any load that is carried, or extends outside a rotorcraft, are found in part 133.

An SRS must comply with the provisions of proposed § 91.108 and is distinct from child restraints approved for use on aircraft, as described in §§ 91.107 and 135.128. A child restraint system does not have a body harness secured around a person's torso, and it is not connected to an airframe attachment point in the aircraft by a lanyard. In the United States, federal regulations for child restraint systems use on aircraft are governed by Federal Motor Vehicles Safety Standard (FMVSS) No. 213, which ensures that child restraint systems for aircraft use not only are crashworthy in a typical motor vehicle frontal crash scenario, but also must pass an inversion test to ensure the occupant is contained in the event an aircraft encounters turbulence.³⁶ In contrast to an SRS, the characteristics of a child restraint system meeting the criteria of FMVSS No. 213 include that the child restraint system should have a solid back and seat, internal restraint straps installed to securely hold the child in the device, and a label showing approval for aviation use.

2. Impede Egress in an Emergency After Being Released (§ 91.108(c)(3))

The FAA proposes that an SRS must not impede egress from the aircraft during an emergency after being released. The use of an SRS may complicate the emergency egress of passengers. This could occur if an SRS is used in conjunction with a corded headset, for instance, or when multiple SRS users' lanyards are attached to

³⁵ Design characteristics of some manufactured devices might not meet the rigorous and necessary safety requirements that would allow for rapid egress in an aircraft emergency. For example, a fall arrest harness which meets its appropriate standard would be able to safely bear the occupant's weight and prevent a fall. However, it still could entangle the occupant and would not be permissible under this rule.

³⁶ 49 CFR 571.213 S8.2.

multiple securement points in the cabin. It could also occur if an SRS requires the user to exit the aircraft while using the harness with the lanyard attached to it, which could cause a tripping hazard or interfere with the ability of any other person on the aircraft to evacuate in an emergency. Even though the user may be able to disconnect themselves from the aircraft while still using the harness with the lanyard attached, this configuration would not meet the regulation since the lanyard could become entangled and impede egress from the aircraft. A retractable lanyard, however, that would not become entangled or impede egress would comply with the proposed requirement.

3. Quick Release Requirements (§ 91.108(c)(4))

The FAA proposes to require that each SRS have a release mechanism that the individual using the SRS can operate quickly with minimal difficulty and without impeding egress from the aircraft in an emergency. This is important because emergency evacuation conditions may include an environment where egress is already difficult due to smoke, fire, or water.

This proposed rule would require the quick release mechanism to be located on the front or side of the harness, in a location easily accessible to, and visible by, the individual using the SRS. This release could work in several ways. A mechanism located on the front or side of the harness that releases the harness from the lanyard, allowing the individual to egress from the aircraft while continuing to wear the harness, would fulfill this proposed requirement. Similarly, a mechanism located on the front or side of the harness that releases the harness from the individual's torso, allowing the individual to egress the aircraft while leaving the entire SRS behind, would also comply with the proposed requirement.

Although the release mechanism of the SRS must be able to be operated quickly with minimal difficulty, it must also prevent inadvertent release while in use. The proposed term "inadvertent release" means unintentional activation of the quick release system. Complying with this standard could consist of having a dual actuation device, which is a sequential control that requires two distinct actions in series for actuation. For example, an operator may use protective covers or flaps that a person must open or remove prior to operating the release mechanism. Another example would be a release mechanism of the SRS that could include a press-gate carabiner that requires two distinct actions.

Additionally, the FAA is aware of certain buckles that cannot be opened when under load, such as could occur when the user is upside down or sideways following an accident. Although this feature would prevent inadvertent release, this feature would not meet the requirement to allow the release mechanism to be operated quickly with minimal difficulty if rapid egress from the aircraft were required.

Additionally, this proposed rule would require that the quick release mechanism be capable of release without the use of a knife, any additional tool, or the assistance of any other individual to cut or release the SRS. In the Liberty Helicopters accident, passengers used harnesses that included interconnected shoulder straps and leg straps, a chest strap that spanned the two front shoulder straps, and a dorsal D-ring (used on the accident flight for attaching a tether) between the wearer's upper shoulder blades. NYONair attached a pouch containing an emergency cutting tool on either the right or left upper shoulder strap of each harness.³⁷ The dorsal D-ring on each passenger's harness was secured with a locking carabiner to a tether, which consisted of several loops of 11 mm webbing of varying lengths (manufactured by a climbing-gear supplier). The other end of each tether was secured to a cabin anchor point with a second locking carabiner.³⁸ First responders reported that they found the passengers strapped in the cabin, and they had to cut various straps to free them. Part of one passenger's harness was found in the helicopter with the D-ring secured to the tether (and the tether secured to the cabin floor fitting) with locking carabiners. The NTSB inspected portions of two harnesses and found that one had a pouch attached that contained a cutting tool; the other had a pouch attached, but no cutting tool was present. Post-accident examination of a harness removed from another passenger revealed a cutting tool contained inside a pouch attached to the front of the left shoulder strap.³⁹ A ceiling-mounted camera in the helicopter captured video and audio information of emergency egress-related events. It showed that, despite receiving instruction on how to remove or cut

their harnesses, the passengers were unable to release themselves.⁴⁰

The NTSB found that minimally trained passengers would have great difficulty extricating themselves from the harness/tether system, each of which was equipped with locking carabiners and an ineffective cutting tool, during an emergency requiring a rapid egress. Additionally, the NTSB concluded that Liberty's "... decision to use locking carabiners and ineffective cutting tools as the primary means for passengers to rapidly release from the harness/tether system was inappropriate and unsafe."⁴¹

In an emergency, rapid egress from the aircraft is essential. Passengers who have never used a cutting tool, or who don't pay attention to a safety briefing or take it seriously, could have difficulty using a tool to cut themselves from an SRS, especially in an environment that may include smoke, fire, or water. They could forget where the tool is located on the harness or have difficulty in removing the tool from the storage pouch. Also, they could drop the tool, rendering it useless. Relying on another person to assist in detachment could also be ineffectual if that person becomes injured or unresponsive in an emergency and cannot help.

E. Who May Provide the SRS (§ 91.108(d))

The FAA proposes to allow an operator or an individual to provide an SRS for use during a flight. In some cases, an individual (e.g., professional photographer, fire suppression technician, wildlife net gunner) may own their own SRS and want to use it on different operators' aircraft. In other cases, the operator or PIC will provide the SRS to individuals who seek to use SRS during the flight. For an individual providing their own SRS, the FAA proposes that they must confirm with the PIC, either verbally or in writing, as determined by the PIC, the system's continued serviceability and readiness for its intended purposes. One way an individual providing their own SRS can meet this requirement is by ensuring the SRS is inspected and maintained in accordance with the manufacturer's instructions.

In addition, the proposed rule would require that each individual providing their own SRS comply with the sizing criteria for which the SRS is rated. This requirement would ensure that the SRS is properly sized for the individual using the SRS. The manufacturer's sizing criteria may include different

³⁷ *Inadvertent Activation of the Fuel Shutoff Lever and Subsequent Ditching, Liberty Helicopters Inc., Operating a FlyNYON Doors-Off Flight, Airbus Helicopters AS350 B2, N350LH, New York, New York, March 11, 2018. Aircraft Accident Report, December 10, 2019. Available at <https://www.ntsb.gov/investigations/AccidentReports/Reports/AAR1904.pdf> at page 18.*

³⁸ *Id.* at 19.

³⁹ *Id.* at 21.

⁴⁰ *See id.* at 28–29.

⁴¹ *Id.* at xii.

measurements such as height, weight, chest circumference, or other specified sizing criteria. Requiring that the SRS be used within the limitations for which the SRS is rated will help ensure safe and appropriate use of the system.⁴² This requirement supplements an SRS operational requirement in section IV.F.3., below, stating that the SRS must fit the individual using it based on the sizing criteria for which the SRS is rated.

F. SRS Operational Requirements
(§ 91.108(e)(1) and (2))

As discussed in more detail below, the FAA proposes specific SRS operational requirements to help ensure individuals are using the SRS safely and appropriately.

1. Airframe Attachment Points
(§ 91.108(e)(1)(i))

This proposed rule would require a qualified person designated by the operator to connect each SRS lanyard to an airframe attachment point or points with a rated strength equal to or greater than the total weight of the occupant (or the combined weight if there is more than one occupant attached to an attachment point).⁴³ There is no requirement for a specific number of attachment points. The number and location vary by each aircraft type design. Attachment points in the cabin may be existing hard points, with weight capabilities documented on existing placards or in appropriate aircraft flight manuals. If multiple harnesses are attached to a single location, the proposed rule requires the attachment point to be rated at a strength equal to or greater than the total combined weight of the occupants.

All aircraft are designed for both emergency landing conditions and all flight loads. The FAA is not proposing that an SRS be designed or intended for restraining an occupant in an emergency landing condition because the FAA expects occupants to be in an FAA-

approved seat with the seat belt fastened prior to an emergency landing. Therefore, the FAA is not proposing that SRS be subject to the emergency landing load factors applicable to the FAA-approved seats and seatbelts. SRS are designed to keep an individual inside the aircraft, while approved seats and seatbelts are designed for emergency landing conditions. The proposed rule would require each airframe attachment point used for the attachment of SRS to have a rated strength equal to or greater than the total weight of each occupant (or the combined weight if there is more than one occupant attached to an attachment point). This proposed requirement regarding airframe attachment point(s) would ensure that the attachment point has adequate strength under all flight conditions.

2. SRS Attachment Location
(§ 91.108(e)(1)(ii))

The FAA proposes that no SRS may be connected to any airframe attachment point located in the flightdeck. During the Liberty Helicopters accident flight, the front passenger, who was facing outboard in his seat with his legs outside the helicopter, leaned back several times to take photographs using a smartphone. The onboard video showed that, each time he leaned back, the tail of the tether attached to the back of his harness hung down loosely near the helicopter's floor-mounted controls. At one point, when he pulled himself up to adjust his seating position, the tail of his tether remained taut but appeared to pop upward. Two seconds later, the helicopter's engine sounds decreased, and the helicopter began to descend. The pilot reported that when he reached down for the emergency fuel shutoff lever, he realized that it was in the off position. He also noted that a portion of the front seat passenger's tether was underneath the lever.⁴⁴

During its investigation of the Liberty Helicopters accident, the NTSB evaluated the certification basis for the accident helicopter's fuel shutoff lever, which did not require protection from inadvertent activation due to external influences, such as interference from a passenger.⁴⁵ The NTSB found that the tail of the front passenger's tether caught on the fuel shutoff lever during the flight, which resulted in the inadvertent activation of the fuel shutoff lever, interruption of fuel flow to the engine, and loss of engine power.⁴⁶ The NTSB determined the probable cause of the accident was Liberty Helicopters' use of

a NYONair-provided passenger harness/tether system, which caught on and activated the floor-mounted engine fuel shutoff lever and resulted in the in-flight loss of engine power and the subsequent ditching.⁴⁷

As the FAA developed this NPRM, it considered previous accidents and incidents in addition to the Liberty Helicopters accident that involved inadvertent operation of flight controls. Reports from these incidents indicate in each that a passenger inadvertently manipulated controls (e.g., fuel flow control lever) in the flightdeck. For example, on April 4, 1994, an Aérospatiale AS 350B Ecureuil air ambulance crashed in Alberta, Canada, following loss of engine power. After an investigation, the Transportation Safety Board of Canada issued its final report, *Engine Failure, Hard Landing, Turbowest Helicopters Limited, Aérospatiale AS350B Astar (Helicopter) C=FHBG, High Prairie, Alberta, 62nm NE, 04 April 1994*.⁴⁸ The report stated that a strap from a knapsack got caught on the fuel control lever and moved it out of the "flight" position resulting in fuel starvation to the engine, a total loss of engine power, and low rotor revolutions per minute.

On September 13, 1996, an Aérospatiale AS 350B1 Ecureuil, under contract to carry out a number of flights in connection with the filming of scenes for a feature film, crashed in Greenland following loss of engine power, killing the single passenger/photographer and seriously injuring the pilot. Following completion of its investigation, the Danish Accident Investigation Board (AAIB) opined that during movements in and around the lefthand seat, while troubleshooting problems with his photographic equipment, the photographer may unintentionally have pushed the fuel control lever toward idle/shut down. During its investigation, the Danish AAIB became aware of an almost identical incident that happened in 1993. The mission was also photography, and the straps of the photography equipment became caught in the fuel control lever and moved it toward the idle position, resulting in the loss of engine power. The pilot was able to restart the engine and landed the helicopter normally.

⁴⁷ Ibid.

⁴⁸ *Engine Failure, Hard Landing, Turbowest Helicopters Limited, Aérospatiale AS350B Astar (Helicopter) C=FHBG, High Prairie, Alberta, 62nm NE, 04 April 1994*, Report Number A94W0037 (Gatineau, Quebec, Canada: Transportation Safety Board of Canada, 1994) accessed at <http://www.bst-tsb.gc.ca/eng/rapports-reports/aviation/1994/a94w0037/a94w0037.pdf> on June 24, 2021.

⁴² For similar requirements imposed on the PIC regarding the SRS's continued serviceability and sizing criteria, see section IV.G below.

⁴³ The weight limits for aircraft attachment points are placarded within the aircraft, and the aircraft weight and center of gravity limitations are outlined in the aircraft flight manual. Under § 91.103 (Preflight action), prior to flight, each pilot is responsible for being familiar with pertinent information concerning the flight—that typically includes information outlined in the aircraft flight manual. In addition, § 91.9 (Civil aircraft flight manual, marking, and placard requirements) requires persons to comply with the operating limitations specified in the approved aircraft flight manual. Consequently, it is the PIC's responsibility to ensure that all occupants on board meet the attachment point limitations outlined for that aircraft.

⁴⁴ *Id.* at 6.

⁴⁵ *Id.* at ix.

⁴⁶ *Id.* at xii.

On April 15, 2008, a Eurocopter AS350B2 helicopter crashed 34 miles east of Chickaloon, Alaska, killing the pilot and three passengers and seriously injuring one passenger. The NTSB determined that the probable cause of the accident was the loss of engine power due to an overspeed of the helicopter's turbine engine, precipitated by the inadvertent movement of the fuel flow control lever by a passenger in the front seat. Contributing to the accident was the pilot's failure to properly secure or stow the passenger's backpack. During its investigation, the NTSB interviewed two large helicopter operators, Era and Eurocopter, about incidents of passengers interfering with floor-mounted engine controls on helicopters—specifically, the fuel flow control lever. Both operators informed the NTSB that they had anecdotal information about passengers placing items such as purses and camera bags on the floor-mounted engine controls. The operators also mentioned incidents of bag straps snagging on the fuel and other control levers.⁴⁹

The airworthiness standards for 14 CFR 23.2600, 25.1143(e), 27.1143(d), and 29.1143(e)⁵⁰ require that flight and engine controls not be subject to inadvertent operation. This requirement is based on the assumption that only crewmembers and/or pilots will interact with the aircraft controls. When the FAA codified these airworthiness standards, the FAA did not anticipate crewmembers or passengers in the flightdeck would be attached to or carry equipment that is not part of the approved type design that could snag on controls. Generally, flight manual procedures⁵¹ require that all items be secured prior to flight. These procedures reinforce the assumptions made when the airworthiness standards were codified.

This proposed rule would prohibit any person who occupies a seat in the flightdeck from using an SRS. In addition, this proposed rule would require an SRS to be connected to an aircraft attaching point or points that are

not in the flightdeck. These proposed limitations would prevent inadvertent operation of the flight controls, as was experienced by the crew and passengers of the Liberty Helicopters accident flight. The operator would be responsible for ensuring that both of these requirements are met.

3. Sizing Criteria (§ 91.108(e)(2))

This proposed rule would also require that the SRS fit the individual using it based on the sizing criteria for which the SRS is rated. As discussed above in section IV.E (“Who May Provide the SRS”), sizing criteria may include different measurements such as height, weight, chest circumference, or other specified sizing criteria. For example, SRS size requirements may be listed as small, medium, and large; however, the size may actually be based on a combination of height and weight. To illustrate, a “small” SRS may have minimum criteria of 4 feet 10 inches in height and a weight of 100 pounds and a maximum of 6 feet in height and 170 pounds. Requiring that the SRS fit the individual using it will help ensure safe and appropriate use of the system. This requirement is supplemented by the additional requirements under § 91.108(d)(2) and (f)(3) found in Sections IV.E. and IV.G, respectively.

G. Pilot in Command (§ 91.108(f)(1) Through (5))

In accordance with § 91.3(a), the PIC of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft. As a result, this proposed rule imposes several responsibilities on the PIC.

First, the FAA proposes that regardless of who provides the SRS, the PIC has the overall responsibility to ensure that the SRS meets the requirements of proposed § 91.108. As the final authority of the aircraft operation, the PIC is best suited to make this determination. In addition, the FAA proposes that if the SRS does not meet the requirements outlined in § 91.108, the PIC must not permit the individual to use the SRS. For example, if the PIC determines that an SRS is not safe for continued use or that an individual does not meet the sizing criteria for which the SRS is rated (if the operator or PIC provided the SRS), the PIC must not permit the individual to use that SRS.

Second, for any SRS provided by either the operator or the PIC, the FAA proposes that the PIC must ensure the SRS's continued serviceability and readiness for its intended purpose. As discussed in the section pertaining to individuals providing their own SRS, this requirement may be met by

inspecting and maintaining the SRS in accordance with the SRS manufacturer's instructions. Ensuring the SRS is serviceable and ready for its intended purpose will help ensure the SRS is safe for continued use.

Third, the FAA proposes that the PIC may only permit an individual to use an SRS that is provided by either the operator or the PIC if that individual complies with the sizing criteria for which the SRS is rated. As discussed in sections IV.E (“Who May Provide the SRS”) and IV.F.3 (“Sizing Criteria”), a manufacturer's sizing criteria may include different measurements such as height, weight, chest circumference, or other specified sizing criteria. This requirement would ensure safe and appropriate use of the system and that the SRS is properly sized for the individual using the SRS.⁵²

Fourth, the FAA proposes that the PIC has final authority regarding whether the SRS may be used during flight operations. If the PIC determines an individual should not use an SRS during an operation, the PIC may prohibit use of the SRS. This stipulation is in addition to the PIC's obligation to prohibit the use of an SRS if it does not meet the requirements in § 91.108. For example, the PIC may determine that aircraft operations, outside the requirements of § 91.108, render conditions unsafe to use an SRS. In that case, the PIC may prohibit individuals from using the SRS during the flight.

Finally, the FAA proposes that the PIC has final authority to authorize an individual to release the FAA-approved safety belt and, if installed, shoulder harness and remain secured only by the supplemental restraint system. The PIC is in the best position to determine when appropriate flight conditions exist so as to allow individuals to move about the aircraft using only an SRS.

H. Enhanced Passenger Briefing and Demonstration (§ 91.108 (g) and (h))

1. Passenger Briefing (§ 91.108(g)(1) and (2))

The FAA proposes to require a passenger briefing on how to use SRS during a flight. Existing regulations require operators to provide all passengers a safety briefing prior to departure. When a passenger onboard an aircraft will use an SRS, the rule as proposed requires that passenger to receive additional information in an enhanced safety briefing. In addition, any passenger using an SRS provided by

⁴⁹ NTSB Accident Number ANC08FA053, released 2/17/2010, available at: <https://data.ntsb.gov/Docket?ProjectID=67841>.

⁵⁰ The airworthiness standards in parts 23, 25, 27, and 29 are organized by aircraft category. Part 23 applies to normal category airplanes; part 25 applies to transport category airplanes; part 27 applies to normal category rotorcraft; and part 29 applies to transport category rotorcraft.

⁵¹ See § 91.9 (Civil aircraft flight manual, marking, and placard requirements) requiring persons to comply with the operating limitations specified in the approved aircraft flight manual; see also § 21.5 (Airplane or Rotorcraft Flight Manual) requiring the aircraft flight manual to contain the operating limitations and other information required by applicable regulations.

⁵² For similar requirements imposed on individuals providing their own SRS, regarding the SRS's continued serviceability and use limitations, see section IV.E above.

either the operator or PIC would have to demonstrate the ability to occupy, secure, and release the FAA-approved seat belts and, if installed, shoulder harnesses, as well as the ability to release quickly the SRS with no assistance and with minimal difficulty. Individuals providing their own SRS do not have to meet this specific requirement, but they must still meet the other briefing requirements, and they must meet the demonstration requirements under § 91.108(h), as discussed in Section IV.H.2, below. Therefore, under the proposed requirements, in addition to the standard briefing requirements codified at §§ 91.107, 91.519, 91.1035, and 135.117, an operator or PIC conducting operations that involve the use of SRS would provide an enhanced briefing prior to the flight to all passengers using an SRS during the flight.

This proposed rule would require the enhanced safety briefing to include information about the proper use, securing, and releasing of the SRS and the means of direct communication among crewmembers and passengers during normal and emergency operating procedures. This proposed rule would require the provision of information about use of any headset and intercom systems, how a passenger will be notified of an event requiring action, including emergencies, egress procedures, and other unforeseen circumstances, and how crewmembers would notify the passenger that they can release the FAA-approved seat belt and, if installed, shoulder harness and move within the aircraft using the SRS. The briefing would also describe how a passenger will be notified when to return to their seat and secure the FAA-approved seat belt and, if installed, shoulder harness, and when to notify the pilot of safety concerns. Each such aspect of this proposed briefing requirement is important because it provides the individual with additional information specific to the unique characteristics of using an SRS during normal and emergency flight operations that would enhance the individual's safety. The proposed briefing helps inform the individual SRS user of the behavioral expectations during the flight and may provoke clarifying dialogue, if necessary, that ensures the individual understands these expectations. These elements are critical to ensuring the safety of the operation.

Finally, to ensure clarity between the existing passenger briefing requirements outlined under §§ 135.117 and 136.7 and the passenger briefing requirements in this proposed rule, the FAA proposes to add a cross-reference to § 91.108 in

those sections. Adding this cross-reference will help ensure that the proposed briefing requirements in § 91.108 are not overlooked when considering the other passenger briefing requirements in §§ 135.117 and 136.7.

2. Passenger Demonstration (§ 91.108(h)(1) and (2))

After receiving this enhanced briefing, prior to ground movement of the aircraft, this proposed rule would require all passengers using an SRS to demonstrate their comprehension of the information presented in the briefing. To this end, the proposed rule requires all passengers using an SRS to demonstrate to the operator their ability to occupy, secure, and release the FAA-approved seat belts and, if installed, shoulder harnesses, as well as their ability to release the SRS quickly without assistance and with minimal difficulty. As noted in the proposed regulatory requirements, the passenger must demonstrate their ability to accomplish all actions required for quick release of the SRS with no assistance, regardless of whether the individual will use the individual's own SRS or will use an SRS the operator provides.

The proposed requirement for the user of the SRS to demonstrate the ability to occupy, secure, and release the FAA-approved seat belts and, if installed, shoulder harnesses would ensure that, in an inflight emergency while using SRS at low altitude, the individual can quickly re-secure themselves with the FAA-approved seat belt and, if installed, shoulder harness. It would also establish that the individual can accomplish all actions required for quick release of the SRS without assistance to egress the aircraft in case of an emergency.

I. Individuals Not Permitted To Use SRS (§ 91.108(i)(1) Through (4))

During operations when SRS are in use, there might be instances when not all individuals are using an SRS, either by choice or because they do not meet the requirements of the proposed rule. This would include, but is not limited to, any passenger who is unable to demonstrate that the individual is able to occupy, secure, and release the FAA-approved seat belt and, if installed, shoulder harness, or release quickly the SRS with no assistance and with minimal difficulty. Passengers under the age of 15, individuals occupying a seat in the flightdeck, and passengers occupying or using an approved child restraint system are not permitted to use an SRS.

1. Individuals Unable To Meet the Demonstration Requirements of the Enhanced Safety Briefing (§ 91.108(i)(1))

If an individual cannot demonstrate that they are able to occupy, secure, and release the FAA-approved seat belt and, if installed, shoulder harness, and able to release quickly the SRS with no assistance and with minimal difficulty, this proposed rule would prohibit the individual from occupying or using an SRS during the flight. The individual must remain secured in their FAA-approved seat belt and, if installed, shoulder harness for the entire flight.

2. Individuals Under the Age of 15 (§ 91.108(i)(2))

The FAA is proposing that an individual may not use an SRS during operations unless the individual has reached their fifteenth birthday. In determining this proposal, the FAA referred to the “*Exit Row Seating*” final rule,⁵³ which evaluated various criteria to determine individuals who are capable of performing certain functions during an emergency. As explained below, limiting the age to 15 or older for those who use an SRS helps maximize the chances of survival for the user should an emergency evacuation occur.

As discussed in the “*Exit Row Seating*” final rule, many children do not have the skills or capabilities necessary to perform the required functions of an emergency evacuation from an aircraft and would likely require the assistance of an adult during an emergency.⁵⁴ The same is true for children using SRS. It is likely a child would need assistance in releasing from the SRS in order to egress the aircraft safely and quickly during an emergency. Similarly, it is likely that some children, due to their age and/or size, would not have the cognitive or physical ability to safely release from an SRS during an emergency.

The FAA has stated that it is difficult to establish a clear cut-off point between childhood and adolescence when individuals may be more capable of handling emergency situations.⁵⁵ Notwithstanding, a number of existing laws, regulations, and practices point to the age of 15 as a turning point into adulthood. For example, in many states it is the age when driver's licenses and

⁵³ See *Exit Row Seating*, Final Rule, 55 FR 8054, 8066 (Mar. 6, 1990).

⁵⁴ *Id.*

⁵⁵ *Id.* (discussing various dictionary definitions of “child.”) In the *Exit Row Seating* NPRM, the FAA did not propose a specific age limit, but one commenter requested a defined age to facilitate the operators' abilities to establish objective criteria. *Exit Row Seating*, NPRM, 54 FR 10484 (Mar. 13, 1989).

work permits become available.⁵⁶ After considering several options for an age requirement to use an SRS, the FAA determined that the reasoning in the “Exit Row Seating” final rule applies in this proposed rule. Fifteen is an objective criterion that will enable operators to comply with clear SRS requirements. Moreover, most children at that age can accomplish the functions required to release from an SRS safely and quickly during an emergency. The FAA has determined that individuals who have reached this age are less likely to need assistance from an adult during an emergency. Consequently, the FAA proposes that passengers under the age of 15 are prohibited from using an SRS and must occupy either an approved seat or berth with a safety belt and, if installed, shoulder harness, or an approved child restraint system that complies with § 91.107(a)(3)(iii) or § 135.128(a)(2).

3. Individuals Seated in the Flightdeck (§ 91.108(i)(3))

This proposed rule would prohibit individuals using an SRS from sitting in the flightdeck. As discussed in section IV.F.3 of this preamble, this proposed prohibition is based on a review of past accidents and incidents where unsecured items, including those with straps and lanyards, have a history of interfering with flight and engine controls. In the Liberty Helicopters accident, a tether caught on and activated the floor-mounted engine fuel shutoff lever, resulting in the in-flight loss of engine power and subsequent ditching.⁵⁷

As described above, airworthiness standards codified at 14 CFR parts 23, 25, 27 and 29 require that flight and engine controls not be subject to inadvertent operation. These standards do not address circumstances when carry-on objects, tethers, or straps would inadvertently move a control. Consequently, crewmembers or passengers in the flightdeck should not be attached to or carry equipment that could snag on controls.

4. Passengers Who Occupy or Use an Approved Child Restraint System (§ 91.108(i)(4))

The FAA proposes to prohibit anyone occupying or using a child restraint

system from also using an SRS. Current regulations under 14 CFR parts 91, 121, 125, and 135 allow a child, who by definition is any individual under 18 years of age, to occupy or use an FAA-approved child restraint system, provided certain conditions exist, including that the child is accompanied by a parent, guardian, or attendant designated by the child's parent or guardian to attend to the safety of the child during the flight.⁵⁸ As a result, there may be circumstances where an individual occupying an approved child restraint system is 15 years old or older and is otherwise eligible to use an SRS. As explained in more detail below, an SRS may not be used by an individual occupying a child restraint system.

The use of a child restraint system is incompatible with the use of an SRS. As described above, this proposed rule would require each SRS to consist of a body harness secured around the torso of the individual using the SRS and a lanyard that connects the body harness to an airframe attachment point inside the aircraft. The SRS would have a release mechanism that the individual can quickly operate with minimal difficulty and without impeding egress from the aircraft in an emergency. Additionally, the release mechanism cannot require the assistance of any other individual to release the SRS. It is illogical to permit a child who occupies a child restraint system, and who must be accompanied by a parent, guardian, or attendant tasked to attend to the safety of the child during the flight, to be permitted to also use an SRS. Therefore, this proposed rule would prohibit all individuals occupying or using a child restraint system from also using an SRS. The FAA notes that this proposed rule permits the use of an approved child restraint system on a flight where the doors are opened or removed as long as the child restraint system is properly secured to an approved seat or berth with a safety belt and, if installed, shoulder harness, and complies with § 91.107(a)(3)(iii) (for part 91 operations) or § 135.128(a)(2) (for part 135 operations).

J. Lap-Held Child (§ 91.108(j)(1) and (2))

The proposed rule would prohibit a child who has not reached their second birthday from being held by an adult during civil aircraft operations when the adult uses an SRS or during any operation in which the doors are opened or removed. Specifically, the proposed rule would prohibit a child from being

held by an adult using an SRS during civil aircraft operations even when the aircraft doors are not opened or removed. The intent of using an SRS is to provide support to the user when they are out of their required safety belt and, if installed, shoulder harness. Unexpected turbulence can cause an airplane to suddenly jolt, possibly injuring passengers who are not restrained. If turbulence occurs when the SRS user is not secured by a safety belt, they would require the use of their hands to steady themselves or to hold onto an aircraft seat or structure to prevent themselves from falling, particularly if they are out of their seat. Holding a lap child would prevent the SRS user from being able to use their hands to steady themselves or to grasp onto something if necessary. Further, in the event of an emergency, time is critical. Using an SRS requires additional steps to release. Holding a lap child while trying to quickly release the SRS and the required safety belt and, if installed, shoulder harness, could cause the SRS user additional time to evacuate the aircraft.

In addition, this rule would prohibit a lap-held child during operations where the aircraft doors are opened or removed. As currently permitted by §§ 91.107 and 135.128, a child who has not reached their second birthday may be held by an adult who occupies an approved seat or berth. However, it is contrary to this proposed rule, the intent of which is to mitigate risks to all occupants during operations conducted anytime an SRS is in use, to permit a child to remain unrestrained during all phases of flight, including during movement on the surface, takeoff, and landing, when the aircraft doors are opened or removed. During an operation with doors opened or removed, a lap-held child would be at high risk of falling out of the aircraft—an unacceptable risk this rule seeks to prevent.

For the above reasons, the FAA proposes that lap-held children may not be held by anyone using an SRS, regardless of whether the doors are opened or removed, and they are not permitted on flights where the doors are opened or removed.

Finally, to ensure clarity between the lap-held child permissions outlined under §§ 91.107 and 135.128 and the lap-held child restrictions in this proposed rule, the FAA proposes to add a cross-reference to § 91.108 in those sections. Adding this cross-reference will help ensure that proposed § 91.108 is not overlooked when considering whether lap-held children are permitted on a flight.

⁵⁶ 55 FR 8066.

⁵⁷ *Inadvertent Activation of the Fuel Shutoff Lever and Subsequent Ditching, Liberty Helicopters Inc., Operating a FlyNYON Doors-Off Flight, Airbus Helicopters AS350 B2, N350LH, New York, New York, March 11, 2018. Aircraft Accident Report, December 10, 2019. Available at <https://www.ntsb.gov/investigations/AccidentReports/Reports/AAR1904.pdf>.*

⁵⁸ See § 91.107 Use of safety belts, shoulder harnesses, and child restraint systems, § 135.128 Use of safety belts and child restraint systems.

K. Excluded Operations (§ 91.108(k)(1) Through (3))

The FAA determined that this proposed rule should not apply to certain other regulations if the rule would otherwise conflict with the intent of those regulations. As a result, this proposed rule would not apply to operations conducted under part 105, Parachute Operations, nor would it apply to the persons described in § 91.107(a)(3)(ii), which allows person(s) on board an aircraft for the purpose of engaging in sport parachuting to use the floor of the aircraft as a seat.

Additionally, this proposed rule would not apply to rotorcraft external-load operations conducted under part 133. Title 14 CFR 1.1 defines external load as a load that is carried, or extends, outside of the aircraft fuselage. Section 133.11(a) states that no person subject to part 133 may conduct rotorcraft external-load operations within the United States without, or in violation of the terms of, a Rotorcraft External-Load Operator Certificate issued by the Administrator under § 133.17.

This proposed rule also would not interfere with or contradict the requirements of § 91.105, Flight crewmembers at stations, or § 135.171, Shoulder harness installation at flight crewmember stations. As proposed, the regulation would allow an operator to conduct a flight with doors opened or removed under § 91.108(b)(1) even if there are flight crewmembers on board who are subject to the requirements of §§ 91.105 or 135.171 and to the extent that the flight crewmembers must unfasten their shoulder harnesses in accordance with those sections. Similarly, the FAA proposes that § 91.108(b)(2) not apply to any flight crewmembers subject to §§ 91.105 or 135.171 to the extent they need to unfasten their shoulder harnesses in accordance with those sections. Sections 91.105 and 135.171 allow a flight crewmember to unfasten or not use the installed shoulder harness if the crewmember cannot perform the required duties with the shoulder harness fastened.

The proposed SRS rule could inhibit, or otherwise conflict with, the aforementioned operations; therefore, the FAA proposes the aforementioned exclusions under § 91.108.

L. Definition (§ 91.108(l))

This proposed rule would define an SRS as a device that is not installed on the aircraft pursuant to an FAA

approval used to secure an individual inside an aircraft when that person is not properly secured by an FAA-approved seat belt and, if installed, shoulder harness or an approved child restraint system.⁵⁹ An SRS consists of a harness secured around the torso of the individual using the supplemental restraint system and a lanyard that connects the harness to an approved airframe attachment point inside the aircraft. Examples of FAA-approved devices include (but are not limited to) restraints approved through a Type Certificate, Supplemental Type Certificate, or as an approved major alteration using FAA Form 337.

M. Additional Comments Invited

This proposed rule would apply to operations conducted under parts 91 and 135 and does not include an option for waiving the proposed requirements of § 91.108 in accordance with § 91.905, *List of rules subject to waivers*. The FAA cannot envision a scenario in which operations conducted with doors opened or removed could occur safely without complying with the proposed requirements of § 91.108. The FAA seeks input, however, on its proposal that § 91.108 not be listed in the rules subject to waivers under § 91.905.

V. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 (“Modernizing Regulatory Review”), direct that each federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a federal mandate likely to result in the expenditure by

state, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (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. The FAA has provided a detailed Regulatory Impact Analysis (RIA) in the docket for this rulemaking. This portion of the preamble summarizes the FAA’s analysis of the economic impacts of this proposed rule.

In conducting these analyses, the FAA has determined that this proposed rule: (1) has benefits that justify its costs. This rule is not a significant regulatory action, as defined in section 3(f) of Executive Order 12866. The proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, would not create unnecessary obstacles to international trade, and would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

A. Summary of the Regulatory Evaluation

The FAA estimates that for safety benefits to equal or exceed the costs of the proposed rule, based on a 20-year analysis, two accidents of the same severity as the Liberty Helicopters accident would need to be mitigated. The estimated safety benefit in present value, from mitigating one part 91 and one part 135 helicopter accident (*i.e.*, an accident in year 10 and an accident in year 20 of the analysis period), would range from \$26.8 million to \$40.2 million, at a 7 percent discount rate, and \$45.4 million to \$68.0 million at a 3 percent discount rate.

The cost of the proposed rule to operators, pilots, and passengers comes from purchasing harnesses and lanyards that meet specific requirements as set forth in this rule, conducting a pre-flight safety briefing on the use of the SRS, and requiring passengers to demonstrate their ability to remove the SRS in the event of an emergency. The FAA would also incur costs for periodic surveillance of parts 91 and 135 SRS operations. The estimated present value cost to the FAA, over 20 years, is \$1,240 at a 7 percent discount rate and \$1,263 at a 3 percent discount rate. The estimated present value total cost to industry and the FAA, for these requirements, over 20 years, is \$22.3 million at a 7 percent discount rate and \$31.7 million at a 3 percent discount rate. Estimated safety

⁵⁹ As explained previously, there may be circumstances where an individual occupying an

approved child restraint system is 15 years old or older and is otherwise eligible to use an SRS.

benefits and costs are shown in the table below.

TABLE 2—TOTAL BENEFITS AND COSTS OVER 20 YEARS
[Millions of USD]*

Provisions	Affected population	Safety benefits		Costs	Safety benefits		Costs
		Low	High		Low	High	
91.108—Use of supplemental restraint systems ⁶⁰ .	Part 91 Operations Part 135 Operations	7 Percent present value			3 Percent present value		
		\$17.8 9.0	\$26.7 13.6	\$19.4 2.9	\$26.0 19.4	\$39.0 29.0	\$27.5 4.1
		26.8 2.5	40.2 3.8	22.3 2.1	45.4 3.0	68.0 4.6	31.7 2.1
Total .....	.....						
Annualized .....	.....						

* Table values have been rounded. Totals may not add due to rounding.

In 2018, in response to the Liberty Helicopters accident, the FAA issued an Emergency Order of Prohibition, which prohibited the use of supplemental passenger restraint systems (SPRS) that cannot be released quickly in an emergency in doors-off flight operations. The FAA also estimates the cost and benefit of the proposed rule using the Emergency Order of Prohibition as the baseline. The FAA estimates that the undiscounted cost of the rule, above the Emergency Order of Prohibition, is \$22.9 million (\$11.8 million at 7 percent present value, or \$16.8 million at 3

percent present value). When annualized, at either a 7 percent or 3 percent discount rate, the cost is approximately \$1.1 million. The costs come entirely from the demonstration by passengers of the ability to release the device. The FAA considers that a passenger demonstrating the ability to release themselves from the device adds to the efficacy of the rule above the Emergency Order of Prohibition. However, the FAA is unable to quantify the incremental safety benefits gained by the passenger demonstration.

1. Who is potentially affected by this rule?

This proposed rule would affect all flights with doors opened or removed and all operations with individuals on board who choose to use an SRS, except for operations conducted under part 105, Parachute Operations, or conducted under part 133, Rotorcraft External-Load Operations, and public aircraft operations. The FAA identified the following, from Flight Standards' Web-based Operations Safety System (June 2021), as the population that could be affected:

TABLE 3—POTENTIAL AFFECTED OPERATORS

CFR	Number of operators	Number of rotorcraft	Number of operators	Number of aircraft
	Rotorcraft		Fixed wing	
91	405	1,051	716	1,894
135	472	2,917	1,728	8,411

However, based on the number of requests for SRS LOAs, the FAA narrowed the population to 26 part 91 operators and 40 part 135 operators over the next 20 years.

General Assumptions:

- The present value discount rate of three and seven percent is used as required by the Office of Management and Budget.⁶¹
- Period of Analysis: 20 years to capture replacement of an SRS occurring every 10 years.⁶²

- The estimated average number of passengers per flight is between 3 to 5 passengers. The FAA used 4 passengers in the analysis.

- Estimated time to create and update content for enhanced passenger safety briefing: ⁶³ 2 hours per operator. Assume updates occur every 10 years to align with the replacement cycle of harnesses and lanyards.

- Estimated pilot time to complete enhanced safety briefing: ⁶⁴ 0.03 hours (2 minutes)

- Estimated time for passenger competency demonstration: ⁶⁵ 0.02 hours (1 minute)

Baseline: There were no requirements for an SRS prior to 2018 when the FAA issued Emergency Order of Prohibition No. FAA-2018-0243. Since the Emergency Order of Prohibition is temporary, the baseline used in this analysis is pre-Emergency Order. However, the Emergency Order requires harnesses and lanyards that fulfill the same requirements required in the

⁶⁰ Assumes a part 91 accident occurs in year 10 and a part 135 accident occurs in year 20.

⁶¹ Office of Management and Budget, OMB Circular A-4 (2003), guidance for the development of regulatory analysis.

⁶² A sample of harnesses provided for consideration of an SRS LOA, such as Yates 363 and 338, have a maximum life span of 10 years. See Product manuals. available at <http://yatesgear.com/>

en/special-forces-full-body-spig-harness and <http://yatesgear.com/en/ars-heli-ops-harness>.

⁶³ Part 135—Operating Requirements: Commuter and on-Demand Operations and Rules Governing Persons on Board such Aircraft, Paperwork Reduction Act Supporting Statement, (OMB No. 2120-0039): § 8 (Apr. 9, 2019) (estimate of time and volume of operators and passenger briefings pursuant to § 135.117, Briefing of passengers before

flight), available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=86383102>.

⁶⁴ *Id.*

⁶⁵ This estimate is a combination of the time identified in the Emergency Order and the FAA's assertion that a passenger will need to release the SRS in under a minute to be able to evacuate a helicopter in an emergency.

proposed rule; therefore, operators already incur the cost of the harness and lanyard. Operators would primarily incur the additional cost of the passenger demonstration briefing under the proposed rule. This is analyzed as a second baseline. The extension of the Emergency Order of Prohibition was considered as an alternative, and cost and benefits are estimated in the alternative section below.

2. Benefits of This Rule

Benefits of this rule include preventing future accidents similar to the Liberty Helicopters accident. The NTSB final safety report identified the probable cause of this accident as Liberty Helicopters' use of an SRS system. The SRS caught on and activated the engine fuel shutoff lever, located in the flightdeck, and resulted in the loss of engine power and the subsequent ditching. That same SRS, worn by passengers on that flight, also contributed to the severity of the accident by hindering the passengers' quick egress from the aircraft. This proposed rule would prohibit use of an SRS in the flightdeck, address the inadvertent activation of the fuel shutoff lever, and propose SRS requirements that would reduce the likelihood of passengers being unable to remove an SRS when needed in an emergency.

The Liberty Helicopters accident resulted in five fatalities, one minor injury, and a substantially damaged aircraft. The analysis assumes that another accident of similar magnitude would occur in the 20-year time horizon. While the SRS operation requirements, passenger briefing, and passenger demonstration set forth in the proposed rule would have lessened the severity of the accident, the NTSB determined the probable cause of the accident to be the inadvertent activation of the floor-mounted engine fuel shutoff lever by the passenger harness/tether system.⁶⁶ Prohibiting the use of an SRS in the flightdeck would help mitigate the risk factor that initiated the accident. The benefits include avoided casualties and aircraft damage. Multiplying the five casualties by a value of statistical life (VSL) of \$11.6 million yields a total of \$58.0 million as the social cost of these fatalities.⁶⁷ The

pilot also sustained minor injuries at an avoided minor injury rate of \$34,800, and the helicopter, an Airbus AS350 B2, suffered substantial damage valued at \$210,243.⁶⁸ Adding the value of avoided casualties, including the pilot's injuries, to aircraft damage gives a total potential loss of \$58.2 million that enhanced safety measures could avert.

The FAA Office of Accident Investigation and Prevention evaluated how effective the proposed requirements would be at addressing the NTSB urgent safety recommendation and any other factors that may have contributed to the Liberty Helicopters accident, previously described in section III. of this proposed rule. Based on that assessment, the FAA used a range for the effectiveness rate of 0.6 to 0.9.⁶⁹ Multiplying the effectiveness rates by the estimated potential loss of \$58.2 million, mentioned above, yields an estimated range of \$34.9 to \$52.4 million for one averted accident. Assuming an accident occurs every 10 years over a 20-year time horizon (*i.e.*, an accident in year 10 and year 20 of the analysis period), the present value of benefits would range from \$26.8 million to \$40.2 million, at a 7 percent discount rate, and \$45.4 million to \$68.0 million at 3 percent discount rate.

3. Costs Relative to Pre-Emergency Order of Prohibition

This proposed rule would prohibit flight operations with an SRS unless the SRS meets specific requirements. Although these requirements are being proposed under part 91, they would affect any operation with an SRS except for operations conducted under part 105, parachute operations, and operations conducted under part 133, Rotorcraft External-Load Operations. This subsection examines the costs relative to the regulatory environment before the Emergency Order of Prohibition, when no rules specifically addressed civil aircraft operations conducted with the use of SRS.

This proposed rule would require the SRS (which would consist of a harness and lanyard, at a minimum) to have an accessible front or side release mechanism that can be quickly operated with minimal difficulty during an emergency. The rule would require the lanyard be connected to an aircraft

attaching point or points that are not in the flightdeck, with a rated strength equal to or greater than the weight of the occupant (or the combined weight if there is more than one occupant attached to an attachment point), and ensures the torso of the person using the SRS remains inside the aircraft at all times. Additionally, for operations with doors opened or removed, each person would need to occupy an approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about the individual during all phases of flight; or occupy an approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about the individual during movement on the surface, takeoff, and landing, in accordance with § 91.107 and during other phases of flight, the individual would use an SRS.

This proposed rule would also require operators to provide passengers with an enhanced safety briefing that includes a passenger's satisfactory demonstration of competency to release quickly the SRS with no assistance. The rule also proposes certain requirements regarding persons who may seek to participate in such flights. Passengers unable to release quickly from an SRS, passengers under 15 years of age, individuals seated in the flightdeck, and passengers occupying an approved child restraint system would be prohibited from using the SRS. Furthermore, children may not be held in an adult's lap if the adult uses an SRS or the aircraft doors are opened or removed. The FAA intends these proposed requirements to ensure the safety of all aircraft occupants on such flights.

The cost of the proposed rule to operators, passengers, and pilots would arise out of purchasing harnesses and lanyards that meet specific requirements as set forth in this rule, a pre-flight safety briefing on the use of the SRS, and passengers demonstrating their ability to remove the SRS in the event of an emergency. The cost to the FAA comes from approving the addition of SRS to part 135 passenger safety briefing cards and for periodic surveillance of parts 91 and 135 SRS operations. The estimated cost of these requirements is \$22.3 million at 7 percent present value

⁶⁶ National Transportation Safety Board. (March 11, 2018) *Inadvertent Activation of the Fuel Shutoff Lever and Subsequent Ditching Liberty Helicopters Inc., Operating a FlyNYON Doors-Off Flight Airbus Helicopters AS350 B2, N350LH* (Report No. NTSB/AAR-19/04 or PB2020-100100). Retrieved from <https://www.nts.gov/investigations/AccidentReports/Reports/AAR1904.pdf>.

⁶⁷ Departmental Guidance on Valuation of a Statistical Life in Economic Analysis, Issued Date:

3/23/2021 <https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis>.

⁶⁸ Economic Values for FAA Investment and Regulatory Decisions, A Guide: 2021 Update, Section 5, Table 5-10: General Aviation Restoration Costs (\$2018). These numbers are adjusted to reflect 2020 dollars. https://www.faa.gov/regulations_policies/policy_guidance/benefit_cost.

⁶⁹ *Id.* at Appendix A at 61 (stating, High effectiveness—The JIMDAT-assigned values in which enhancements that are judged to have a “low” probability of preventing an accident receive a numerical value ranging from 0.1 to 0.4, reflecting a one in ten chance of preventing the accident to a 40% chance. Similarly, “medium” may receive numerical ratings of 0.4 to 0.6 and “high” may receive up to 0.95).

and \$31.6 million at 3 percent present value, as shown in the table below.

TABLE 4—PROPOSED RULE TOTAL COST OVER 20 YEARS *

Requirements	Part 91	Part 135	Total
Harness + Replacement	\$172,608	\$623,616	\$796,224
Lanyard + Replacement	43,152	155,904	199,056
Create Briefing	14,572	19,774	34,346
Passenger Briefing (Pilot + Passenger)	16,840,356	2,139,920	18,980,276
Passenger Demonstration (Pilot + Passenger)	20,342,887	2,584,989	22,927,876
FAA costs	583	898	1,481
Total Cost	37,414,159	5,525,101	42,939,259
Total Cost at 7 Percent Present Value	19,361,893	2,933,645	22,295,537
Total Cost at 3 Percent Present Value	27,541,440	4,109,635	31,651,075

* Table values have been rounded. Totals may not add due to rounding.

4. Costs Relative to Post-Emergency Order of Prohibition

After the FAA published the Emergency Order of Prohibition, operators were required to comply with many of the requirements of this proposed rule. This subsection measures the costs which are above and beyond the costs of complying with the Emergency Order of Prohibition.

There are three main differences between this rule and the Emergency Order of Prohibition. First, the Emergency Order of Prohibition does not prohibit passengers using an SRS from being seated in the flightdeck, while the proposed rule would prohibit this. The FAA estimates minimal cost from this proposed prohibition.

Second, the Emergency Order of Prohibition applies only to operations conducted for compensation or hire. The proposed rule would extend this to

all civil operations. The FAA does not have precise data on operations using an SRS that are not for compensation or hire, and so assumes there would be a negligible number.

Finally, the Emergency Order of Prohibition does not require a passenger demonstration of the passenger's ability to release the SRS. The FAA estimates the undiscounted costs, beyond the Emergency Order of Prohibition, to be \$22.9 million (\$11.8 million at 7 percent present value, or \$16.8 million at 3 percent present value). At either discount rate, the annualized cost is approximately \$1.1 million. These costs come entirely from the value of passenger and pilot time spent on the demonstration.

5. Alternatives Considered

The FAA considered proposing the Emergency Order of Prohibition as the

proposed rule but applying it to all civil operations. The Emergency Order of Prohibition prohibits the use of an SRS that cannot be released quickly in an emergency during flight operations for compensation or hire with the doors opened or removed. The Emergency Order of Prohibition requires: a supplemental harness that meets specific safety requirements, an application for an LOA to include a link to a video (roughly 8 seconds long) demonstrating the user's ability to release themselves from the supplemental harness without assistance, a preflight briefing on the release of the SRS, and FAA review and approval of the application. The table below summarizes the costs of each of these requirements.

TABLE 5—EMERGENCY ORDER OF PROHIBITION TOTAL COST OVER 20 YEARS *

Requirements	Part 91	Part 135	Total
Cost of Harness + Application + Video + Safety Briefing	\$4,747,142	\$1,225,615	\$5,972,757
FAA Cost	2,399	4,107	6,506
Total Cost	4,749,541	1,229,722	5,979,263
Total Cost at 7 Percent Present Value	4,394,485	986,054	5,380,539

* Table values have been rounded. Totals may not add due to rounding.

The FAA considered proposing the above requirements in this proposed rule, but after careful review of the NTSB final accident report and the information gathered through the Emergency Order of Prohibition, the FAA determined that it could tailor the requirements to increase the likelihood that passengers would be able to quickly release the supplemental restraint in the event of an emergency. For example, the Emergency Order of Prohibition does not address the use of an SRS in the flightdeck. Additionally, the proposed rule would require operators to conduct an enhanced safety briefing and

passengers to complete a demonstration. Passengers in the Liberty Helicopters accident received a briefing on how to release their supplemental restraints but were unable to release them during the accident. Requiring passengers to demonstrate successfully their ability to release the SRS would ensure passengers not only understand how to release themselves from the SRS during an emergency but also increase the likelihood that they would be able to release themselves from the SRS during an emergency. The proposed passenger demonstration requirement would be necessary to achieve the effectiveness

estimate of 0.6 to 0.9 as discussed in the main analysis of the proposed rule. However, uncertainty exists regarding the incremental reduction in the effectiveness of a regulatory alternative that would not require passengers to demonstrate proficiency in using the SRS. The FAA requests comments and data to help quantify the benefits of this alternative relative to the proposed rule.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub.

L. 104–121) and the Small Business Jobs Act of 2010 (Pub. L. 111–240), requires federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The FAA is publishing this Initial Regulatory Flexibility Analysis (IRFA) to aid the public in commenting on the potential impacts to small entities from this proposal. The FAA invites interested parties to submit data and information regarding the potential economic impact that would result from the proposal. The FAA will consider comments when making a determination or when completing a Final Regulatory Flexibility Assessment.

An IRFA must contain the following:

- (1) A description of the reasons why the action by the agency is being considered;

- (2) A succinct statement of the objective 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 that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

- (5) An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule; and

- (6) A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.

1. Reasons the Action Is Being Considered

This proposed rule addresses safety issues that contributed to the Liberty

Helicopters accident to ensure the safety of similar operations. The operator-provided harness/tether system the passengers used on that flight, while intended as a safety measure when the aircraft was in flight, hindered the passengers' egress from the aircraft. This proposed rule would address the safety issue by proposing specific requirements for individuals using an SRS or participating in flights with doors opened or removed.

2. Objectives of the Proposed Rule

For flights with doors opened or removed, each person would be required to either occupy an approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about the individual during all phases of flight; or occupy an approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about the individual during movement on the surface, takeoff, and landing, and during other phases of flight, the individual uses an SRS.

For flights using an SRS, this proposed rule would require the harness and lanyard, at a minimum, to have an accessible front or side release mechanism that can be operated quickly with minimal difficulty during an emergency. As proposed, the lanyard must be connected to an aircraft attaching point or points, not in the flightdeck, with a rated strength equal to or greater than the weight of the occupant (or the combined weight if there is more than one occupant attached to an attachment point). This proposed rule would require the lanyard to ensure the torso of the person using the SRS remains inside the aircraft. Additionally, operators would be required to provide passengers with an enhanced safety briefing, and passengers would demonstrate the capability to release quickly the SRS with no assistance. Passengers under 15 years of age, individuals seated in the flightdeck, passengers occupying an approved child restraint system, or passengers unable to release quickly from the SRS would be prohibited from using the SRS.

3. All Federal Rules That May Duplicate, Overlap, or Conflict

This proposed rule does not duplicate, overlap, or conflict with any other rule.

4. Description and Estimate of the Number of Small Entities

This proposed rule would affect flights with doors opened or removed and all operations with individuals on board who choose to use an SRS. A search of the Web Based Operations Safety System (WebOPSS) database, as of June 2021, indicates that the rule could affect 1,121 part 91 operators and 2,200 part 135 operators. These flights include sightseeing, motion picture and television filming, electronic news gathering, power line inspection, game management, and fire suppression, for example. The Small Business Administration (SBA) defines charter nonscheduled passenger air transport (NAICS 481211) with less than 1,500 employees or scenic and sightseeing transportation (NAICS 487990) with less than \$8.0 million in revenue as small businesses.⁷⁰ Census data indicates that revenue for the scenic and sightseeing transportation industry (NAICS 4879), which includes airplane and helicopter operations, was roughly \$502.5 million for 220 establishments, and for nonscheduled chartered passenger air transportation (NAICS 481211), there are 28,261 employees for 1,604 firms.⁷¹ Based on census data and the SBA definition of a small business, a substantial number of operators affected by this proposed rule would be considered small businesses.

5. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The cost of the proposed rule would include purchasing harnesses and lanyards that meet specific requirements as set forth in this rule, a preflight safety briefing on the use of the SRS, and passengers' satisfactory demonstration of their ability to remove the SRS in the event of an emergency. The estimated cost for these requirements per year for a part 91 operator is \$71,949 and \$6,905 for a part 135 operator, as shown in the table below.

TABLE 6—ESTIMATED COST PER OPERATOR *

Provisions	Part 91 ⁷²	Part 135 ⁷³
Harness + Replacement	\$6,639	\$15,590

⁷⁰ United States Small Business Administration, *Table of Size Standards* (2019), available at <https://www.sba.gov/document/support-table-size-standards>.

⁷¹ United States Census Bureau, *Transportation and Warehousing: Geographic Area Series: Summary Statistics for the U.S., States, Metro Areas, Counties, and Places* (2012), available at

<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>.

TABLE 6—ESTIMATED COST PER OPERATOR *—Continued

Provisions	Part 91 ⁷²	Part 135 ⁷³
Lanyard + Replacement	1,660	3,898
Create + Update Briefing	560	494
Passenger Briefing (Pilot + Passenger)	647,706	53,498
Passenger Demonstration (Pilot + Passenger)	782,419	64,625
Total Over 20 Years	1,438,984	138,105
Estimated Yearly Cost Per Operator	71,949	6,905

* Table values have been rounded. Totals may not add due to rounding.

6. Significant Alternatives Considered

The FAA considered proposing to codify the requirements of the Emergency Order of Prohibition applied to all civil operations, but determined to propose adding the requirement for operators to brief passengers on the SRS and verify that passengers could release the SRS in an emergency.

The Emergency Order currently prohibits the use of an SRS during flights with doors opened or removed unless it complies with the process referenced in FAA Order 8900.4. FAA Order 8900.4 requires harnesses and lanyards that fulfill the same requirements this proposed rule would require; therefore, operators already incur the cost of the harness and lanyard. Under this proposed rule, operators would primarily incur the additional cost of the enhanced safety briefing. However, the majority of the cost comes from the pilot safety briefing and the passenger demonstration and is directly tied to the passenger count. Based on the foregoing, this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this proposed determination.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes

imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would have only a domestic impact and, therefore, no effect on international trade.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the federal government having first provided the funds to pay those costs. The FAA determined that the proposed rule will not result in the expenditure of \$177 million or more by state, local, or tribal governments, in the aggregate, or the private sector, in any one year.

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by state, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$177.0 million in lieu of \$100 million.

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

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens imposed on the public. According to the

1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement, unless it displays a currently valid Office of Management and Budget (OMB) control number. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a new information collection to OMB for its review.

- *Summary:* The FAA is proposing to require operators conducting operations using SRS, including during operations with doors opened or removed, to present updated safety information to passengers.

- *Use:* Part 91 and 135 operators would create and brief an enhanced passenger safety briefing.

- *Respondents:* As of June 2021, the FAA estimates that 26 part 91 operators (based on the number of approved Letter of Authorization holders and the A049 ⁷⁴ population) and 40 part 135 operators would choose to offer flights with use of an SRS over the next 20 years.

- *Frequency:* Operators who choose to offer flights using an SRS would initially develop and periodically update an enhanced passenger safety briefing pertaining to the SRS. The FAA assumes updates would occur every ten years, based on a typical SRS replacement period.

- *Annual Burden Estimated:* The total burden hours are calculated by multiplying the number of enhanced passenger safety briefings and subsequent updates by 2 hours per briefing. As shown in the table below, this sums to 90 hours for part 91 operators and 134 hours for part 135 operators over 3 years. The FAA is updating existing Information Collection Request (ICR) 2120–0005 (General Operating and Flight Rules—FAR 91 and FAR 107).

⁷² Total cost per requirement is divided by 26 part 91 operators.

⁷³ Total cost per requirement is divided by 40 part 135 operators.

⁷⁴ An A049 is a Letter of Authorization for Commercial Air Tour Operations Authorization and Drug and Alcohol Testing Program Registration. This allows a Part 91 operator to operate

commercially and allows the FAA to estimate the affected population.

TABLE 7—INFORMATION COLLECTION BURDENS

Year	Number of operators		Time to develop or update briefing (hours per briefing)	Total hour burden	
	Part 91	Part 135		Part 91	Part 135
1	21	31	2	42	62
2	0	0	2	0	0
3	0	1	2	0	2
Total .....	.....	.....	.....	42	64
Average Over 3 Years .....	.....	.....	.....	14	21

For part 91 operators, the FAA assumes that a pilot, with an hourly wage of \$75.90, would be the person developing and updating the content of the briefing. At \$75.90 the total cost burden is \$3,188 (\$2,602 at 7 percent present value) over a 3-year period. For part 135 operators, the Director of Operations, at an hourly wage of \$68.66,

could be the person responsible for developing the briefing. Total cost burden for part 135 operators over a 3-year period is \$4,394 (\$3,578 at 7 percent present value) for developing the content of the briefing. Pilots would also brief passengers on the content of the enhanced passenger briefing prior to each flight. The

estimated number of flights per year is multiplied by 2 minutes per briefing for parts 91 and 135 annual burden hours to brief passengers. Total burden hours, over 3 years, as shown in the table below, sums to 8,177 hours for part 91 operators and 962 hours for part 135 operators.

TABLE 8—TOTAL HOUR BURDEN FOR ENHANCED SAFETY BRIEFING

Year	Number of flights		Time to present the enhanced safety briefing (hours per briefing)	Total hour burden	
	Part 91	Part 135		Part 91	Part 135
1	89,935	10,475	0.03	2,698	314
2	90,845	10,684	0.03	2,725	321
3	91,780	10,897	0.03	2,753	327
Total .....	.....	.....	.....	8,177	962
Average Over 3 Years .....	.....	.....	.....	2,726	321

A pilot would be presenting the briefing at an hourly wage of \$75.90. At \$75.90 the total cost burden over a 3-year period, for part 91 operators, is \$620,598 (\$506,593 at 7 percent present value) and \$72,989 (\$59,581 at 7 percent present value) for part 135 operators.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by January 22, 2024. Comments also should be

submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Office Building, Room 10202, 725 17th Street NW, Washington, DC 20053.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the ICAO Standards and Recommended Practices and has not identified any conflicts with these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in

paragraph 5–6.6f for regulations and involves no extraordinary circumstances.

This rulemaking action provides a framework for civil aircraft operations conducted with SRS, including during operations with doors opened or removed. It does not affect the frequency of aircraft operations in the airspace of the United States. The FAA has reviewed the implementation of the rulemaking action and determined it is categorically excluded from further environmental review. Possible extraordinary circumstances that would preclude the use of a categorical exclusion have been examined, and the FAA has determined that no such circumstances exist. After careful and thorough consideration of the rulemaking action, the FAA finds that it does not require preparation of an Environmental Assessment or Environmental Impact Statement in accordance with the requirements of NEPA, Council on Environmental Quality (CEQ) regulations, and FAA Order 1050.1F.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the states, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

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

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The agency has determined that it would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

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

VII. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. 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 agency may change this proposal in light of the comments it receives.

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

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 in the **FOR FURTHER INFORMATION CONTACT** section of this document. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Electronic Access and Filing

A copy of the notice of proposed rulemaking (NPRM), all comments received, any final rule, and all background material may be viewed online at <https://www.regulations.gov> using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register’s website at <https://www.federalregister.gov>

.gov and the Government Publishing Office’s website at <https://www.govinfo.gov>. A copy may also be found at the FAA’s Regulations and Policies website at https://www.faa.gov/regulations_policies.

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

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

List of Subjects

14 CFR Part 91

Air carrier, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 136

Air transportation, Aircraft, Aviation safety, National parks, Recreation and recreation areas, Reporting and recordkeeping requirements.

The Proposed Amendment

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

PART 91—GENERAL OPERATING AND FLIGHT RULES

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

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

- 2. Amend § 91.107 by revising paragraph (a)(3)(i) to read as follows:

§ 91.107 Use of safety belts, shoulder harnesses, and child restraint systems.

- (a) * * *
- (3) * * *

(i) Be held by an adult, except as outlined in § 91.108(j), who is occupying an approved seat or berth, provided that the person being held has

not reached his or her second birthday and does not occupy or use any restraining device;

* * * * *

■ 3. Add § 91.108 to read as follows:

§ 91.108 Use of supplemental restraint systems.

(a) *Use of supplemental restraint systems.* Except as provided in this section, no person may conduct an operation in a registered civil aircraft in which any individual on board is secured with a supplemental restraint system.

(b) *Doors opened or removed flight operations.* Except as provided under paragraph (k) of this section:

(1) No person may operate a registered civil aircraft with the doors opened or removed unless—

(i) Each individual on board occupies an approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about the individual or an approved child restraint system properly secured to an approved seat or berth with a safety belt and, if installed, shoulder harness in accordance with § 91.107(a)(3)(iii) or § 135.128(a)(2) of this chapter, during all phases of flight; or

(ii) Each individual on board—

(A) Occupies an approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about the individual during movement on the surface, takeoff, and landing; and

(B) Is secured during the remainder of the flight using a supplemental restraint system in accordance with, and that meets the requirements of, this section.

(2) Prior to releasing an FAA-approved safety belt and, if installed, shoulder harness during an operation with the doors opened or removed, an individual must be properly secured by a supplemental restraint system that is connected to an airframe attachment point. An individual cannot release their safety belt and, if installed, shoulder harness until the pilot in command authorizes them to do so.

(c) *Supplemental restraint system design requirements.* Each supplemental restraint system must:

(1) Have a harness that secures around the torso of the individual using the supplemental restraint system;

(2) Have a lanyard that connects the harness to an airframe attachment point or points inside the aircraft and that ensures the torso of the individual using the supplemental restraint system remains inside the aircraft at all times;

(3) Not impede egress from the aircraft in an emergency after being released; and

(4) Have a release mechanism that—

(i) Can be quickly operated by the individual using the supplemental restraint system with minimal difficulty;

(ii) Is attached to the front or side of the harness in a location easily accessible to and visible by the individual using the supplemental restraint system;

(iii) Prevents inadvertent release; and

(iv) Does not require the use of a knife to cut the restraint, any other additional tool, or the assistance of any other individual to release the supplemental restraint system.

(d) *Who may provide the supplemental restraint system.* The supplemental restraint system may be provided by the operator or by the individual using the supplemental restraint system. An individual providing their own supplemental restraint system must:

(1) Confirm with the pilot in command, either verbally or in writing, as determined by the pilot in command, the system's continued serviceability and readiness for its intended purposes; and

(2) Ensure they are complying with the sizing criteria for which the supplemental restraint system is rated.

(e) *Supplemental restraint system operational requirements.* The following are supplemental restraint system operational requirements:

(1) A qualified person designated by the operator must—

(i) Connect the supplemental restraint system to an airframe attachment point or points with a rated strength equal to or greater than the weight of the individual using the supplemental restraint system (or the combined weight if there is more than one supplemental restraint system attached to an attachment point); and

(ii) Not connect the supplemental restraint system to any airframe attachment point located in the flightdeck.

(2) A supplemental restraint system must fit the individual using it based on the sizing criteria for which the supplemental restraint system is rated.

(f) *Pilot in command.* The pilot in command—

(1) Has the overall responsibility to ensure that the supplemental restraint system meets the requirements of this section and must not permit an individual to use a supplemental restraint system that does not meet the requirements of this section;

(2) Must ensure, for any supplemental restraint system provided by either the operator or the pilot in command, the supplemental restraint system's continued serviceability and readiness for its intended purpose;

(3) May only permit an individual to use a supplemental restraint system provided by the operator or the pilot in command if that individual complies with the sizing criteria for which the supplemental restraint system is rated;

(4) Has final authority regarding whether the supplemental restraint system may be used during flight operations; and

(5) Has final authority to authorize an individual to release the FAA-approved safety belt and, if installed, shoulder harness and remain secured only by the supplemental restraint system.

(g) *Passenger briefing.* Before each takeoff, the pilot in command must ensure that each passenger who intends to use a supplemental restraint system has been briefed on:

(1) How to use, secure, and release the supplemental restraint system properly. This requirement is not necessary for an individual providing their own supplemental restraint system, but that individual must meet the passenger demonstration requirements in paragraph (h) of this section.

(2) Means of direct communication between crewmembers and passengers during normal and emergency operating procedures regarding—

(i) The use of headset and intercom systems, if installed;

(ii) How passengers will be notified of an event requiring action, including emergencies, egress procedures, and other unforeseen circumstances;

(iii) How each passenger will be notified when the passenger is permitted to release the FAA-approved safety belt and, if installed, shoulder harness, and move within the aircraft using the supplemental restraint system;

(iv) How each passenger will be notified when the passenger must return to their seat and secure the FAA-approved safety belt and, if installed, shoulder harness; and

(v) When and how to notify a crewmember of safety concerns.

(h) *Passenger demonstration.* After the briefing required by paragraph (g) of this section, prior to ground movement, any passenger intending to use a supplemental restraint system must demonstrate to the pilot in command, a crewmember, or other qualified person designated by the operator, the following:

(1) The ability to use, secure, and release the FAA-approved safety belt and, if installed, shoulder harness, and

(2) The ability to accomplish all actions required for quick release of the supplemental restraint system, without assistance and with minimal difficulty.

(i) *Individuals not permitted to use supplemental restraint systems.* The

following individuals are not permitted to use a supplemental restraint system, as defined in paragraph (l) of this section:

(1) Any passenger who cannot demonstrate—

(i) That they are able to occupy, secure, and release the FAA-approved seat belt and, if installed, shoulder harness; and

(ii) That they are able to release quickly the supplemental restraint system with no assistance and with minimal difficulty.

(2) Any individual who is less than 15 years of age.

(3) Any individual seated in the flightdeck.

(4) Any passenger who occupies or uses an approved child restraint system.

(j) *Lap-held child.* Notwithstanding any other requirement of this chapter, a child who has not reached their second birthday may not be held by an adult during civil aircraft operations when:

(1) The adult uses a supplemental restraint system; or

(2) The aircraft doors are opened or removed.

(k) *Excluded operations.* Unless otherwise stated:

(1) This section does not apply to operations conducted under part 105 or 133 of this chapter and does not apply to the persons described in § 91.107(a)(3)(ii) of this chapter.

(2) Operators subject to the requirements of paragraph (b)(1) of this section may operate an aircraft with doors opened or removed notwithstanding any flight crewmembers on board who are subject to the requirements of §§ 91.105 and 135.171 of this chapter and who need to unfasten their shoulder harnesses in accordance with those sections.

(3) Paragraph (b)(2) of this section does not apply to any flight crewmembers subject to §§ 91.105 and 135.171 of this chapter to the extent that the flight crewmembers need to unfasten their shoulder harnesses in accordance with those sections.

(l) *Definition.* For purposes of this section, a *supplemental restraint system* means any device that is not installed on the aircraft pursuant to an FAA approval, used to secure an individual inside an aircraft when that person is not properly secured by an FAA-approved seat belt and, if installed, shoulder harness, or an approved child restraint system. It consists of a harness secured around the torso of the individual using the supplemental restraint system and a lanyard that connects the harness to an approved airframe attachment point inside the aircraft.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 4. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 41706, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58 (49 U.S.C. 44730).

■ 5. Amend § 135.117 by adding paragraph (g) to read as follows:

§ 135.117 Briefing of passengers before flight.

* * * * *

(g) If any passengers on board a flight conducted under this part are secured with a supplemental restraint system, the pilot in command of that flight must ensure those passengers are briefed in accordance with § 91.108(g) of this chapter.

■ 6. Amend § 135.128 by revising paragraph (a)(1) to read as follows:

§ 135.128 Use of safety belts and child restraint systems.

(a) * * *

(1) Be held by an adult, except as outlined in § 91.108(j) of this chapter, who is occupying an approved seat or berth, provided the child has not reached his or her second birthday and the child does not occupy or use any restraining device; or

* * * * *

PART 136—COMMERCIAL AIR TOURS AND NATIONAL PARKS AIR TOUR MANAGEMENT

■ 7. The authority citation for part 136 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

■ 8. Amend § 136.7 by adding paragraph (c) to read as follows:

§ 136.7 Passenger briefings.

* * * * *

(c) If any passengers on board a flight conducted under this part are secured with a supplemental restraint system, the pilot in command of that flight must ensure those passengers are briefed in accordance with § 91.108(g) of this chapter.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and 44701(a)(5).

Wesley L. Mooty,

Acting Deputy Executive Director, Flight Standards Service.

[FR Doc. 2023–24936 Filed 11–20–23; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2023–0358; FRL–10655–03–OAR]

RIN 2060–AV93

New Source Performance Standards Review for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels); Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On October 4, 2023, the U.S. Environmental Protection Agency (EPA) proposed amendments to the “Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels).” The EPA is extending the comment period on this proposed rule that currently closes on November 20, 2023, by 18 days. The comment period will now remain open until December 8, 2023, to allow additional time for stakeholders to review and comment on the proposal.

DATES: The public comment period for the proposed rule published in the *Federal Register* (FR) on October 4, 2023 (88 FR 68535), originally ending November 20, 2023, is being extended by 18 days. Written comments must now be received on or before December 8, 2023.

ADDRESSES: Submit comments, identified by Docket ID No. EPA–HQ–OAR–2023–0358, by any of the following methods:

• *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

• *Email:* a-and-r-docket@epa.gov. Include Docket ID No. EPA–HQ–OAR–2023–0358 in the subject line of the message.

• *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2023–0358.

• *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2023–

0358, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

• *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact U.S. EPA, Attn: Michael Cantoni, Mail Drop: E143–01, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, NC 27711; telephone number: (919) 541–5593; and email address: Cantoni.Michael@epa.gov.

SUPPLEMENTARY INFORMATION:

Rationale. On October 4, 2023, the U.S. Environmental Protection Agency (EPA) proposed amendments to the “Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels).” 88 FR 68535. The comment period on this proposed rule currently closes on November 20, 2023. The EPA has received numerous requests for additional time to review and comment on this proposed rule. The EPA has decided to extend the period by 18 days. The public comment period will now end on December 8, 2023.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2023–0358. All documents in the docket are listed in the *Regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov*.

Written Comments. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2023–0358, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section.

Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed in the *Submitting CBI* section of this document.

Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the Web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI or multimedia submissions; and general guidance on making effective comments.

The <https://www.regulations.gov> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

Submitting CBI. Do not submit information containing CBI to the EPA through <https://www.regulations.gov>. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital

storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in the *Written Comments* section of this document. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (e.g., Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address oaqpscibi@epa.gov, and as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email oaqpscibi@epa.gov to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: U.S. EPA, Attn: OAQPS Document Control Officer, Mail Drop: C404–02, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2023–0358. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Penny Lassiter,

Director, Sector Policies and Programs Division.

[FR Doc. 2023–25759 Filed 11–17–23; 11:15 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180****[EPA-HQ-OPP-2023-0069; FRL-10579-10-OCSPP]****Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (October 2023)****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of filing of petition and request for comment.**SUMMARY:** This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.**DATES:** Comments must be received on or before December 21, 2023.**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2023-0069, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.**FOR FURTHER INFORMATION CONTACT:** Charles Smith, Registration Division (RD) (7505T), main telephone number: (202) 566-2427, email address: RDfRNotices@epa.gov. The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this action apply to me?*

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

applies to them. Potentially affected entities may include:

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

B. What should I consider as I prepare my comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/comments.html>. When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide

chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at <https://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

A. Notice of Filing—Amended Tolerance Exemptions for Inerts (Except PIPS)

PP IN-11780. (EPA-HQ-OPP-2023-0429). Mandava Associates, LLC (1050 Connecticut Ave. NW, Suite 500, Washington, DC 20036), on behalf of Contact Organics USA Inc., (4947 US 75 Avenue, Maurice, IA 51036), requests to amend an exemption from the requirement of a tolerance for residues of limonene (CAS Reg. No. 138-86-3) by adding its use as an inert ingredient (solvent) limited to 3% in pesticide formulations under 40 CFR 180.910. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

B. Notice of Filing—New Tolerance Exemptions for Non-Inerts (Except PIPS)

PP IN-11778. (EPA-HQ-OPP-2023-0514). Micro Powders, Inc., 580 White Plains Road, Tarrytown, NY 10591, requests to establish an exemption from the requirement of a tolerance for residues of rice bran wax (CAS Reg. No. 8016-60-2) when used as a pesticide inert ingredient (lubricant) in pesticide formulations under 40 CFR 180.910,

180.930, and 180.940. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

C. Notice of Filing—New Tolerances for Non-Inerts

1. *PP 0F8842.* EPA–HQ–OPP–2020–0533. Meiji Seika Pharma Co., Ltd, c/o Landis International, Inc., 3185 Madison Highway, P.O. Box 5126, Valdosta, GA 31603–5126, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide, L-glufosinate Free Acid, in or on apple at 0.05 parts per million (ppm); beet, sugar, molasses at 5.0 ppm; beet, sugar, roots at 0.9 ppm; beet, sugar, tops (leaves) at 1.5 ppm; bushberry subgroup 13B at 0.15 ppm; canola, meal at 1.1 ppm; canola, seed at 0.40 ppm; cattle, fat at 0.40 ppm; cattle, meal at 0.15 ppm; cattle, meat byproducts at 6.0 ppm; corn, field, forage at 4.0 ppm; corn, field, grain at 0.20 ppm; corn, field, stover at 6.0 ppm; corn, sweet, forage at 1.5 ppm; corn, sweet, kernels plus cob with husks removed at 0.30 ppm; corn, sweet, stover at 6.0 ppm; cotton, gin byproducts at 15 ppm; cotton, undelinted seed at 4.0 ppm; egg at 0.15 ppm; fruit, citrus, crop group 10–10 at .15 ppm; fruit, pome, crop group 11–10 at .25 ppm; fruit, stone, crop group 12–12 at 0.30 ppm; goat, fat at 0.40 ppm; goat, meat at 0.15 ppm; goat, meat byproducts at 6.0 ppm; grape at 0.05 ppm; hog, fat at 0.40 ppm; hog, meat at 0.15 ppm; hog, meat byproducts at 6.0 ppm; horse, fat at 0.40 ppm; horse, meat at 0.15 ppm; horse, meat byproducts at 6.0 ppm; milk at 0.15 ppm; nut, tree, crop group 14–12 at 0.50 ppm; olive at 0.50 ppm; potato at 0.80 ppm; potato, chips at 1.6 ppm; potato, granules/flakes at 2.0 ppm; poultry, fat at 0.15 ppm; poultry, meat at .15 ppm; poultry, meat byproducts at 0.60 ppm; sheep, fat at 0.40 ppm; sheep, meat at 0.15 ppm; sheep, meat byproducts at 6.0 ppm; soybean at 2.0 ppm; soybean, hulls at 10.0 ppm. The analytical methods HRAV–5A and BK/01/99 are used to measure and evaluate the chemical L-glufosinate free acid. *Contact:* RD.

2. *PP 2F9042.* EPA–HQ–OPP–2023–0459. UPL NA Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide, L-Glufosinate Ammonium, in or on almond, hulls at 0.25 parts per million (ppm); beet, sugar, molasses at 2.5 ppm; beet, sugar, roots at 0.45 ppm; bushberry subgroup 13b at 0.075 ppm; canola, meal at 0.55 ppm; canola, seed at 0.2 ppm; cattle, fat at 0.2 ppm; cattle, meat at 0.075 ppm;

cattle, meat byproducts at 3 ppm; corn, field forage at 2 ppm; corn, field, grain at 0.1 ppm; corn, field, stover at 3 ppm; corn, sweet, forage at 0.75 ppm; corn, sweet, kernels plus cob with husks removed at 0.15 ppm; corn, sweet, stover at 3 ppm; cotton, gin byproducts at 15 ppm; cotton, undelinted seed at 7.5 ppm; egg at 0.075 ppm; citrus fruit (crop group 10–10) at 0.075 ppm; pome fruit (crop group 11–10) at 0.125 ppm; stone fruit (crop group 12–12) at 0.15 ppm; goat, fat at 0.2 ppm; goat, meat at 0.075 ppm; goat, meat byproducts at 3 ppm; grain aspirated fractions at 12.5 ppm; grape at 0.025 ppm; hog, fat at 0.2 ppm; hog, meat at 0.075 ppm; hog, meat byproducts at 3 ppm; horse, fat at 0.2 ppm; horse, meat at 0.075 ppm; horse, meat byproducts at 3 ppm; milk at 0.075 ppm; tree nut (crop group 14–12) at 0.25 ppm; olive at 0.25 ppm; potato at 0.4 ppm; potato, chips at 0.8 ppm; potato granules/flakes at 1ppm; poultry, fat at 0.075 ppm; poultry, meat at 0.075 ppm; poultry, meat byproducts at 0.3 ppm; sheep, fat at 0.2 ppm; sheep, meat at 0.075 ppm; sheep, meat byproducts at 3 ppm; soybean at 1 ppm; soybean, hulls at 5 ppm and inadvertent or indirect uses on Barley, hay at 0.2 ppm; barley, straw at 0.2 ppm; buckwheat, fodder at 0.2 ppm; buckwheat, forage at 0.2 ppm; oat, forage at 0.2 ppm; oat, hay at 0.2 ppm; oat, straw at 0.2 ppm; rye, forage at 0.2 ppm; rye, straw at 0.2 ppm; teosinte at 0.2 ppm; triticale at 0.2 ppm; wheat, forage at 0.2 ppm; wheat, hay at 0.2 ppm; wheat, straw at 0.2 ppm. The analytical method uses liquid chromatograph-tandem mass spectrometer (LC–MS/MS) is used to measure and evaluate the chemical L-glufosinate ammonium. *Contact:* RD.

3. *PP 3E9058.* EPA–HQ–OPP–2023–0399. UPL Delaware, Inc. (UPL), 630 Freedom Business Center, Suite 402 King of Prussia, PA 19406, requests to establish an import tolerance in 40 CFR part 180 for residues of the fungicide, kasugamycin, in or on tea, dried at 3 ppm. The analytical method uses LC–MS/MS method is used to measure and evaluate the chemical kasugamycin. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: November 13, 2023.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2023–25751 Filed 11–20–23; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[BLM_HQ_FRN_MO4500172968]

RIN 1004–AE89

Temporary Closure and Restriction Orders

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to modernize and streamline how the agency notifies the public of temporary closure and restriction orders; clarify that the BLM may issue temporary closure or restriction orders to implement management responsibilities, avoid conflicts among public land users, and ensure the privacy of Tribal activities for traditional or cultural use; require that all orders specify the date and time that a temporary closure or restriction becomes effective and terminates; and make the penalties for violating temporary closure and restriction orders consistent with current statutory authority.

DATES: Please submit comments on this proposed rule on or before January 22, 2024. The BLM is not obligated to consider comments received after this date in making its decision on the final rule.

ADDRESSES:

Mail, personal, or messenger delivery: U.S. Department of the Interior, Director (HQ–630), Bureau of Land Management, Room 5646, 1849 C St. NW, Washington, DC 20240, Attention: Regulatory Affairs: 1004–AE89.

Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter “RIN 1004–AE89” and click the “Search” button. Follow the instructions at this website.

FOR FURTHER INFORMATION CONTACT:

Kevin Oliver with the BLM Headquarters Division of Recreation and Visitor Services at (801) 450–3134 or via email at koliver@blm.gov. For questions relating to regulatory process issues, email Brittney D. Rodrigues at: brodrigues@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. 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. In compliance with the Providing Accountability Through Transparency Act of 2023, please see the Abstract section in Docket No. BLM–2023–0007 on <https://www.regulations.gov> for a summary of the proposed rule.

SUPPLEMENTARY INFORMATION:

- I. Executive Summary
- II. Public Comment Procedures
- III. Background
- IV. Discussion of the Proposed Rule
- V. Procedural Matters

I. Executive Summary

The BLM proposes to modernize and streamline how the agency notifies the public of temporary closure and restriction orders; clarify that the BLM may issue temporary closure or restriction orders to implement management responsibilities, avoid conflicts among public land users, and ensure the privacy of Tribal activities for traditional or cultural use; require that all orders specify the date and time that a temporary closure or restriction becomes effective and terminates; and make the penalties for violating temporary closure and restriction orders consistent with current statutory authority.

The proposed revisions would allow the BLM to better notify the public about the presence, nature, and scope of temporary closure and restriction orders and would make the BLM's procedures for issuing temporary closure and restriction orders more consistent with those of the United States Forest Service (USFS) and the National Park Service (NPS).

The requirement in 43 CFR 8364.1 to publish temporary closure and restriction orders in the **Federal Register** frequently delays the BLM's ability to issue such orders. The BLM's ability to expeditiously close or restrict the use of public lands temporarily is also hampered by the time it takes for an order to become effective after being signed by an authorized officer. Because emergencies and unforeseen events on public lands often require a more immediate response, any delay caused by the current regulatory scheme can compromise the BLM's ability to carry out its mission and protect the public. The proposed rule would enhance the BLM's ability to adequately meet the public's expectation for the protection of health, safety, property, and public land resources. Importantly, the proposed rule would not itself close or restrict use of any public land, nor would it require the BLM to issue any new or additional closure or restriction orders.

II. Public Comment Procedures

If you wish to comment on this proposed rule, you may submit your comments to the BLM by mail, personal or messenger delivery, or through <https://www.regulations.gov> (see **ADDRESSES**, above). Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, explain the reason for any changes you recommend, and include any supporting documentation. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The BLM is not obligated to consider or include in the administrative record for the final rule any comments received after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed previously (see **ADDRESSES**). Comments, including names and street addresses of respondents, will be available for public review at the address listed under “**ADDRESSES**: Mail, personal or messenger delivery” during regular hours (7:45 a.m. to 4:15 p.m. Eastern Time), Monday through Friday, except holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

III. Background

The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701–1787) establishes the agency's multiple use and sustained yield mandate. In managing the public lands in accordance with FLPMA, the BLM occasionally issues temporary closure and restriction orders under 43 CFR 8364.1 to protect persons, property, public lands, and resources. The need to temporarily close or restrict the use of public land often arises in response to emergencies or unplanned events such as a flood or fire, hazardous material incident, discovery of unexploded ordnance, public health emergency, or change in public land use that creates a public safety hazard. For example, the BLM issued temporary closure or restriction orders to protect the public from unsafe conditions in a community rock pit in Doña Ana County, New Mexico (88 FR 42984 (July 5, 2023));

close nine acres of public land near Rowley, Utah that were inundated with a hydrochloric acid spill (79 FR 26265 (May 7, 2014)); and close a recreation site near Challis, Idaho to protect the public from dangerous flooding and ice jams impacting the recreation site (87 FR 25523 (April 29, 2022)). Occasionally, the BLM also temporarily closes public land or restricts its uses to protect resources, implement certain management activities, or avoid conflict among visitor use activities. In such situations, the BLM may restrict an area to certain types of travel to facilitate restoration or close an area to public access to facilitate the preparation for and occurrence of a special recreation event, such as the Burning Man Project (88 FR 39863 (June 20, 2023)); the King of the Hammers off-road race (87 FR 69300 (November 11, 2022)); the Reno Air Races (84 FR 31337 (July 1, 2019)); the Mint 400 off-road race in Las Vegas (88 FR 7994 February 7, 2023)); and the Desert Classic racecourse (87 FR 20457 (April 7, 2022)).

However, aspects of 43 CFR 8364.1—such as the requirement to publish temporary closure and restriction orders in the **Federal Register** and the absence of a provision authorizing the BLM to issue temporary closure and restriction orders with immediate full force and effect—can hinder the BLM's ability to respond effectively to exigencies that arise on public lands. Streamlining and modernizing the manner in which the BLM notifies the public about temporary closure and restriction orders, as well as providing authorized officers with the ability to issue such orders with immediate effectiveness, would allow the BLM to better perform its mission to responsibly manage public lands and protect public safety. Revising § 8364.1 would also make the BLM's closure and restriction authorities more consistent with those of the USFS and the NPS (agencies with which BLM-administered public lands often share a common boundary) and, in turn, would allow the BLM to be a more effective cooperater with other federal and local jurisdictions when responding to multijurisdictional emergency incidents or unforeseen events.

Section 310 of FLPMA, which authorizes the Secretary to promulgate regulations to carry out the purposes of that Act and other laws with respect to public lands, provides authority for revising the BLM's regulatory authority for closing and restricting the use of public lands. Other statutes, such as the Archaeological Resources Protection Act (16 U.S.C. 470aa–470mm), also authorize the Secretary to promulgate

regulations relating to closures and use restrictions in certain contexts.

IV. Discussion of the Proposed Rule

As resource uses and demands for access to public lands have increased, the need for the BLM to issue temporary closure and restriction orders under 43 CFR 8364.1 to protect persons, property, and public lands has also increased. However, current regulatory requirements can hinder the BLM's ability to issue temporary closure and restriction orders.

For example, the requirement to publish temporary closure and restriction orders in the **Federal Register** frequently impedes the agency from closing and restricting the use of public lands in a timely fashion. As a result of these requirements, the window of opportunity for the BLM to effectively respond to emergency incidents or unforeseen events can pass before a closure or restriction order takes effect. This hinders the agency's ability to prevent or reduce the risk to public health or safety, property, or important resources. Although the **Federal Register** may have been the most effective way to convey access and use limitations when 43 CFR 8364.1 was promulgated in 1983, that is less true today. The tools for a bureau to communicate its actions to stakeholders and the public have become more numerous and direct, such that publication of a **Federal Register** notice is no longer likely to be the most effective way for the public to learn of a temporary closure or restriction in an expedient fashion.

The proposed rule is intended to harmonize 43 CFR 8364.1 with that reality by eliminating the need to publish temporary closure and restriction orders issued under 43 CFR 8364.1 in the **Federal Register**. Instead, the proposed rule would require the BLM to inform the public about temporary closure and restriction orders by notifying local media outlets and posting information about the closure or restriction on at least one BLM-controlled, publicly available online communication system. By relying on more current communication methods and technologies, the BLM would be better positioned to serve the public and maximize the number of stakeholders and visitors who are aware of potential access and use limitations.

Online systems have become widely used by government agencies in the time since 43 CFR 8364.1 was initially promulgated, and new online systems are already evolving that may soon supersede or supplant those used today as the most effective means for

informing public land users about government actions. Language in the proposed rule is intended to describe the communications systems in common use today, while at the same time being sufficiently flexible to account for new systems and rapidly emerging best practices in communications and public affairs without needing to update the rule again in the near future.

In addition to the **Federal Register** publication requirement in 43 CFR 8364.1, the time it takes for an order to become effective after being signed by an authorized officer also hampers the BLM's ability to expeditiously issue temporary closure and restriction orders. Under 43 CFR 4.21(a), orders that temporarily close or restrict the use of BLM-managed public lands are typically not effective during the 30-day period in which a person may file an appeal of the decision before the Department's Office of Hearings and Appeals. Emergencies and unforeseen events on public lands often require a more immediate response, however, and the delay in a closure or restriction order taking effect can compromise the BLM's ability to carry out its mission and protect the public. To adequately meet the public's expectation for the BLM to protect health, safety, property, and resources, the agency needs the ability to issue temporary closure or restriction orders that are immediately effective, when necessary.

Under the proposed rule, BLM authorized officers would have discretion to provide that orders issued under 43 CFR 8364.1 will become effective upon issuance or at a date and time established in the order. While this change would not negate someone's ability to appeal an order under 43 CFR part 4, it would make the orders effective during the time in which they are subject to appeal, which would allow the BLM to begin enforcing temporary closure and restriction orders in a timelier fashion, thus aiding the agency in protecting public lands, resources, and public safety.

Notably, eliminating the **Federal Register** publication requirement and authorizing the issuance of temporary closure and restriction orders with immediate full force and effect would make 43 CFR 8364.1 more consistent with the NPS and USFS's closure and restriction authorities. For example, USFS's closure authority at 36 CFR 261.50 does not have a **Federal Register** publication requirement. Instead, it requires closure and restriction orders to be placed in the offices of the Forest Supervisor and District Ranger who have jurisdiction over the subject lands,

and the relevant prohibitions to be displayed in such locations and manner as to reasonably bring the prohibitions to the attention of the public. NPS similarly does not need to publish closure and restriction orders in the **Federal Register** in a wide variety of situations, such as those related to emergency situations, those that will not result in a significant alteration in the public use pattern of a park area, and those that will not adversely affect a park's natural, aesthetic, scenic, or cultural values. Moreover, both USFS and NPS can issue closure and restriction orders with immediate full force and effect. Eliminating the **Federal Register** publication requirement and authorizing the issuance of temporary closure and restriction orders with immediate full force and effect would allow the BLM to better coordinate with other federal land management agencies (as well as Tribal, state, and local government agencies), especially in situations where the agencies manage land either adjacent to or in proximity with each other.

The proposed rule would also effectuate other important changes intended to clarify the nature and extent of the restrictions temporarily being placed on the use of public lands. For example, the proposed rule would require all temporary closure and restriction orders issued under 43 CFR 8364.1 to state the date and time that a closure or restriction would become effective, as well as the date and time that the closure or restriction would terminate. The proposed rule would also clarify the BLM's ability to exempt certain persons from closure and restriction orders. Currently, 43 CFR 8364.1 provides that the authorized officer may identify persons who are exempt from closure or restriction orders. The proposed rule clarifies that specific groups can also be exempt from closure or restriction orders, such as Tribal members that may need to access an otherwise closed area for traditional or cultural uses.

Additionally, the proposed rule would help clarify the broad range of situations in which the BLM may issue temporary closure and restriction orders. While the BLM may currently issue closure and restriction orders to protect persons, property, and public lands and resources, the proposed rule would reinforce that the BLM may issue temporary closure and restriction orders to provide for implementation of management responsibilities; avoid conflicts among public land users; or ensure the privacy of Tribal activities for traditional or cultural use. While implementing various resource

management strategies, it is sometimes necessary to exclude the public from areas of the public lands for either implementation efficiency or effectiveness. For instance, the BLM may need to exclude the public from an area to facilitate construction, demolition, resource monitoring, or invasive species control projects. Restricting access to areas of public lands may also be necessary to avoid conflicts between user groups, such as an off-road racecourse being closed to other uses during the race, or to ensure privacy to Tribal members during traditional or cultural uses. The proposed revisions to 43 CFR 8364.1 are intended to make clear that the temporary closure and restriction orders are intended to achieve such purposes.

The proposed rule would update the penalty provision in 43 CFR 8364.1. The year after the current regulation was promulgated, Congress passed the Sentencing Reform Act of 1984 (98 Stat. 1995) (18 U.S.C. 3571), which identifies criminal penalties that supersede the fines set in the FLPMA at 43 U.S.C. 1743. The proposed rule would amend 43 CFR 8364.1 to be consistent with current statutory authorities. Moreover, the elastic nature of the proposed rule language would make it unlikely that the BLM would need to amend the regulation if Congress updates 18 U.S.C. 3571 with new fines in the future.

Finally, the proposed rule would clarify that closure and restriction orders issued under § 8364.1 are “temporary” in nature. However, this clarification would not change how or when the BLM would implement closures or restrictions, nor would it limit or impede the BLM’s ability to issue orders that remain in effect for the duration of the activity, situation, or unforeseen event that the closure or restriction order responds to or addresses. In other words, the term “temporary” should be understood in relation to the underlying condition for which the BLM determines that a closure or restriction is warranted; it would not impose any specific time limitations on a closure or restriction order issued under § 8364.1. Instead, a temporary closure or restriction order would generally remain in effect until the situation it is addressing has ended or abated, it expires by its own terms, or the BLM issues a superseding decision, which can include incorporating the terms of a closure or restriction order into a resource management plan in accordance with the regulations at 43 CFR part 1600.

Importantly, the proposed rule would not itself close or restrict the use of any specific public land, nor would it

require the BLM to issue any new or additional temporary closure and restriction orders. The proposed rule would merely modernize and streamline the procedures governing how the BLM issues temporary closure and restriction orders, providing the public with better clarity about the scope of these orders and when they are effective. Under the proposed rule, the BLM would continue to establish closures and use restrictions after other management strategies and alternatives have been explored, including, but not limited to, increased law enforcement, cooperative efforts with local governments, engineering, education, and outreach.

The proposed rule would not impact the public’s ability to provide feedback on temporary closures and restrictions. In its current form, 43 CFR 8364.1 requires that closure and restriction orders be published in the **Federal Register**, but the provision does not require that the public have an opportunity to provide feedback on these closures and restrictions prior to their implementation. To the degree that the public receives an opportunity to provide feedback on proposed closures and restrictions, that opportunity stems from other authorities, such as the National Environmental Policy Act (NEPA), the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019 (Dingell Act), and the regulations implementing the Alaska National Interest Lands Conservation Act of 1980. That would still be the case under the proposed rule, which would neither require the BLM to seek public feedback on proposed closures and restrictions nor modify any separate statutory or regulatory provisions that do impose such requirements. For example, even though the proposed rule would eliminate the **Federal Register** publication requirement in 43 CFR 8364.1, the BLM may still need to publish a **Federal Register** notice and provide the public with an opportunity to comment in accordance with section 4103 of the Dingell Act (16 U.S.C. 7913) if proposing to close public lands to hunting, fishing, or recreational shooting.

The proposed rule would not affect how the BLM complies with NEPA and other statutory obligations when issuing closure or restriction orders. While most temporary closure and restriction orders are unlikely to have significant effects on the quality of the human environment, the BLM would continue to ensure that individual closure and restriction orders satisfy NEPA’s requirements.

The proposed rule would not diminish or eliminate the public’s opportunity to challenge the issuance of temporary closure or restriction orders, which would remain subject to appeal to the Department of the Interior’s Board of Land Appeals (IBLA) in accordance with 43 CFR part 4 or challenge in Federal court. The proposed rule would merely provide that the BLM may issue temporary closure and restriction orders with immediate full force and effect and that such orders would remain in effect pending a decision on administrative appeal unless a stay is granted by the IBLA.

V. Procedural Matters

Regulatory Planning and Review *(Executive Orders 12866 and 13563)*

Executive Order (E.O.) 12866 (58 FR 51725, October 4, 1993), as amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. The OIRA has determined that this proposed rule is not significant.

E.O. 13563 (76 FR 3821, January 11, 2011) reaffirms the principles of E.O. 12866 while calling for improvements in the Nation’s regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rule making process must allow for public participation and an open exchange of ideas. The BLM has developed this proposed rule in a manner consistent with these requirements.

The BLM reviewed the proposed requirements and has determined that the proposed rule does not meet any of the E.O. 12866 criteria of significance. The OIRA has also concluded that the proposed rule is not a significant regulatory action. Therefore, the proposed rule is not a significant regulatory action, and the BLM is not required to submit a regulatory impact analysis to OMB for review.

The BLM reviewed the requirements of the proposed rule and determined that it would not 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, or Tribal

governments or communities. For more detailed information, see the Economic and Threshold analysis prepared for this proposed rule. This analysis has been posted in the docket for the proposed rule on the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Searchbox, enter “RIN 1004–AE89”, click the “Search” button, open the Docket Folder, and look under Supporting Documents.

Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations (E.O. 12898)

E.O. 12898 (59 FR 7629, February 16, 1994) requires that, to the extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. E.O. 12898 provides that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin. This proposed rule would amend the process the BLM uses to issue temporary closure and restriction orders. The proposed rule change is not expected to have an effect on any particular population. Therefore, this proposed rule is not expected to negatively impact any community and is not expected to cause any disproportionately high or adverse impacts to minority or low-income communities.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. See 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises. Based on the available information, we conclude that the proposed rule would not have a

significant impact on a substantial number of small entities. Therefore, neither a final Regulatory Flexibility Analysis nor a Small Entity Compliance Guide is required.

Congressional Review Act

This proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). This proposed rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*), agencies must prepare a written statement about benefits and costs prior to issuing a proposed or final rule that may result in aggregate expenditure by State, local, and Tribal governments, or by the private sector, of \$100 million or more in any one year.

This proposed rule is not subject to the requirements under the UMRA. The proposed rule does not contain a federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or to the private sector in any one year. The proposed rule would not significantly or uniquely affect small governments. A statement containing the information required by the UMRA is not required.

Takings (E.O. 12630)

This proposed rule would not affect a taking of private property or otherwise have taking implications under E.O. 12630. Section 2(a) of E.O. 12630 (53 FR 8859, March 15, 1988) identifies policies that do not have takings implications, such as those that abolish regulations, discontinue governmental programs, or modify regulations in a manner that lessens interference with the use of private property. The proposed rule would not interfere with private property and does not have takings implications under E.O. 12630. Accordingly, a takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132 (64 FR 43255, August 4, 1999), this proposed rule does not have

sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of E.O. 12988 (61 FR 4729, February 5, 1996). Specifically, this proposed rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior (DOI) strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty.

In accordance with E.O. 13175 (65 FR 67249, November 9, 2000), the BLM has evaluated this proposed rulemaking and determined that it would not have substantial direct effects on Federally recognized Indian Tribes. Nevertheless, on a government-to-government basis we initiated consultation with Tribal governments that wish to discuss the proposed rule.

On March 22, 2023, the BLM sent a letter to Federally recognized Indian Tribes and Alaska Native Corporations notifying them about the BLM's intent to pursue this proposed rulemaking. In that letter, the BLM invited the Tribes and Corporations to engage in government-to-government consultation. We look forward to continuing close interaction with Tribal leaders throughout this proposed rulemaking process.

*Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)*

This rule does not contain information collection requirements, and a submission to the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required.

National Environmental Policy Act

The BLM intends to apply the Departmental categorical exclusion at 43 CFR 46.210(i) to comply with NEPA. This categorical exclusion covers policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case. The BLM plans to document the applicability of the categorical exclusion concurrently with development of the final rule.

The proposed rule is procedural and administrative in nature. The proposed rule would not be self-executing and would not result in access being prohibited or use being restricted on any specific public lands. The proposed rule also would not limit or reduce any current public participation opportunities. The proposed rule would merely streamline the administrative process through which the BLM issues and publicizes temporary closure and restriction orders in an effort to enhance the agency's ability to respond to emergencies, unforeseen events, and other management exigencies. Because the proposed rule is administrative and procedural in nature and would not result in any on-the-ground changes or other environmental effects, it satisfies the first prong of the categorical exclusion at 43 CFR 46.210(i).

The proposed rule also satisfies the second prong of 43 CFR 46.210(i). Because the proposed rule would not result in access being prohibited or use being restricted on any specific public lands, the environmental effects that may flow from the procedural changes being proposed are entirely speculative or conjectural at this time and do not lend themselves to meaningful analysis. Moreover, any environmental effects associated with future orders would be subject to the NEPA process on a case-by-case basis. Accordingly, reliance on the second prong of the categorical exclusion at 43 CFR 46.210(i) is also appropriate.

The BLM has determined, as a preliminary matter, that the proposed rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the NEPA.

Effects on the Energy Supply (E.O. 13211)

This proposed rule is not a significant energy action under E.O. 13211 (66 FR 28355, May 22, 2001). Section 4(b) of

E.O. 13211 defines a "significant energy action" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1) (i) that is a significant regulatory action under E.O. 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of OIRA as a significant energy action."

The BLM reviewed the proposed rule and determined that it is not a significant energy action as defined by E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

We are required by E.O.s 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Authors

The principal authors of this proposed rule are Kevin Oliver, Cory Roegner, Russell Scofield, and David Jeppesen, Recreation and Visitor Services Division; Rebecca Moore, Branch of Decision Support; Heather Feeney, Division of Public Affairs; Jon Young, Office of Law Enforcement and Security; Kyle W. Moorman Division of Regulatory Affairs; and Darrin King, Division of Regulatory Affairs, and assisted by the Office of the Solicitor, Ryan Sklar.

List of Subjects in 43 CFR Part 8360

Penalties, Public lands, Recreation and recreation areas.

For the reasons set out in the preamble, the Bureau of Land Management proposes to amend 43 CFR part 8360 as follows:

PART 8360—VISITOR SERVICES

- 1. The authority citation for part 8360 continues to read as follows:

Authority: 16 U.S.C. 470aaa, *et seq.*; 670, *et seq.*; 877, *et seq.*; 1241, *et seq.*; and 1281c; and 43 U.S.C. 315a and 1701 *et seq.*

- 2. Revise § 8364.1 to read as follows:

§ 8364.1 Temporary closure and restriction orders.

(a) The authorized officer may issue an order to temporarily close or restrict the use of designated public lands to protect persons, property, public lands, or resources; provide for implementation of management responsibilities; avoid conflict among public land users; or ensure the privacy of Tribal activities for traditional or cultural use.

- (b) Each order shall:
 - (1) Identify the public lands, roads, trails, or waterways that are closed to entry or restricted as to use;
 - (2) Specify the uses that are restricted;
 - (3) Specify the date and time that the closure or restriction order will become effective and the date and time the order will terminate;
 - (4) Identify any persons or groups who are exempt from the closure or restrictions;
 - (5) Be posted in a Bureau of Land Management (BLM) Office having jurisdiction over the public lands, roads, trails, or waterways to which the order applies;
 - (6) Be posted at places near or within the area to which the closure or restriction applies, in such manner and location as is reasonable to bring prohibitions to the attention of users; and
 - (7) Include a statement that includes the reasons for the closure or restriction.

(c) When issuing closure or restriction orders pursuant to this section, the authorized officer shall provide public notice:

- (1) By notifying local media outlets; and
 - (2) Posting information on at least one BLM-controlled, publicly available online communication system.
- (d) Orders issued pursuant to this section shall be effective upon issuance or a date and time established in the order and shall remain in effect during the time in which it may be appealed to

the Office of Hearings and Appeals under part 4 of this title. If appealed, such orders shall remain in effect pending the decision on appeal unless a stay is granted.

(e) Any person who violates a temporary closure or restriction order 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 § 8360.0–7, or both.

Steven H. Feldgus,

Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 2023–25698 Filed 11–20–23; 8:45 am]

BILLING CODE 4331–30–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2022–0081; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BF83

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for the Kern Canyon Slender Salamander and Endangered Species Status for the Relictual Slender Salamander; Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revisions and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reopening the comment period on our October 18, 2022, proposed rule to list the Kern Canyon slender salamander (*Batrachoseps simatus*) and the relictual slender salamander (*Batrachoseps relictus*) under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. This action will allow all interested parties an additional opportunity to comment on the October 18, 2022, proposed rule, as well as the opportunity to comment on the new areas we are considering for relictual slender salamander critical habitat, small changes to Kern Canyon slender salamander critical habitat, and our updates to the physical or biological features for the Kern Canyon slender salamander, in response to previously submitted public comments. Comments previously submitted need not be resubmitted as they are already incorporated into the public record and will be fully considered in the final rule.

DATES: The comment period on the proposed rule that published October 18, 2022 (87 FR 63150), is reopened. We will accept comments received or postmarked on or before December 6, 2023.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS–R8–ES–2022–0081, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R8–ES–2022–0081, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: This document and supporting materials (including the species status assessment report, the coordinates or plot points or both from which the critical habitat maps are generated, comments and information received on the proposed rule, the updated economic analysis, and references cited are available at <https://www.regulations.gov> at Docket No. FWS–R8–ES–2022–0081.

FOR FURTHER INFORMATION CONTACT:

Michael Fris, Field Supervisor, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Sacramento, CA 95825; telephone 916–414–6700. 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. In compliance with the Providing Accountability Through Transparency Act of 2023, please see Docket No. FWS–R8–ES–2022–0081 on <https://www.regulations.gov> for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Information Requested

We will accept written comments and information during this reopened comment period on our proposed rule to list the Kern Canyon slender salamander and the relictual slender salamander and designate critical habitat for both species. We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposal will be based on the best scientific data available. Our final determination will take into consideration all comments and any additional information we receive during the reopened comment period on the proposed rule.

Because we will consider all comments and information received during both comment periods, our final determination may differ from our October 18, 2022 (87 FR 63150), proposed rule. Based on the new information we receive (and any comments on that new information), we may conclude that the Kern Canyon slender salamander is endangered instead of threatened, that the relictual slender salamander is threatened instead of endangered, or we may conclude that either or both species do not warrant listing as either endangered species or threatened species. For critical habitat, our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, and may exclude some additional areas if we find the benefits of exclusion outweigh the benefits of inclusion and will not lead to the extinction of the species.

In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the proposed 4(d) rule for the Kern Canyon slender salamander if we conclude it is appropriate in light of comments and new information received. For example, we may expand the prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of the species. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

If you already submitted comments or information on the October 18, 2022, proposed rule, please do not resubmit them. Any such comments are incorporated as part of the public record

of the rulemaking proceeding, and we will fully consider them in the preparation of our final determination.

Comments should be as specific as possible. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you assert. Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support our determination, as section 4(b)(2) of the Act directs that designations of critical habitat be made “on the basis of the best scientific data available.”

We request that you send comments and materials only by one of the methods listed in **ADDRESSES**. If you submit information via <https://www.regulations.gov>, your entire submission—including your personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on <https://www.regulations.gov> at Docket No. FWS-R8-ES-2022-0081.

Background

On October 18, 2022, we published a proposed rule in the **Federal Register** (87 FR 63150) to list the Kern Canyon slender salamander as a threatened species with a critical habitat designation of approximately 2,051 acres (ac) (830 hectares (ha)), and to list the relictual slender salamander as an endangered species with a critical habitat designation of approximately 2,685 ac (1,087 ha). Both species are found in the southern Sierra Nevada mountains.

During the comment period on the October 18, 2022, proposed rule, species experts submitted a comment letter stating that they had discovered several new locations where the relictual slender salamander occurs. In their comment letter, they stated that they were concerned about sharing these new locations due to the potential for increased foot traffic and possible disturbance of sensitive habitat for the species. After the comment period

closed, we met with the experts to discuss the risks of sharing the new locations and the lead researcher then subsequently provided us the new location data in a way that was consistent with our critical habitat mapping methods but does not reveal the specific site locations that may be sensitive to trampling and disturbance.

Based on these new data for the relictual slender salamander, we have expanded Unit 2 and Unit 3 within the proposed designation to include the new locations that contain the physical or biological features essential to the conservation of the species. We also added a new unit to proposed critical habitat to include new locations in the Walker Basin Drainage that also contain the physical or biological features essential to the conservation of the species (Unit 4). We are adding 2,257 ac (913 ha) to critical habitat for a new total of 4,942 ac (2,000 ha) proposed for designation for the relictual slender salamander. In addition, the experts noted an error in the mapping of Kern Canyon slender salamander critical habitat and identified one additional location within proposed Unit 3 where the Kern Canyon slender salamander occurs and which contains the physical or biological features essential to the conservation of the species. We have proposed to modify Unit 3 of the proposed designation for the Kern Canyon slender salamander to incorporate these changes. In total, these changes result in an additional 6 ac (2 ha) of critical habitat for the Kern Canyon slender salamander.

The experts also provided information that the Kern Canyon slender salamander makes use of a broader range of habitats than was stated in the proposed rule. They stated that the Kern Canyon slender salamander has been frequently found on open, rocky slopes adjacent to streams. We therefore updated our physical or biological features for the Kern Canyon slender salamander in order to reflect this new information.

Because we received the new location data outside the public comment period, we now reopen the comment period to allow for the public to review and comment on the new information and the revisions to the proposed critical habitat designation. Below, we provide a summary of that information. We provide a new description of the physical or biological features for the two species that have been updated in response to the new information. We also provide the new unit descriptions for the units that have changed and the units that are being added.

Physical or Biological Features Essential to the Conservation of the Species

Space for Individual and Population Growth and for Normal Behavior

The Kern Canyon slender salamander and the relictual slender salamander are endemic to, and occur within or immediately adjacent to, humid habitat associated with seeps, springs, and streams in the Greenhorn and Piute Mountains in the southern Sierra Nevada in Kern County. The Kern Canyon slender salamander's habitat is constrained to riparian zones adjacent to seeps, springs, and streams, and open, rocky slopes adjacent to streamside habitats that are likely being wetted by cryptic seeps. These seeps may not be readily apparent, but can be identified by the presence of moisture-dependent vegetation (Evelyn 2022, pers. comm.; Jockusch 2022, pers. comm.). The relictual slender salamander's habitat is constrained to riparian zones adjacent to seeps, springs, and streams due to their narrow physiological tolerances. Habitat within larger fast-moving bodies of water, such as the Kern River, is not suitable habitat and does not contain the physical or biological features that support the Kern Canyon slender salamander or relictual slender salamander.

Primary habitat for the Kern Canyon slender salamander is composed of wet stream and seep margins within rocky, narrow canyons supporting chaparral shrubs, sycamore (*Platanus racemosa*), California buckeye (*Aesculus californica*), willow (*Salix* spp.), Fremont cottonwood (*Populus fremontii*), interior live oak (*Quercus wislizeni*), canyon live oaks (*Quercus chrysolepis*), and foothill pine (*Pinus sabiniana*). Historically, the Kern Canyon slender salamander was found on exposed hillsides and open grasslands, but the primary habitat of the species is now limited to riparian habitats or other moist microsites (Lannoo 2005, p. 692; Jockusch 2021b, pers. comm.). However, the species is still found in open, rocky habitat within moist microsites that are likely being wetted by cryptic seeps (Evelyn 2022, pers. comm.; Jockusch 2022, pers. comm.). These seeps may not be readily apparent but can be identified by the presence of moisture-dependent vegetation.

Primary habitat for the relictual slender salamander is composed of seeps, perennial springs, and streams in rocky habitat supporting limited tree cover of oaks (*Quercus* spp.), buckeyes (*Aesculus* spp.), sycamores (*Platanus*

racemosa), pines (*Pinus* spp.), and firs (*Abies* spp.).

We do not know how much suitable habitat and habitat connectivity is required to sustain a viable population of either the Kern Canyon slender salamander or the relictual slender salamander. There may be distinct, non-interbreeding populations or there may be some level of dispersal between localities associated with the same streams or different aquatic features providing at least a small level of connectivity between individual populations. The minimum number of viable populations necessary to sustain the salamanders is unknown. The distribution and quantity of available suitable habitat across the range necessary to support populations of either the Kern Canyon slender salamander or the relictual slender salamander are unknown.

While the amount of habitat necessary to support Kern Canyon slender salamander and relictual slender salamander individual and population growth and normal behavior is unknown, preservation of these features is essential for the species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

The diets of the Kern Canyon slender salamander and the relictual slender salamander are assumed to be similar to other *Batrachoseps* species such as the California slender salamander and the Pacific slender salamander, which prey upon small invertebrates, earthworms, and slugs (Cunningham 1960, p. 98; Adams 1968, p. 171; Stebbins and McGinnis 2012, p. 127). The prey-related requirements (abundance, diversity, range, etc.) to sustain a viable population of either species is unknown.

Water is essential for survival of the Kern Canyon slender salamander and the relictual slender salamander. We have no specific information on the amount of water they require; however, both species are restricted to patches of humid habitat near sources of water such as small seeps, springs, and streams, even if the water source is not readily apparent. The relictual slender salamander has a closer association with water than other species of terrestrial salamanders as relictual slender salamanders have been found submerged in water and under cover objects with water beneath them. During times of drought, water sources may become scarce, and associated riparian areas may become hot and dry. The relictual slender salamander and the Kern Canyon slender salamander may

need to expend more energy and time to search for new water sources and humid habitat or may restrict surface activity and foraging time to seek shelter in subterranean refugia to avoid desiccation during times of drought.

Summary of Essential Physical or Biological Features for the Kern Canyon Slender Salamander

We derive the specific physical or biological features essential to the conservation of the Kern Canyon slender salamander from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report (Service 2022, entire; available on <https://www.regulations.gov> under Docket No. FWS-R8-ES-2022-0081). We have determined that the following physical or biological features are essential to the conservation of the Kern Canyon slender salamander:

- (1) Aquatic habitat consisting of seeps, springs, and streams.
- (2) Riparian habitat consisting of terrestrial areas adjacent to seeps, springs, and streams that contain:
 - a. Sufficient refugia consisting of woody debris, leaf litter, and rocks with abundant interstitial spaces to facilitate safe resting, foraging, and movement;
 - b. Suitable prey to allow for survival, growth, and reproduction; and
 - c. Riparian vegetation that provides shade cover contributing to cool and moist surface conditions for maintaining homeostasis, foraging opportunities, and physical structure for predator avoidance.
- (3) Open, rocky slopes that are likely being wetted by cryptic seeps due to the presence of moisture-dependent vegetation. These slopes should be adjacent to streamside habitat and contain:

- a. Sufficient refugia consisting of debris, vegetation, and rocks with abundant interstitial spaces to facilitate safe resting, foraging, and movement;
- b. Suitable prey to allow for survival, growth, and reproduction; and
- c. Boulders and rocks that provide shade cover contributing to cool and moist surface conditions for maintaining homeostasis, foraging opportunities, and physical structure for predator avoidance.

- (4) Corridors of aquatic habitat, riparian habitat, or open, rocky slopes with moisture-dependent vegetation that provide connectivity between patches of occupied habitat to allow for movement of individuals.

Summary of Essential Physical or Biological Features for the Relictual Slender Salamander

We derive the specific physical or biological features essential to the conservation of the relictual slender salamander from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report (Service 2022, entire; available on <https://www.regulations.gov> under Docket No. FWS-R8-ES-2022-0081). We have determined that the following physical or biological features are essential to the conservation of the relictual slender salamander:

- (1) Aquatic habitat consisting of seeps, springs, and streams.
- (2) Riparian habitat consisting of terrestrial areas adjacent to seeps, springs, and streams that contain:
 - a. Sufficient refugia consisting of woody debris, leaf litter, and rocks with abundant interstitial spaces to facilitate safe resting, foraging, and movement;
 - b. Suitable prey to allow for survival, growth, and reproduction; and
 - c. Riparian vegetation that provides shade cover contributing to cool and moist surface conditions for maintaining homeostasis, foraging opportunities, and physical structure for predator avoidance.
- (3) Corridors of aquatic habitat or riparian habitat that provide connectivity between patches of occupied habitat to allow for movement of individuals.

Proposed Critical Habitat Designation for the Kern Canyon Slender Salamander

We are proposing to designate four units as critical habitat for the Kern Canyon slender salamander, for a total of approximately 2,057 ac (833 ha). The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Kern Canyon slender salamander. The areas we propose as critical habitat are: (1) Bodfish Creek, (2) Erskine Creek, (3) Kern Canyon Tributaries, and (4) Kern Canyon Tributaries and Connecting Creeks. Table 1 shows the proposed critical habitat units and the approximate area of each unit. Unit 3 overlaps with proposed critical habitat for the relictual slender salamander.

For the Kern Canyon slender salamander, the three occupied units contain all of the identified physical or biological features and support multiple life-history processes, and the one unoccupied unit contains only some of the physical or biological features

necessary to support the Kern Canyon slender salamander's particular use of

that habitat. The unoccupied unit has aquatic habitat containing seeps,

springs, and streams that support the life-history needs of the species.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR THE KERN CANYON SLENDER SALAMANDER

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of unit	Occupied?	Changed since proposed rule?
1. Bodfish Creek	Federal Unclassified/Private	125 ac (50 ha) 19 ac (8)	Yes	No.
2. Erskine Creek	Federal Unclassified/Private	182 ac (74 ha) 259 ac (105 ha)	Yes	No.
3. Kern Canyon Tributaries	Federal Unclassified/Private	1,383 ac (560 ha) 32 ac (13 ha)	Yes	Yes.
4. Kern Canyon Tributaries and Connecting Creeks	Federal Unclassified/Private	25 ac (10 ha) 32 ac (13 ha)	No	No.
Total .....	.....	2,057 ac (833 ha).		

Note: Area sizes may not sum due to rounding.

Below we provide the description of the unit that has been updated since the proposed rule.

Unit 3: Kern Canyon Tributaries

We expanded this unit to include additional habitat occupied by the Kern Canyon slender salamander that contains the physical or biological features essential to the conservation of the species. We also removed one occurrence mapped in error; the total change is 6 ac (2 ha) added to the unit. In total, this unit encompasses 1,415 ac (573 ha) within Kern County in Sequoia National Forest in the Kern Canyon. This unit includes segments of streams and small tributaries that feed into the Kern River and associated riparian habitat on the south side of the Kern Canyon. Small streams within steep ravines and narrow canyons provide habitat for the Kern Canyon slender salamander within this unit. The mainstem of the Kern River is not considered to be habitat for the Kern Canyon slender salamander within this unit. Some of the habitat within this unit is fragmented by highway California State Route 178, single lane roads, and recreational development.

The majority of habitat in this unit is federally owned by the U.S. Forest Service (USFS). General land use activities on Federal lands within the unit include forest management (for example, fuels reduction, hazard tree management, forest restoration, prescribed fire), grazing, highway maintenance, and recreational development. Smaller tracts of habitat are owned by private entities and contain a small amount of residential and recreational development. Wildfire and climate change are the primary ongoing threats to habitat within this unit. Physical or biological features in this unit may require special management considerations or practices to protect them from impacts associated with California State Route 178 and other roads, forest management, recreational development, residential development, and grazing. This unit includes all the physical or biological features. This unit is considered occupied.

Proposed Critical Habitat Designation for the Relictual Slender Salamander

We are proposing to designate four units as critical habitat for the relictual

slender salamander, for a total of approximately 4,942 ac (2,000 ha). The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the relictual slender salamander. The four areas we propose as critical habitat are: (1) Kern Canyon Tributaries, (2) Lucas Creek, (3) Mill Creek and Flying Dutchman Creek, and (4) Walker Basin Drainage. Table 2 shows the proposed critical habitat units and the approximate area of each unit. Unit 1 overlaps with proposed critical habitat for the Kern Canyon slender salamander.

For the relictual slender salamander, the three occupied units contain all of the identified physical or biological features and support multiple life-history processes, and the one unoccupied unit contains only some of the physical or biological features necessary to support the relictual slender salamander's particular use of that habitat. The unoccupied unit has aquatic habitat containing seeps, springs, and streams that support the life-history needs of the species.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR THE RELICTUAL SLENDER SALAMANDER

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of unit	Occupied?	Changed since proposed rule?
1. Kern Canyon Tributaries	Federal Unclassified/Private	713 ac (289 ha) 10 ac (4 ha)	No	No.
2. Lucas Creek	Federal Unclassified/Private	1,109 ac (449 ha) 26 ac (11 ha)	Yes	Yes.
3. Mill Creek and Flying Dutchman Creek	Federal Unclassified/Private	2,500 ac (1,012 ha) 151 ac (61 ha)	Yes	Yes.
4. Walker Basin Drainage	Federal Unclassified/Private	419 ac (169 ha) 14 ac (6 ha)	Yes	New unit.
Total .....	.....	4,942 ac (2,000 ha).		

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all changed and new units, and reasons why they meet the definition of critical habitat for the relictual slender salamander, below.

Unit 2: Lucas Creek

We have expanded this unit to include an additional 372 ac (151 ha) to incorporate new occurrences of the species; these new areas contain the physical or biological features essential to the conservation of the species. In total, this unit encompasses 1,135 ac (460 ha) within Kern County to the south of the Kern Canyon in Sequoia National Forest. This unit extends south from the Kern Canyon along Lucas Creek and unnamed tributaries to Lucas Creek on Breckenridge Mountain. Land within this unit is largely undeveloped and only sparsely fragmented by single-lane roads, recreational development, and small parcels that contain residential development. Most of the habitat in this unit is federally owned by the USFS. General land use activities on Federal lands within the unit include forest management (for example, fuels reduction, timber harvest, hazard tree management, forest restoration, prescribed fire), grazing, road maintenance, and recreational development. Wildfire and climate change are the primary ongoing threats to the habitat in this unit. Physical or biological features in this unit may require special management considerations or practices to protect them from impacts associated with forest management, roads, recreational development, residential development, and grazing. This unit includes all the physical or biological features and is considered occupied.

Unit 3: Mill Creek and Flying Dutchman Creek

We have expanded this unit to include an additional 1,452 ac (588 ha) to incorporate new occurrences of the species; these new areas contain the physical or biological features essential to the conservation of the species. In total, this unit encompasses 2,651 ac (1,073 ha) within Kern County to the south of the Kern Canyon primarily within Sequoia National Forest. This unit extends south from the Kern Canyon along Mill Creek and unnamed tributaries to Mill Creek on Breckenridge Mountain. The unit also includes habitat associated with Flying Dutchman Creek and unnamed tributaries to Flying Dutchman Creek on Breckenridge Mountain. Land within this unit is largely undeveloped and only sparsely fragmented by single-lane roads and some recreational

development. The majority of habitat in this unit is federally owned by the USFS and the Bureau of Land Management (BLM), and a few tracts of habitat are owned by private entities. General land use activities on Federal lands within this unit include forest management (for example, timber harvest, fuels reduction, hazard tree management, forest restoration, prescribed fire), grazing, road maintenance, and recreational development. Wildfire and climate change are the primary ongoing threats to the habitat in this unit. Physical or biological features in this unit may require special management considerations or practices to protect them from impacts associated with forest management, roads, recreational development, and grazing. This unit includes all the physical or biological features and is considered occupied.

Unit 4: Walker Basin Drainage

This unit encompasses 433 ac (175 ha) within Kern County on the eastern slope of Breckenridge Mountain primarily within Sequoia National Forest. This unit extends along four unnamed tributaries within the Walker Basin drainage. Land within this unit is largely undeveloped and only sparsely fragmented by recreational development. The majority of habitat in this unit is federally owned by the USFS, and a small area of habitat is privately owned. General land use activities on Federal lands within this unit include forest management (for example, timber harvest, fuels reduction, hazard tree management, forest restoration, prescribed fire), grazing, and recreational development. Wildfire and climate change are the primary ongoing threats to the habitat in this unit. Physical or biological features in this unit may require special management considerations or practices to protect them from impacts associated with forest management, recreational development, and grazing. This unit includes all the physical or biological features and is considered occupied.

Authors

The primary authors of this document are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Sacramento Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose further to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 87 FR 63150 (October 18, 2022) 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. Further amend § 17.95(d), as proposed to be amended at 87 FR 63150, by:

■ a. In the entry for “Kern Canyon Slender Salamander (*Batrachoseps simatus*)”, revising paragraphs (2), (5), and (8); and

■ b. In the entry for “Relictual Slender Salamander (*Batrachoseps relictus*)”, revising paragraphs (5), (7), and (8) and adding paragraph (9).

The revisions and additions read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Kern Canyon Slender Salamander (*Batrachoseps simatus*)

* * * * *

(2) Within these areas, the physical or biological features essential to the conservation of Kern Canyon slender salamander consist of the following components:

(i) Aquatic habitat consisting of seeps, springs, and streams;

(ii) Riparian habitat consisting of terrestrial areas adjacent to seeps, springs, and streams that contain:

(A) Sufficient refugia consisting of woody debris, leaf litter, and rocks with abundant interstitial spaces to facilitate safe resting, foraging, and movement;

(B) Suitable prey to allow for survival, growth, and reproduction; and

(C) Riparian vegetation that provides shade cover contributing to cool and moist surface conditions for maintaining homeostasis, foraging opportunities, and physical structure for predator avoidance.

(iii) Open, rocky slopes that are likely being wetted by cryptic seeps due to the presence of moisture-dependent vegetation. These slopes should be adjacent to streamside habitat and contain:

(A) Sufficient refugia consisting of debris, vegetation, and rocks with abundant interstitial spaces to facilitate safe resting, foraging, and movement;

(B) Suitable prey to allow for survival, growth, and reproduction; and

(C) Boulders and rocks that provide shade cover contributing to cool and moist surface conditions for maintaining homeostasis, foraging opportunities, and

physical structure for predator avoidance.

(iv) Corridors of aquatic habitat, riparian habitat, or open, rocky slopes with moisture-dependent vegetation that provide connectivity between

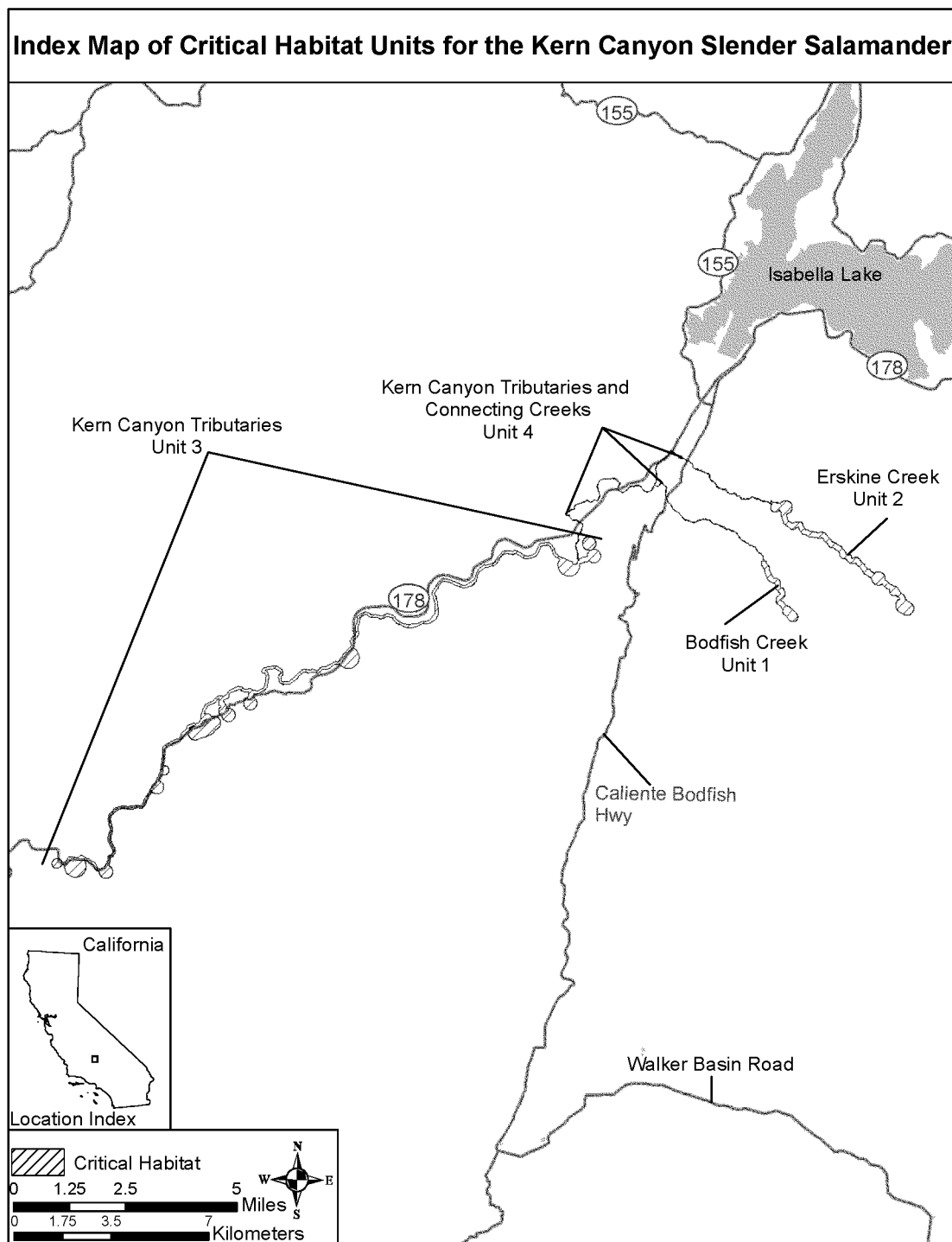
patches of occupied habitat to allow for movement of individuals.

* * * * *

(5) Index map follows:

BILLING CODE 4333-15-P

Figure 1 to Kern Canyon Slender Salamander (*Batrachoseps simatus*) paragraph (5)



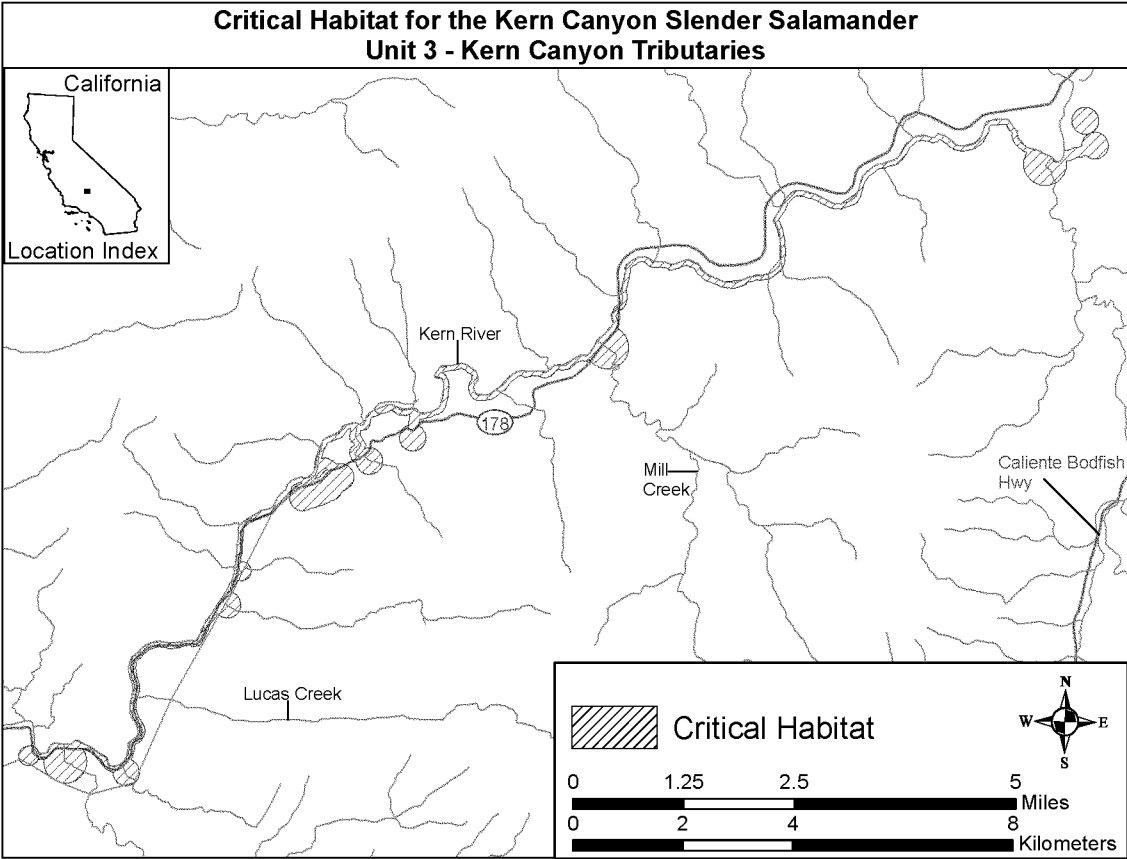
* * * * *

(8) Unit 3: Kern Canyon Tributaries, Kern County, California.
(i) Unit 3 consists of 1,415 ac (573 ha) in Kern County. Nearly all land in the

unit (1,383 ac (560 ha)) is owned by USFS (in Sequoia National Forest) and BLM, and the remainder is owned by private entities. This unit includes land

along the southern bank of the Kern River from river mile 45.6 to 64.2.
(ii) Map of unit 3 follows:
* * * * *

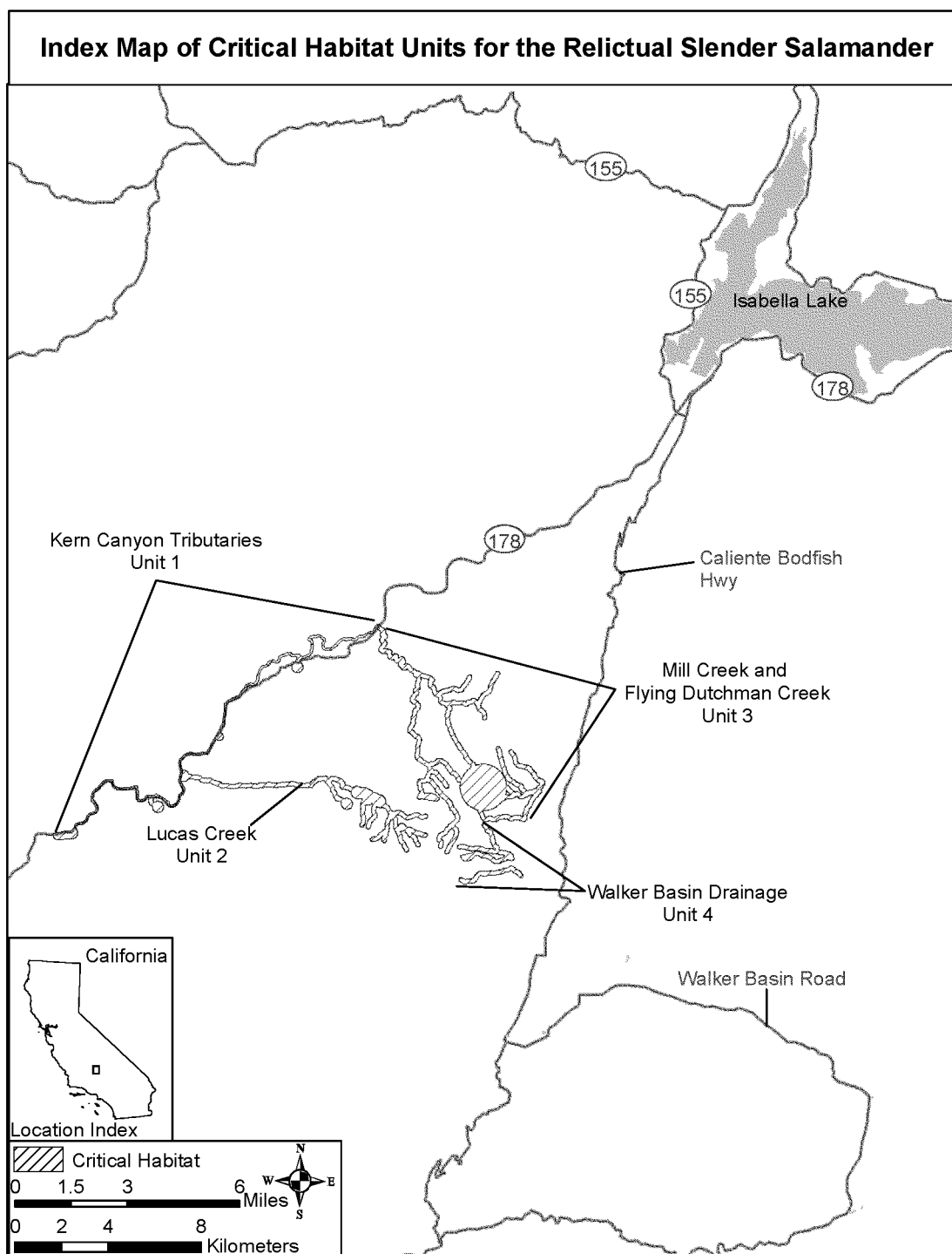
Figure 4 to Kern Canyon Slender Salamander (*Batrachoseps simatus*) paragraph (8)(ii)



* * * * *

Relictual Slender Salamander
(*Batrachoseps relictus*)
* * * * *

(5) Index map follows:
* * * * *

Figure 1 to Relictual Slender Salamander (*Batrachoseps relictus*) paragraph (5)

* * * * *

(7) Unit 2: Lucas Creek, Kern County, California.

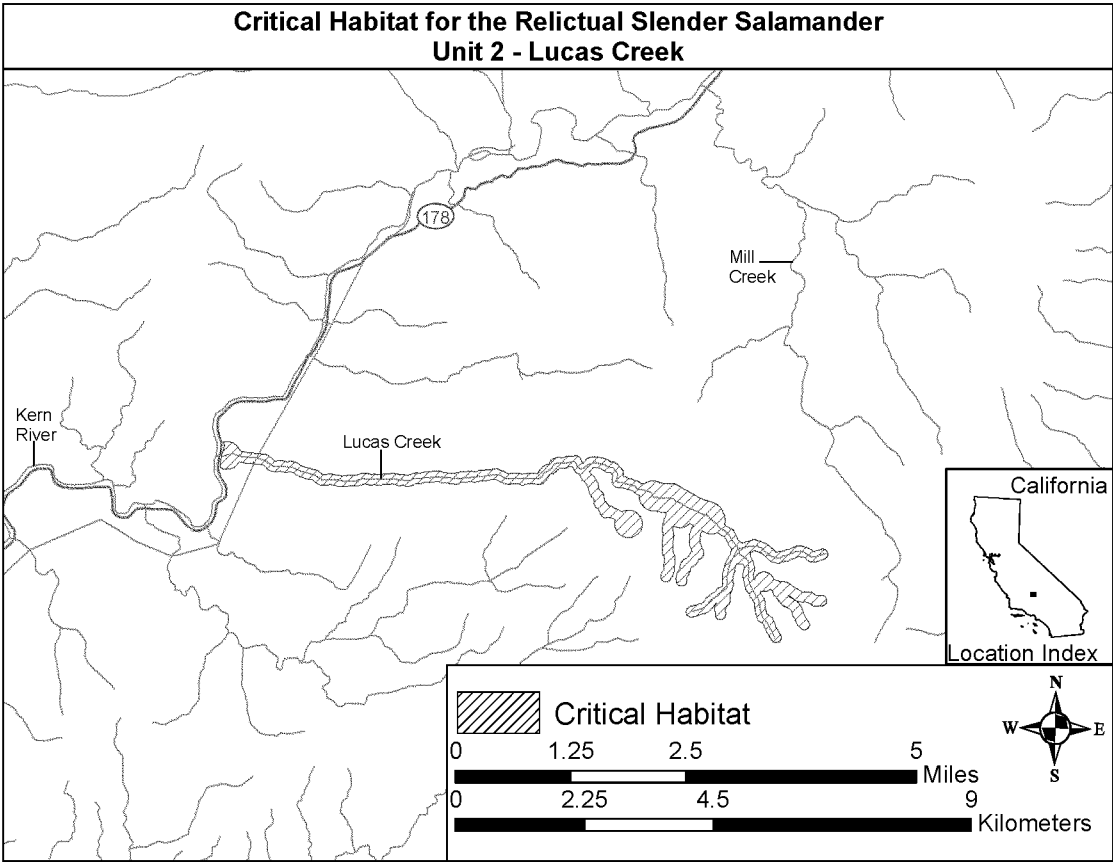
(i) Unit 2 consists of 1,135 ac (460 ha) in Kern County. Nearly all of the land

(1,109 ac (449 ha)) is within the boundaries of Sequoia National Forest, and a small area is privately owned. This unit extends south from the Kern

Canyon along Lucas Creek and unnamed tributaries to Lucas Creek on Breckenridge Mountain.

(ii) Map of Unit 2 follows:

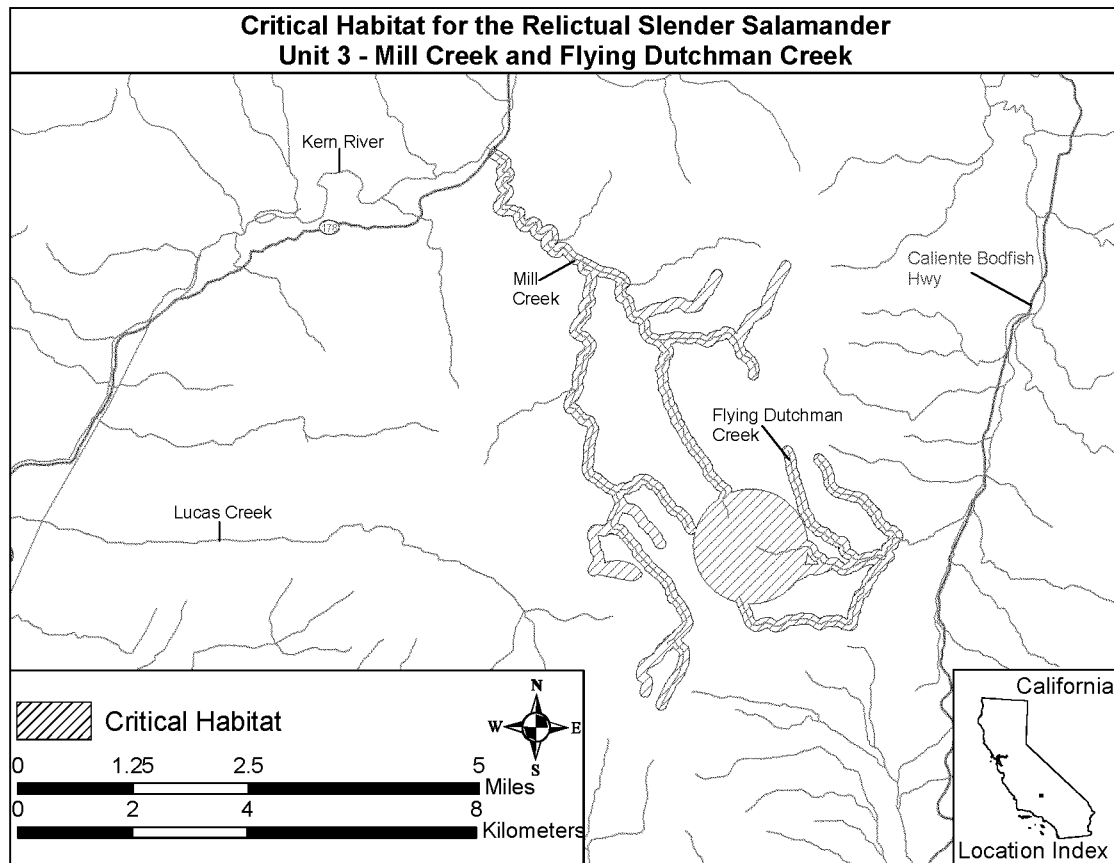
Figure 3 to Relictual Slender Salamander (*Batrachoseps relictus*) paragraph (7)(ii)



(8) Unit 3: Mill Creek and Flying Dutchman Creek, Kern County, California.
(i) Unit 3 consists of 2,651 ac (1,073 ha) in Kern County. The majority of

land (2,500 ac (1,012 ha)) is within the boundaries of Sequoia National Forest, and a small area is privately owned. This unit extends south from the Kern

Canyon along Mill Creek and unnamed tributaries to Mill Creek on Breckenridge Mountain.
(ii) Map of Unit 3 follows:

Figure 4 to Relictual Slender Salamander (*Batrachoseps relictus*) paragraph (8)(ii)

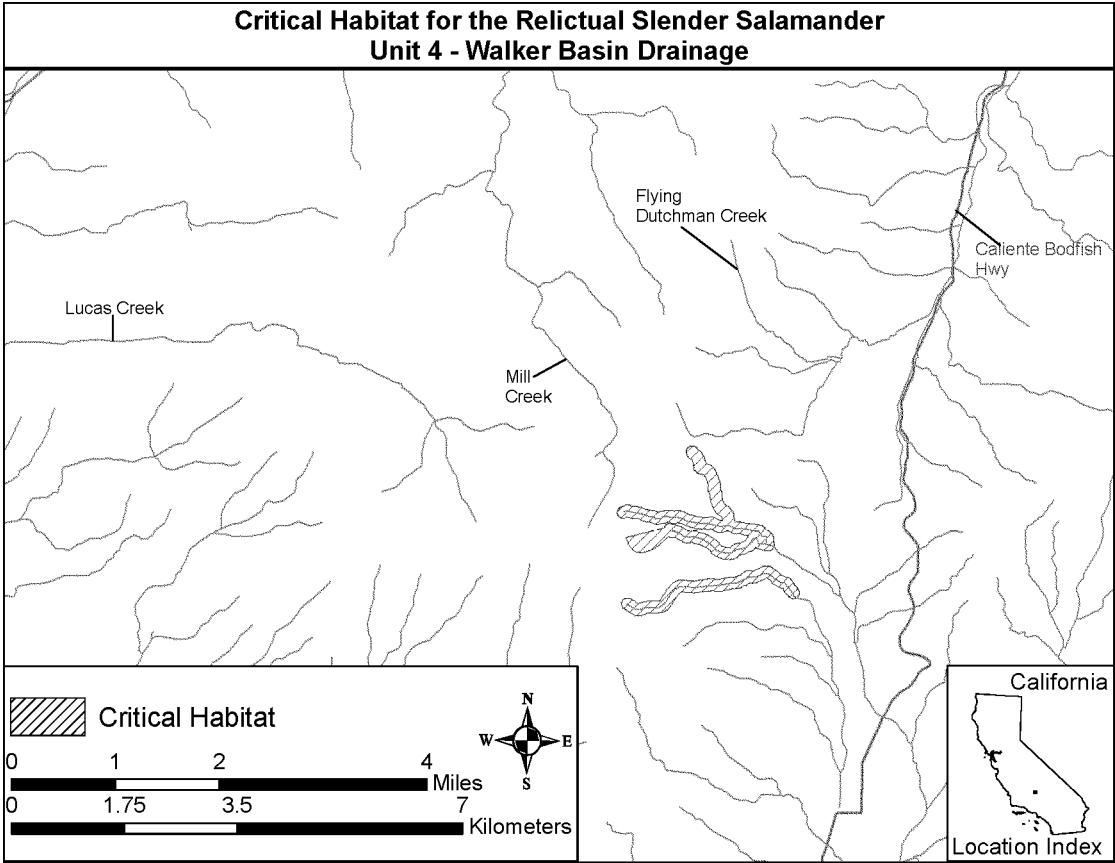
(9) Unit 4: Walker Basin Drainage, Kern County, California.

(i) Unit 4 consists of 433 ac (175 ha) in Kern County. The majority of habitat in this unit (419 ac (169 ha)) is federally

owned by the USFS, and a small area of habitat is privately owned. This unit extends along four unnamed tributaries within the Walker Basin drainage.

(ii) Map of Unit 4 follows:

Figure 5 to Relictual Slender Salamander (*Batrachoseps relictus*) paragraph (9)(ii).



* * * * *

Martha Williams,
Director, U.S. Fish and Wildlife Service.
[FR Doc. 2023–25622 Filed 11–20–23; 8:45 am]
BILLING CODE 4333–15–C

Notices

Federal Register

Vol. 88, No. 223

Tuesday, November 21, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS-NOP-23-0052]

Notice of Request To Extend and Revise a Previously Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension and revision of a previously approved information collection titled "National Organic Program" (OMB Control Number: 0581-0191).

DATES: Comments on this notice must be received by January 22, 2024 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments by using the electronic process available at <https://www.regulations.gov>. All comments should reference the docket number, date and page number of this issue of the **Federal Register**. All comments received will be posted without change, including any personal information provided, at <https://www.regulations.gov> and will be included in the record and made available to the public. Please do not include personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Comments may be submitted anonymously.

FOR FURTHER INFORMATION CONTACT: Erin Healy, Director, Standards Division, National Organic Program, Phone: (202) 720-3252; Email: erin.healy@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: National Organic Program.

OMB Control Number: 0581-0191.

Expiration Date of Current Approval: March 31, 2024.

Type of Request: Notice of intent to extend and revise a previously approved information collection for three years.

Abstract: AMS is requesting that the Office of Management and Budget (OMB) extend the approval for the currently approved information collection, "National Organic Program," OMB Control Number 0581-0191 for another three years past its existing expiration date of March 31, 2024. AMS is also requesting OMB approval of revisions made to this information collection. AMS is requesting the revision and extension of this previously approved information collection, to fully implement the "National Organic Program" (NOP).

The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501-6524), authorized the Secretary of Agriculture to establish the National Organic Program (NOP) and accredit certifying agents to certify that farms and businesses meet national organic standards. Under OFPA, the purpose of the NOP is to: (1) establish national standards governing the marketing of certain agricultural products as organically produced products; (2) assure consumers that organically produced products meet a consistent standard; and (3) facilitate interstate commerce in fresh and processed food that is organically produced (7 U.S.C. 6501). Since AMS published the first USDA organic regulations (7 CFR part 205, 65 FR 80548, Dec 21, 2000), the information collected (under OMB Control No. 0581-0191) has been used at the Federal level (by AMS) to evaluate the compliance of organically produced products around the world, evaluate the effectiveness of the program, and to inform program management decisions and policy changes. AMS requests that the approval of this information collection be extended another three years. If this information is not collected, AMS's ability to carry out the mandates of OFPA through the NOP will be greatly diminished.

Respondents to this information collection include operations seeking or maintaining USDA organic certification, accredited certifying agents and their inspectors, and State and foreign

program officials. This collected information is used by accredited certifying agents and their inspectors, State and foreign program officials, and AMS. Respondents to this information collection also includes entities seeking certifying agent accreditation, members of the public petitioning a change to the USDA organic regulations National List of Allowed and Prohibited Substances (7 CFR 205.600-607), and members of the public submitting allegations of fraudulent organic activities (complaints). This collected information is used by AMS.

In addition to generic descriptions of information to be collected (described in the USDA organic regulations, 7 CFR part 205), the National Organic Program information collection includes three forms: (1) TM-10CG, Application for Accreditation; (2) TM-11, Export Certificate; and (3) NOP 2110-1, NOP Import Certificate.

In this renewal, AMS intends to revise the explanatory/instructional text in form TM-10CG, Application for Accreditation. The existing form repeats language that is codified in the USDA organic regulations (7 CFR part 205). AMS plans to remove this redundant language and replace the instructions with references to relevant sections of the USDA organic regulations. AMS also plans to revise the form to clarify when information is to be submitted to AMS to reduce or eliminate the resubmission of duplicate information from certifying agents renewing their accreditation. The TM-10CG, Application for Accreditation, will be revised and submitted to OMB after the public comment period for this notice has closed. AMS is not planning any changes to TM-11, Export Certificate, at this time. At a later date, AMS plans to revise NOP 2110-1, NOP Import Certificate, due to recent rulemaking (Strengthening Organic Enforcement, 88 FR 3548, Jan 19, 2023).

AMS is also revising the National Organic Program information collection to include estimates of paperwork burdens related to the five-year Transition to Organic Partnership Program and the NOP Online Complaint Portal.

The National Organic Program, on behalf of AMS, is responsible for facilitating the Transition to Organic Partnership Program portion of the USDA Organic Transition Initiative

(Press Release No. 0181.22, August 22, 2022). AMS revised the paperwork burden estimate for the National Organic Program information collection to include participant applications. Through the Transition to Organic Partnership Program, the USDA ensures that operations (farmers) transitioning to organic production have the support and resources needed to navigate that transition. Respondents to the Transition to Organic Partnership Program are operations (e.g., farmers) seeking to transition their agricultural operation to USDA certified organic production, operations looking to expand their existing USDA certified organic operation and/or acreage, and existing USDA certified organic operations looking to serve in a mentorship role to the above listed respondents. AMS and Transition to Organic Partnership Program cooperators use this information to build a partnership network across six regions of the United States, with the purpose of connecting transitioning operations (mentees) with mentors, and to help with technical assistance events and resource material content development.

Administrative investigations are exempt from the Paperwork Reduction Act requirements [44 U.S.C. 3518(c)(1)(B)(ii)]. Therefore, information regarding the submission of complaints has not previously been included in the National Organic Program information collection. However, AMS recognizes that respondents wishing to stay anonymous go to greater lengths to preserve their anonymity. To reduce the burden on these voluntary submissions, AMS created the NOP Online Complaint Portal. Since personally identifiable information is collected from non-anonymous respondents in this portal, AMS revised the National Organic Program information collection to include these respondents. These respondents are members of the public who voluntarily submit allegations of fraudulent organic activities (complaints) using the new NOP Online Complaint Portal. Complaints have historically been received and investigated by AMS since the publication of the first USDA organic regulations (7 CFR part 205, 65 FR 80548, Dec 21, 2000). As always, the public may submit complaints how they wish, using mail, fax, phone, email, or now—the NOP Online Complaint Portal. This collected information is used by AMS to initiate administrative investigations. Additional information requests associated with AMS following up on these complaints are not

discussed here, as administrative investigations are exempt from the Paperwork Reduction Act requirements [44 U.S.C. 3518(c)(1)(B)(ii)].

At a later date, AMS will update the information collection to describe revisions to the Organic Integrity Database (INTEGRITY) due to recent rulemaking (Strengthening Organic Enforcement, 88 FR 3548, Jan 19, 2023).

Estimate of Burden: The total annual hours requested for this information collection is 3,382,459 hours. This estimated burden includes time needed for participant education; record creation and administration; and preparation, review, and submission of reports. Respondents include producers and handlers of certified and exempt organic products, organic inspectors, certifying agents, State governments, petitioners, complainants, and participants in the Transition to Organic Partnership Program.

Estimated Number of Respondents: 55,285 respondents.

Estimated Number of Responses per Respondent: 5.2 responses per respondent.

Estimated Burden per Response: 11.8 hours.

Estimated Total Annual Burden on Respondents: 3,382,459 hours.

Comments are invited on: Revisions being made to “National Organic Program,” (OMB Control Number 0581–0191) to (1) revise the explanatory/instructional text in form TM–10CG, (2) include the Transition to Organic Partnership Program, and (3) include the NOP Online Complaint Portal. Comments are also invited on: (i) 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; (ii) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. For access to the docket to read background documents (such as the spreadsheet used to estimate burden) or comments received, go to <https://www.regulations.gov> and search for Docket ID “AMS–NOP–23–0052.”

All responses to this notice will be summarized in a Supporting Statement and included in the request to OMB for approval. All comments will become a matter of public record.

A copy of the information collection and related documents may be obtained free of charge by contacting the Agency as directed above in section **FOR FURTHER INFORMATION CONTACT.**

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–25726 Filed 11–20–23; 8:45 am]

BILLING CODE 3410–02–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 required 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 21, 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.

Farm Service Agency

Title: Customer Data Worksheet Request for Business Partner Record Change.

OMB Control Number: 0560–0265.

Summary of Collection: The Core Customer Data is required in order to identify USDA program participants who are individual persons and legal entities and is necessary to ensure that benefits are issued to the correct customer and valid Tax Identification Numbers. Also, the customers can be validated and also to provide a necessary basis for pursuing legal remedies in the event of error or fraud. There is no public law regarding the use or collection of Core Customer Data. The option to document and track Core Customer Data changes is necessary to ensure the integrity of the data and to provide the Farm Service Agency (FSA), Natural Resources and Conservation Service and Rural Development (RD), Risk Management Agency (RMA), and Agricultural Marketing Service (AMS), a method of verifying the validity of the information, and provide a necessary basis for pursuing legal remedies when needed.

Need and Use of the Information: Core Customer Data is necessary to input customer information for identity purposes and to provide a point of contact for the respective customer and a valid Tax Identification Number to direct program benefits to. The form (AD–2047) will be used to document Core Customer Data changes and also to provide a method to identify who made applicable changes and when this was done. Failure to collect and timely maintain the data collected will result in erroneous or outdated point of contact information, which could result in program information and benefits being directed to incorrect recipients.

Description of Respondents: Individuals or households.

Number of Respondents: 161,250.

Frequency of Responses: Reporting: Other (when necessary).

Total Burden Hours: 8,063.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–25721 Filed 11–20–23; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; State and Local Government Finance Collections, and Public Employment and Payroll Collections

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed extension of the State and Local Government Finance Collections, and Public Employment and Payroll Collections prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before January 22, 2024.

ADDRESSES: Interested persons are invited to submit written comments by email to Thomas.J.Smith@census.gov. Please reference State and Local Government Finance Collections, and Public Employment and Payroll Collections in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2023–0014, to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. All comments received are part of the public record. No comments will be posted to <http://www.regulations.gov> for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection

activities should be directed to Michael Reich, Assistant Division Chief, Public Sector, Economy-Wide Statistics Division, 301–763–5163; or by email michael.r.reich@census.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request an extension of the clearance for the Annual Survey of Public Employment & Payroll and the Annual Survey of State and Local Government Finances. There are no proposed changes since the last approved clearance. The Annual Survey of Public Employment & Payroll collects state and local government data by function for full-time and part-time employees and payroll. The Annual Survey of State and Local Government Finances collect state and local government finance data including government revenue, expenditure, debt, assets, and pension systems. Data are collected for all agencies, departments, and institutions of the fifty state governments and for a sample of all local governments (counties, municipalities, townships, and special districts). Data for school districts are collected under a separate survey and are not included here.

In years ending with 2 and 7 this collection is conducted as a part of the Census of Governments. There is no difference in content collected between a Census of Governments year and non-Census year. The only difference is that in non-Census years, we only collect from a sample of the universe of state and local governments, whereas during a Census of Governments year the entire universe is collected. The upcoming three years of this clearance extension will cover the collections for fiscal years of 2023, 2024, and 2025, all of which are non-Census years.

The data are released as part of the State and Local Government Finance and Public Employment & Payroll statistical series. The collections also produce individual data products that focus on state governments, local governments, and public pensions in greater detail than the combined financial and employment series as a by-product of their collections for the combined data series. The Census Bureau provides these data to the Bureau of Economic Analysis to develop the public sector components of the National Income and Product Accounts and for constructing the functional payrolls in the public sector of the Gross Domestic Product, payroll being the single largest component of current operations. The Census Bureau also provides these data to the Federal Reserve Board for use in the Flow of

Funds Accounts. Other Federal agencies that make use of the data include the Council of Economic Advisers, the Agency for Healthcare Research and Quality, the Government Accountability Office, and the Department of Justice. State and local governments and related organizations, public policy groups, public interest groups, private research organizations, and private sector businesses also use these data.

Statistics are produced as data files in electronic formats published to the Census website.

II. Method of Collection

These surveys use multiple modes for data collection with the main collection method being internet data collection with a mailed invitation, followed by email, mail, and telephone follow-ups. Other methods used to collect data and maximize response include collecting state and local government data through administrative records such as submitted financial audits, state financial reports, and annual comprehensive financial reports via electronic or mailed files and/or records.

The Census Bureau developed central collection agreements with state and large local government officials to collect the data from their dependent agencies and report to the Census Bureau as a central respondent. These arrangements eliminate the need for a mail invitation for approximately 5,900 governmental units in a sample year and 32,000 during the year of the Census of Governments. The arrangements reduce burden by greatly decreasing the number of respondents who must complete an on-line response as the data are acquired from a centralized source instead of multiple sources.

III. Data

OMB Control Number: 0607–0585.

Form Number(s): F–5, F–11, F–12, F–13, F–28, F–29, F–32, E–1, E–2, E–3, E–4, E–5, E–6, E–7, E–8, E–9, E–10.

Type of Review: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.

Affected Public: State and Local governments.

Estimated Number of Respondents: For F-forms: 13,683, For E-forms: 15,926/sample year.

Estimated Time per Response: For F-forms: 2.97, For E-forms: .86 hours/sample year.

Estimated Total Annual Burden Hours: For F-forms: 40,613, For E-forms: 13,693 hours/sample year.

Estimated Total Annual Cost to Public: 0. (This is not the cost of

respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. 161 and 182.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–25733 Filed 11–20–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–58–2023]

Foreign-Trade Zone (FTZ) 57, Notification of Proposed Production Activity; M&M Labs LLC; (Packaging of Nutritional Supplements and Skin Care Products); Mill Spring, North Carolina

M&M Labs LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for

its facility in Mill Spring, North Carolina within FTZ 57. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on November 15, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/ component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via www.trade.gov/ftz.

The proposed finished products include packaged nutritional supplements and packaged skin care products (duty rate ranges from duty-free to 6.4%).

The proposed foreign-status materials and components include folding cardboard boxes; plastic components (bottles, lids, labels); silica gel desiccant packs; paper labels; glass components (bottles, spray bottles); metal lids; skin moisturizers; eye serums; night creams; scent sprayers; and, spraying apparatuses (duty rate ranges from duty-free to 6.5%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is January 2, 2024.

A copy of the notification will be available for public inspection in the "Online FTZ Information System" section of the Board's website.

For further information, contact Juanita Chen at juanita.chen@trade.gov.

Dated: November 16, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–25729 Filed 11–20–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-46-2023]

**Foreign-Trade Zone (FTZ) 168;
Authorization of Production Activity;
Samsung Electronics America, Inc.;
(Stylus for Mobile Phones and
Tablets); Coppell, Texas**

On July 19, 2023, the Metroplex International Trade Development Corporation, grantee of FTZ 168, submitted a notification of proposed production activity to the FTZ Board on behalf of Samsung Electronics America, Inc., within Subzone 168D, in Coppell, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 47846, July 25, 2023). On November 16, 2023, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: November 16, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023-25730 Filed 11-20-23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-331-805, A-560-842]

**Frozen Warmwater Shrimp From
Ecuador and Indonesia: Initiation of
Less-Than-Fair-Value Investigations**

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 14, 2023.

FOR FURTHER INFORMATION CONTACT: Kyle Clahane (Ecuador) and Nicolas Mayora (Indonesia), AD/CVD Operations, Offices III and V, respectively, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5449 and (202) 482-3053, respectively.

SUPPLEMENTARY INFORMATION:**The Petitions**

On October 25, 2023, the U.S. Department of Commerce (Commerce) received antidumping duty (AD)

petitions concerning imports of frozen warmwater shrimp (shrimp) filed in proper form on behalf of the American Shrimp Processors Association (ASPA or the petitioner).¹ These AD petitions were accompanied by countervailing duty (CVD) petitions concerning imports of shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam.²

On October 27 and 30, 2023, and November 6 and 9, 2023, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.³ The petitioner filed an amendment to the proposed scope on October 26, 2023, and responses to the supplemental questionnaires on October 31, 2023, and November 1, 8, and 13, 2023.⁴

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of shrimp from Ecuador and Indonesia are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the shrimp industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry, because the

petitioner is an interested party, as defined in section 771(9)(E) of the Act.⁵ Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigations.⁶

Periods of Investigation

Because the Petitions were filed on October 25, 2023, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the Ecuador and Indonesia LTFV investigations is October 1, 2022, through September 30, 2023.

Scope of the Investigations

The product covered by these investigations is shrimp from Ecuador and Indonesia. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On October 30, 2023, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.⁷ On October 26 and November 1, 2023, the petitioner provided clarifications and revised the scope.⁸ The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for parties to raise issues regarding product coverage (*i.e.*, scope).⁹ Commerce will consider all scope comments received and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,¹⁰ all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on December 4, 2023, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by

⁵ See Petitions at Volume I (page 2).

⁶ See, *infra*, section on "Determination of Industry Support for the Petitions."

⁷ See General Issues Questionnaire.

⁸ See Scope Amendment at Exhibit 1; *see also* First General Issues Supplement at 3 and Exhibit 1.

⁹ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); *see also* 19 CFR 351.312.

¹⁰ See 19 CFR 351.102(b)(21) (defining "factual information").

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam," dated October 25, 2023 (the Petitions).

² *Id.*

³ See Commerce's Letters, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam: Supplemental Questions," dated October 30, 2023 (General Issues Questionnaire); and Country-Specific Supplemental Questionnaires: Ecuador Supplemental and Indonesia Supplemental, dated October 27, 2023; *see also* Memoranda, "Phone Call with Counsel to the Petitioner," dated November 6, 2023; and "Phone Call with Counsel to the Petitioner," dated November 9, 2023.

⁴ See Petitioner's Letters, "Amendment to Petitions for the Imposition of Antidumping and Countervailing Duties on Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam," dated October 26, 2023 (Scope Amendment); "Petition Supplemental Questions Response," dated November 1, 2023 (First General Issues Supplement); "Second Supplemental Questions Response," dated November 8, 2023 (Second General Issues Supplement); "Petition 3rd Supplemental Question Response," dated November 13, 2023 (Third General Issues Supplement); Country-Specific First Supplemental Responses, dated October 31, 2023; and Country-Specific Second Supplemental Responses, dated November 8, 2023.

5:00 p.m. ET on December 14, 2023, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of these investigations be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party must contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of each of the concurrent LTFV and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.¹¹ An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of shrimp to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production (COP) accurately, as well as to develop appropriate product comparison criteria.

Subsequent to the publication of this notice, Commerce intends to release a proposed list of physical characteristics and product-comparison criteria, and interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) general product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product

comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe shrimp, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on December 4, 2023, which is 20 calendar days from the signature date of this notice.¹² Any rebuttal comments must be filed by 5:00 p.m. ET on December 14, 2023, which is 10 calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the LTFV investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. In investigations involving processed agricultural products, the statute allows Commerce to also include growers or producers of the raw agricultural

product within the definition of the domestic industry.¹³ Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹⁴ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹⁵

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.¹⁶ Based on our analysis

¹³ See section 771(4)(E) of the Act. For a full discussion of this provision of the Act and Commerce's analysis, see Antidumping Duty Investigation Initiation Checklists: Frozen Warmwater Shrimp from Ecuador and Indonesia (Ecuador AD Initiation Checklist and Indonesia AD Initiation Checklist, collectively Country-Specific AD Initiation Checklists), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam (Attachment II). These checklists are dated concurrently with this notice and are on file electronically via ACCESS.

¹⁴ See section 771(10) of the Act.

¹⁵ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

¹⁶ See Petitions at Volume I (pages 2–5 and Exhibits 1–2 through I–4 (containing *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam*, Inv. No. 731–TA–1063–1068 (Preliminary), USITC Pub. 3672 (February 2004) at 13–14; *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam*, Inv. No. 731–TA–1063–1068, USITC Pub. 3478 (January 2005) at 6; *Frozen Warmwater Shrimp From China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam*, Inv. Nos. 701–TA–491–497 (Preliminary), USITC

¹¹ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.

¹² See 19 CFR 351.303(b)(1).

of the information submitted on the record, we have determined that shrimp, as described in the domestic like product definition set forth in the Petitions, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁷

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the Petitions and the “Scope of the Investigations,” in the appendix to this notice. To establish industry support for fresh shrimp and frozen shrimp, the petitioner provided the 2022 production of ASPA members, as well as the 2022 production of frozen shrimp for three additional processors that support the Petitions.¹⁸ In addition, the petitioner provided letters of support from over 800 shrimp fishermen, expressing support for the Petitions and establishing each vessel’s 2022 production (harvested quantity) of fresh shrimp.¹⁹ On October 27 and November 6, 9, and 14, 2023, we received submissions from the Ad Hoc Shrimp Trade Action Committee (AHSTAC) providing letters of support from six additional processors and 49 additional shrimp fishermen.²⁰

To establish total production of fresh shrimp, the petitioner relied on 2022 U.S. commercial landings data for fresh shrimp reported for the Gulf and South Atlantic regions in 2022 reported by the National Oceanic and Atmospheric Administration’s (NOAA) National Marine Fisheries Service (NMFS)

Fisheries One Stop Shop (FOSS) database and added an estimate for farmed shrimp based on information from the ITC’s publication for *Shrimp 2023 Sunset* to arrive at total U.S. production of fresh shrimp.²¹ Because data on the production of frozen shrimp were not available from NOAA, to establish total production of frozen shrimp, the petitioner relied on the same NOAA NFMS FOSS data on U.S. commercial landings in the Gulf and South Atlantic regions, as well as the same farmed shrimp estimate from the ITC’s 2023 sunset review, and added total 2022 U.S. imports of fresh shrimp, as reported in official import statistics, to account for imported fresh shrimp that is further processed into frozen shrimp in the United States.²² To establish total production of fresh shrimp and frozen shrimp by the U.S. shrimp industry, the petitioner combined the total 2022 U.S. production of fresh shrimp with the total 2022 U.S. production of processed shrimp.²³ To establish industry support, the petitioner provided three separate calculations comparing the supporters’ production of frozen shrimp, fresh shrimp, and combined frozen and fresh shrimp to the respective totals for the entire U.S. industry.²⁴ We relied on data provided by the petitioner and AHSTAC for purposes of measuring industry support.²⁵

Our review of the data provided in the Petitions, the First General Issues Supplement, the Second General Issues Supplement, the AHSTAC Letters, the Third General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.²⁶ First, the Petitions established support from domestic producers (or workers) accounting for

more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (e.g., polling).²⁷ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.²⁸ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.²⁹ Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.³⁰

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.³¹

The petitioner contends that the industry’s injured condition is illustrated by a significant volume of subject imports; reduced market share; underselling and price depression and/or suppression; lost sales and revenues; inventory overhang; and negative impact on production, shipments, and financial performance.³² We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by substantial evidence, and

Pub. 4830 (February 2013) at 8–10; *Frozen Warmwater Shrimp from China, Ecuador, India, Malaysia, and Vietnam*, Inv. Nos. 701–TA–491–493, 495, and 497 (Final), USITC Pub. 4429 (October 2013) at 9; and *Frozen Warmwater Shrimp from China, India, Thailand, and Vietnam*, Inv. No. 731–TA–1064 and 1066–1068, USITC Pub. 5432 (June 2023) (*Shrimp 2023 Sunset*) at 14–15, I–43, I–44, III–19, and III–30).

¹⁷ For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, see Attachment II of the Country-Specific AD Initiation Checklists.

¹⁸ See Petitions at Volume I (page 7–8 and Exhibits I–9 and I–10); see also First General Issues Supplement at Exhibits 4 and 10–13; and Second General Issues Supplement at 2–4 and Exhibits 1 and 4.

¹⁹ See Petitions at Volume I (pages 7–8 and Exhibit I–11); see also First General Issues Supplement at 7–8 and Exhibits 10–12; and Second General Issues Supplement at 3–4 and Exhibits 1 and 4.

²⁰ See AHSTAC’s Letters, “Additional Support for the Petitions,” dated October 27, 2023; “Additional Support for the Petitions,” dated November 6, 2023; and “Further Additional Support for the Petitions,” dated November 6, 2023; “Additional Support for Petitions,” dated November 9, 2023; and “Additional Support for Petitions,” dated November 14, 2023 (collectively, AHSTAC Letters).

²¹ See Petitions at Volume I (page 6 and Exhibit I–4 (containing *Shrimp 2023 Sunset* at IV–31 and IV–32) and I–8); see also First General Issues Supplement at 5–6 and Exhibits 5 and 9; and Second General Issues Supplement at Exhibit 1.

²² See Petitions at Volume I (pages 6–8 and Exhibits I–4, I–7, and I–8); see also First General Issues Supplement at Exhibits 5–8; and Second General Issues Supplement at 2 and Exhibits 1–3.

²³ See Petitions at Volume I (page 8); see also First General Issues Supplement at Exhibit 8; and Second General Issues Supplement at 2 and Exhibit 1.

²⁴ See Petitions at Volume I (page 8); see also First General Issues Supplement at Exhibit 8; and Second General Issues Supplement at 2–4 and Exhibit 1.

²⁵ See Petitions at Volume I (pages 6–8 and Exhibits I–4 (containing *Shrimp 2023 Sunset* at IV–31 and IV–32) and I–5 through I–11); see also First General Issues Supplement at 3–9 and Exhibits 2–13; Second General Issues Supplement at 2–4 and Exhibits 1–4; and AHSTAC Letters. For further discussion, see Attachment II of the Country-Specific CVD Initiation Checklists.

²⁶ See Attachment II of the Country-Specific AD Initiation Checklists.

²⁷ *Id.*; see also section 732(c)(4)(D) of the Act.

²⁸ See Attachment II of the Country-Specific AD Initiation Checklists.

²⁹ *Id.*

³⁰ *Id.*

³¹ See Petitions at Volume I (page 15 and Exhibit I–14).

³² See Petitions at Volume I (pages 14–30 and Exhibits I–4, I–8, I–9, I–14, I–17, and I–18); see also Second General Issues Supplement at 5 and Exhibit 5.

meet the statutory requirements for initiation.³³

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate LTFV investigations of imports of shrimp from Ecuador and Indonesia. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Country-Specific AD Initiation Checklists.

U.S. Price

For Ecuador and Indonesia, the petitioner based export price (EP) on the average unit values (AUVs) derived from official import statistics for imports of shrimp from Ecuador and Indonesia into the United States during the POI. The petitioner made certain adjustments to U.S. price to calculate a net ex-factory U.S. price, where applicable.³⁴

Normal Value³⁵

For Ecuador, the petitioner was unable to obtain prices for shrimp produced in Ecuador and sold or offered for sale in the home market or in third country markets to use as a basis for NV.³⁶ Therefore, for Ecuador, the petitioner calculated NV based on CV.³⁷ For further discussion of CV, *see* the section “Normal Value Based on Constructed Value,” below.

For Indonesia, the petitioner based NV on home market prices obtained through market research for shrimp produced in and sold, or offered for sale, in Indonesia during the POI.³⁸

Normal Value Based on Constructed Value

As noted above, for Ecuador, the petitioner stated it was unable to obtain home-market or third-country prices for shrimp to use as the basis for NV.³⁹

Therefore, for Ecuador, the petitioner based NV on CV.⁴⁰

Pursuant to section 773(e) of the Act, the petitioner calculated CV as the sum of the cost of manufacturing, selling, general, and administrative (SG&A) expenses, financial expenses, and profit.⁴¹ In calculating the cost of manufacturing, the petitioner relied on the production experience and input consumption rates of a U.S. producer of shrimp, valued using publicly available information applicable to Ecuador.⁴² In calculating SG&A expenses, financial expenses, and profit ratios (where applicable), the petitioners relied on the calendar year 2022 financial statements of an Ecuadorian producer of identical merchandise.⁴³

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of shrimp from Ecuador and Indonesia are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for shrimp for each of the countries covered by this initiation are as follows: (1) Ecuador—9.55 to 25.82 percent; and (2) Indonesia—26.13 to 33.95 percent.⁴⁴

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating LTFV investigations to determine whether imports of shrimp from Ecuador and Indonesia are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Respondent Selection

In the Petitions, the petitioners identified 227 companies in Ecuador and 276 companies in Indonesia as producers/exporters of shrimp.⁴⁵ Following standard practice in LTFV investigations involving market economy countries, in the event Commerce determines that the number of companies is large such that it cannot individually examine each company

based upon Commerce’s resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the “Scope of the Investigations,” in the appendix.

On November 13 and 14, 2023, Commerce released CBP data on imports of shrimp from Ecuador and Indonesia under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on CBP data and/or respondent selection must do so within three business days of the publication date of the notice of initiation of these investigations.⁴⁶ Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce’s website at https://access.trade.gov/Resources/Administrative_Protective_Order.aspx.

Distribution of Copies of the AD Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the AD Petitions have been provided to the governments of Ecuador and Indonesia via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the AD Petitions to each exporter named in the AD Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the AD Petitions were filed, whether there is a reasonable indication that imports of Ecuador and/or Indonesia are materially injuring, or threatening material injury to, a U.S. industry.⁴⁷ A negative ITC determination for any

³³ See Country-Specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam.

³⁴ See Country-Specific AD Initiation Checklists.

³⁵ In accordance with section 773(b)(2) of the Act, for the Ecuador and Indonesia LTFV investigations, Commerce will request information necessary to calculate the constructed value (CV) and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

³⁶ See Ecuador AD Initiation Checklist.

³⁷ *Id.*

³⁸ See Indonesia AD Initiation Checklist.

³⁹ See Ecuador AD Initiation Checklist.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See Indonesia AD Initiation Checklist; and Ecuador AD Initiation Checklist.

⁴⁵ See Petitions at Volume I (page 11 and Exhibit I–16).

⁴⁶ See Memoranda, “Release of Customs and Border Protection Entry Data,” dated November 13, 2023; and “Release of Customs and Border Protection Entry Data,” dated November 14, 2023.

⁴⁷ See section 733(a) of the Act.

country will result in the investigation being terminated with respect to that country.⁴⁸ Otherwise, these LTFV investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted⁴⁹ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.⁵⁰ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), set a deadline for the submission of PMS allegations

and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301.⁵¹ For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.⁵²

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.⁵³ Parties must use the certification formats provided in 19 CFR 351.303(g).⁵⁴ Commerce intends to

reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (e.g., by filing the required letter of appearance). Note that Commerce has modified its regulations to make permanent certain changes to its service procedures that were adopted on a temporary basis due to COVID-19, as well as to make additional clarifications and corrections to its AD/CVD regulations.⁵⁵

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: November 14, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Investigations

The scope of these investigations includes certain frozen warmwater shrimp and prawns whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form. “Tails” in this context means the tail fan, which includes the telson and the uropods.

The frozen warmwater shrimp and prawn products included in the scope, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern

Countervailing Duty Proceedings, 78 FR 42678 (July 17, 2013) (*Final Rule*). Additional information regarding the *Final Rule* is available at <https://access.trade.gov/Resources/filing/index.html>.

⁵⁵ Effective October 30, 2023, these changes apply to all AD/CVD proceedings that are ongoing on the effective date and all AD/CVD proceedings initiated on or after the effective date. See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

⁴⁸ *Id.*

⁴⁹ See 19 CFR 351.301(b).

⁵⁰ See 19 CFR 351.301(b)(2).

⁵¹ See 19 CFR 351.301; see also *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at <https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>.

⁵² See 19 CFR 351.302; see also, e.g., *Time Limits Final Rule*.

⁵³ See section 782(b) of the Act.

⁵⁴ See *Certification of Factual Information to Import Administration During Antidumping and*

brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope.

Excluded from the scope are: (1) breaded shrimp and prawns (HTSUS subheading 1605.21.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.36.0020 and 0306.36.0040); (4) shrimp and prawns in prepared meals (HTSUS subheadings 1605.21.0500 and 1605.29.0500); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.29.1040); and (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (IQF) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the scope are currently classified under the following HTSUS subheadings: 0306.17.0004, 0306.17.0005, 0306.17.0007, 0306.17.0008, 0306.17.0010, 0306.17.0011, 0306.17.0013, 0306.17.0014, 0306.17.0016, 0306.17.0017, 0306.17.0019, 0306.17.0020, 0306.17.0022, 0306.17.0023, 0306.17.0025, 0306.17.0026, 0306.17.0028, 0306.17.0029, 0306.17.0041, 0306.17.0042, 1605.21.1030, and 1605.29.1010. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope is dispositive.

[FR Doc. 2023–25736 Filed 11–20–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–147, A–533–910, A–552–834, C–533–911]

Paper File Folders From the People’s Republic of China, India, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Paper File Folders From India: Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing the antidumping duty (AD) orders on paper file folders from the People’s Republic of China (China), India, and the Socialist Republic of Vietnam (Vietnam) and the countervailing duty (CVD) order on paper file folders from India.

DATES: Applicable November 21, 2023.

FOR FURTHER INFORMATION CONTACT: William Horn (China), Jinny Ahn (Vietnam), Eric Hawkins (AD India), or Thomas Martin (CVD India), AD/CVD Operations, Offices IV, V, and VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4868, (202) 482–0339, (202) 482–1988, or (202) 482–3936, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(d) and 735(d) of the Tariff Act of 1930, as amended (the Act), on October 5, 2023, Commerce published its affirmative final determinations in the less-than-fair-value (LTFV) investigations of paper file folders from China, India, and Vietnam,¹ and its affirmative final determination that countervailable subsidies are being provided to producers and exporters of paper file folders from India.²

¹ See *Paper File Folders from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 88 FR 69141 (October 5, 2023); *Paper File Folders from India: Final Affirmative Determination of Sales at Less Than Fair Value*, 88 FR 69138 (October 5, 2023); and *Paper File Folders from the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less Than Fair Value*, 88 FR 69130 (October 5, 2023).

² See *Paper File Folders from India: Final Affirmative Countervailing Duty Determination*, 88 FR 69134 (October 5, 2023) (CVD Final Determination).

On November 13, 2023, pursuant to sections 705(d) and 735(d) of the Act, the ITC notified Commerce of its final affirmative determinations that an industry in the United States is materially injured by reason of LTFV imports of paper file folders from China, India, and Vietnam, and subsidized imports of paper file folders from India, within the meaning of sections 705(b)(1)(A)(i) and 735(b)(1)(A)(i) of the Act.³

Scope of the Orders

The products covered by these orders are paper file folders from China, India, and Vietnam. For a complete description of the scope of the orders, see the appendix to this notice.

AD Orders

On November 13, 2023, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determinations that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of paper file folders from China, India, and Vietnam that are sold in the United States at LTFV.⁴ Therefore, in accordance with sections 735(c)(2) and 736 of the Act, Commerce is issuing these AD orders. Because the ITC determined that imports of paper file folders from China, India, and Vietnam are materially injuring a U.S. industry, unliquidated entries of such merchandise from China, India, and Vietnam, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise on all relevant entries of paper file folders from China, India, and Vietnam. Antidumping duties will be assessed on unliquidated entries of paper file folders entered, or withdrawn from warehouse, for consumption on or after May 17, 2023, the date of publication of the *AD Preliminary Determinations*,⁵ but will

³ See ITC’s Letter, “Notification of ITC Final Determinations,” dated November 13, 2023 (ITC Notification Letter).

⁴ *Id.*

⁵ See *Paper File Folders from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 88 FR 31485 (May 17, 2023); *Paper File Folders from India: Preliminary Affirmative Determination of*

not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination, as further described below.

Continuation of Suspension of Liquidation and Cash Deposits—AD

Except as noted in the "Provisional Measures—AD" section of this notice, in accordance with section 736 of the Act, Commerce intends to instruct CBP to continue to suspend liquidation on all relevant entries of paper file folders from China, India and Vietnam. These

instructions suspending liquidation will remain in effect until further notice.

Commerce also intends to instruct CBP to require cash deposits equal to the estimated weighted-average dumping margins indicated in the tables below, adjusted by the relevant subsidy offsets. Accordingly, effective on the date of publication in the **Federal Register** of the notice of the ITC's final affirmative injury determination, CBP must require, at the same time as importers would normally deposit estimated customs duties on subject

merchandise, a cash deposit equal to the rates listed in the tables below.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average dumping margin (percent)
China China-wide entity	192.70

Exporter/producer	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent) ⁶
India		
Navneet Education Limited	17.22	13.44
Kokuyo Riddhi Paper Products Pvt. Ltd	86.01	82.23
LGPL Paper Industries Pvt. Limited	86.01	82.23
All Others	17.22	13.44

Exporter	Producer	Weighted-average dumping margin (percent)
Vietnam		
Three-Color Stone Stationary (Viet Nam) Company Limited.	Three-Color Stone Stationary (Viet Nam) Company Limited.	97.52
Vietnam-Wide Entity.	.....	233.93

Provisional Measures—AD

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request that Commerce extend the four-month period to no more than six months. At the request of exporters that accounted for a significant proportion of exports of paper file folders from China, India, and Vietnam, Commerce extended the four-month period to no more than six-months.⁷ In the

underlying investigations, Commerce published the *AD Preliminary Determinations* on May 17, 2023. Therefore, the six-month period beginning on the date of the publication of the *AD Preliminary Determinations* ended on November 12, 2023. Pursuant to section 737(b) of the Act, the collection of cash deposits at the rates listed above will begin on the date of publication of the ITC's final injury determinations. Therefore, in accordance with section 736(a)(1) of the Act and our practice, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of paper file folders from China, India, and Vietnam entered, or withdrawn from warehouse, for consumption on or after November 13, 2023, the first day provisional measures were no longer in effect, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final determinations in the **Federal Register**.

CVD Order

As stated above, based on the above-referenced affirmative final determination by the ITC that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of paper file folders from India,⁸ in accordance with section 705(c)(2) of the Act, Commerce is issuing this CVD order. Moreover, because the ITC determined that imports of paper file folders from India are materially injuring a U.S. industry, unliquidated entries of subject merchandise from India entered, or withdrawn from warehouse, for consumption, are subject to the assessment of countervailing duties.

Therefore, in accordance with section 706(a) of the Act, Commerce intends to direct CBP to assess, upon further instruction by Commerce, countervailing duties on all relevant entries of paper file folders from India, which are entered, or withdrawn from warehouse, for consumption on or after March 20, 2023, the date of publication of the *CVD Preliminary Determination*, but will not include entries occurring after the expiration of the provisional measures period and before the publication of the ITC's final injury determination under section 705(b) of

Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures, 88 FR 31490 (May 17, 2023); and *Paper File Folders from Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional*

Measures, 88 FR 31488 (May 17, 2023) (collectively, *AD Preliminary Determinations*).

⁶ In the companion CVD investigation, Commerce calculated a 3.78 percent export subsidy rate for Navneet Education Limited. See *CVD Final Determination* and accompanying Issues and Decision Memorandum at 6.

⁷ See *AD Preliminary Determinations*; and *Paper File Folders from the People's Republic of China: Postponement of Final Determination in the Less-Than-Fair-Value Investigation*, 88 FR 34827 (May 31, 2023).

⁸ See ITC Notification Letter.

the Act, as further described in the “Provisional Measures—CVD” section of this notice.⁹

Suspension of Liquidation and Cash Deposits—CVD

In accordance with section 706 of the Act, Commerce intends to instruct CBP to reinstitute the suspension of liquidation of paper file folders from India, effective on the date of publication of the ITC’s final affirmative injury determination in the **Federal Register**, and to assess, upon further instruction by Commerce, pursuant to section 706(a)(1) of the Act, countervailing duties on each entry of subject merchandise in an amount based on the net countervailable subsidy rates below. On or after the date of publication of the ITC’s final injury determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated customs duties on this merchandise, a cash deposit equal to the rates listed in the table below. These instructions suspending liquidation will remain in effect until further notice. The all-others rate applies to all producers or exporters not specifically listed below, as appropriate:

Company	Subsidy rate (percent <i>ad valorem</i>)
Navneet Education Limited ..	3.78
Lotus Global Pvt. Ltd	10.90.98
All Others	3.78

Provisional Measures—CVD

Section 703(d) of the Act states that the suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months. Commerce published the *CVD Preliminary Determination* on March 20, 2023.¹¹ As such, the four-month period beginning on the date of the publication of the *CVD Preliminary Determination* ended on July 17, 2023.

Therefore, in accordance with section 703(d) of the Act, we instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of paper file folders from India entered, or withdrawn from warehouse, for consumption, on or after July 18,

⁹ See *Paper File Folders from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With the Final Antidumping Duty Determination*, 88 FR 16590 (March 20, 2023) (*CVD Preliminary Determination*).

¹⁰ Commerce has assigned a rate to Lotus Global Pvt. Ltd. based entirely on facts available, using adverse inferences, under section 776 of the Act.

¹¹ *Id.*

2023, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC’s final injury determination in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC’s final determination in the **Federal Register**.

Establishment of the Annual Inquiry Service Lists

On September 20, 2021, Commerce published the *Final Rule* in the **Federal Register**.¹² On September 27, 2021, Commerce also published the *Procedural Guidance* in the **Federal Register**.¹³ The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.¹⁴

In accordance with the *Procedural Guidance*, for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce’s online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at <https://access.trade.gov>, within five business days of publication of the notice of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called “AISL-Annual Inquiry Service List.”¹⁵

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry

¹² See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300 (September 20, 2021) (*Final Rule*).

¹³ See *Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*, 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

¹⁴ *Id.*

¹⁵ This segment will be combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A-000-000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as “AISL-January Anniversary.” Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance*,¹⁶ the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

Commerce may update an annual inquiry service list at any time as needed based on interested parties’ amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website.

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule*, Commerce stated that, “after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.”¹⁷ Accordingly, as stated above, the petitioner and the Governments of China, India, and Vietnam should submit their initial entries of appearance after publication of this notice in order to appear in the first annual inquiry service lists for these orders. Pursuant to 19 CFR 351.225(n)(3), the petitioner and the Governments of China, India, and Vietnam will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioner and the Governments of China, India, and Vietnam are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notification to Interested Parties

This notice constitutes the AD orders with respect to paper file folders from China, India, and Vietnam and the CVD order with respect to paper file folders from India, pursuant to sections 706(a) and 736(a) of the Act. Interested parties

¹⁶ See *Procedural Guidance*, 86 FR at 53206.

¹⁷ See *Final Rule*, 86 FR at 52335.

can find a list of AD and CVD orders currently in effect at <https://enforcement.trade.gov/stats/iastats1.html>.

These orders are issued and published in accordance with sections 706(a) and 736(a) of the Act and 19 CFR 351.211(b).

Dated: November 15, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Orders

The products within the scope of these orders are file folders consisting primarily of paper, paperboard, pressboard, or other cellulose material, whether coated or uncoated, that has been folded (or creased in preparation to be folded), glued, taped, bound, or otherwise assembled to be suitable for holding documents. The scope includes all such folders, regardless of color, whether or not expanding, whether or not laminated, and with or without tabs, fasteners, closures, hooks, rods, hangers, pockets, gussets, or internal dividers. The term “primarily” as used in the first sentence of this scope means 50 percent or more of the total product weight, exclusive of the weight of fasteners, closures, hooks, rods, hangers, removable tabs, and similar accessories, and exclusive of the weight of packaging.

Subject folders have the following dimensions in their folded and closed position: lengths and widths of at least 8 inches and no greater than 17 inches, regardless of depth.

The scope covers all varieties of folders, including but not limited to manila folders, hanging folders, fastener folders, classification folders, expanding folders, pockets, jackets, and wallets.

Excluded from the scope are:

- mailing envelopes with a flap bearing one or more adhesive strips that can be used permanently to seal the entire length of a side such that, when sealed, the folder is closed on all four sides;
- binders, with two or more rings to hold documents in place, made from paperboard or pressboard encased entirely in plastic;
- binders consisting of a front cover, back cover, and spine, with or without a flap; to be excluded, a mechanism with two or more metal rings must be included on or adjacent to the interior spine;
- non-expanding folders with a depth exceeding 2.5 inches and that are closed or closeable on the top, bottom, and all four sides (e.g., boxes or cartons);
- expanding folders that have: (1) 13 or more pockets; (2) a flap covering the top; (3) a latching mechanism made of plastic and/or metal to close the flap; and (4) an affixed plastic or metal carry handle;
- folders that have an outer surface (other than the gusset, handles, and/or closing mechanisms, if any) that is covered entirely with fabric, leather, and/or faux leather;
- fashion folders, which are defined as folders with all of the following characteristics: (1) plastic lamination covering the entire exterior of the folder; (2) printing, foil stamping, embossing (*i.e.*,

raised relief patterns that are recessed on the opposite side), and/or debossing (*i.e.*, recessed relief patterns that are raised on the opposite side), covering the entire exterior surface area of the folder; (3) at least two visible and printed or foil stamped colors (other than the color of the base paper), each of which separately covers no less than 10 percent of the entire exterior surface area; and (4) patterns, pictures, designs, or artwork covering no less than thirty percent of the exterior surface area of the folder;

- portfolios, which are folders having: (1) a width of at least 16 inches when open flat; (2) no tabs or dividers; and (3) one or more pockets that are suitable for holding letter size documents and that cover at least 15 percent of the surface area of the relevant interior side or sides; and
- report covers, which are folders having: (1) no tabs, dividers, or pockets; and (2) one or more fasteners or clips, each of which is permanently affixed to the center fold, to hold papers securely in place.

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) category 4820.30.0040. Subject imports may also enter under other HTSUS classifications. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

[FR Doc. 2023–25688 Filed 11–20–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–126; C–570–127]

Non-Refillable Steel Cylinders From the People’s Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that non-refillable steel cylinders with water capacities between 100 and 299 cubic inches produced in the People’s Republic of China (China) and exported to the United States, are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on certain non-refillable steel cylinders (non-refillable cylinders) from China.

DATES: Applicable November 21, 2023.

FOR FURTHER INFORMATION CONTACT: Alex Cipolla, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4956.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 2021, Commerce published in the **Federal Register** the AD and CVD orders on non-refillable cylinders from China.¹ On June 1, 2023, in response to a request from Worthington Industries (the petitioner),² Commerce initiated a circumvention inquiry to determine whether imports of non-refillable cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specification 39, TransportCanada Specification 39M, or United Nations pressure receptacle standard ISO 11118 with a water capacity between 100 cubic inches (1.6 liters) and 299 cubic inches (4.9 liters) produced in China and exported to the United States are “later-developed merchandise,” and/or are “altered in form or appearance in minor respects” from in-scope merchandise such that they should be considered subject to the *Orders*.³ For a complete description of the events that followed initiation of this inquiry, *see* the Preliminary Decision Memorandum.⁴

Scope of the Orders

The products covered by the *Orders* are certain seamed (welded or brazed), non-refillable steel cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specification 39, TransportCanada Specification 39M, or United Nations pressure receptacle standard ISO 11118. A full description of the scope of the

¹ *See Certain Non-Refillable Steel Cylinders from the People’s Republic of China: Amended Final Antidumping Duty Determination and Antidumping Duty and Countervailing Duty Orders*, 86 FR 25839 (May 11, 2021) (*Orders*).

² *See* Petitioner’s Letter, “Request for Circumvention Ruling Pursuant to Sections 781(c) and 781(d) of the Tariff Act of 1930,” dated April 12, 2023.

³ *See Non-Refillable Steel Cylinders from the People’s Republic of China: Initiation of Circumvention Inquiry of the Antidumping and Countervailing Duty Orders; Water Capacity Between 100 and 299 Cubic Inches*, 88 FR 35839 (June 1, 2023) (*Initiation Notice*). Although Commerce initiated a circumvention inquiry for merchandise “altered in form or appearance in minor respects,” pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.226(j) and as “later-developed merchandise,” pursuant to section 781(d) of the Act and 19 CFR 351.226(k), we are rescinding the portion of the circumvention inquiry relating to “later-developed merchandise” because of the affirmative preliminary determination with respect to circumvention under section 781(c) of the Act.

⁴ *See* Memorandum, “Preliminary Decision Memorandum for Circumvention Inquiry; 100–299 Cubic Inches NRSCs,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Orders is provided in the Preliminary Decision Memorandum.

Scope of the Circumvention Inquiry

This circumvention inquiry covers non-refillable cylinders meeting the requirements of, or produced to meet the requirements of, USDOT Specification 39, Transport Canada Specification 39M, or United Nations pressure receptacle standard ISO 11118 with a water capacity between 100 cubic inches (1.6 liters) and 299 cubic inches (4.9 liters) produced in China and exported to the United States.

Statutory and Regulatory Framework

Section 781(c) of the Act, provides that Commerce may find circumvention of an AD or CVD order when merchandise of the same class or kind as subject merchandise has been “altered in form or appearance in minor respects . . . whether or not included in the same tariff classification.” Section 781(c)(2) of the Act provides an exception that “[p]aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {order}.”

While the Act is silent as to what factors to consider in determining whether alterations are properly considered “minor,” the legislative history of this provision indicates that there are certain factors that should be considered before reaching a circumvention determination. In conducting a circumvention inquiry under section 781(c) of the Act, Commerce has generally relied upon “such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.”⁵ Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.226(j), Commerce examines such factors as: (1) overall physical characteristics; (2) expectations of ultimate users; (3) use of merchandise; (4) channels of marketing; and (5) cost of any modification relative to the value of the imported products.⁶ Each inquiry is highly dependent on the facts on the record and must be analyzed in light of

those specific facts.⁷ Thus, along with the five factors enumerated above, Commerce may also consider the circumstances under which the products enter the United States, including, but not limited to, the timing of the entries and the quantity of merchandise entered during the circumvention review period.⁸

Preliminary Determination

We preliminarily determine that non-refillable cylinders with water capacities between 100 and 299 cubic inches and non-refillable cylinders with water capacities between 300 and 1,526 cubic inches are not dissimilar in terms of overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, channels of marketing, and the timing and circumstances under which Jinhua Sinoblue Machinery Manufacturing Co., Ltd. (Jinhua Sinoblue) and Ningbo Eagle Machinery & Technology Co., Ltd. (Ningbo Eagle) exported the non-refillable cylinders with water capacities between 100 and 299 cubic inches. Because we find that the merchandise subject to this inquiry is not dissimilar to subject merchandise, we preliminarily determine that the non-refillable cylinders at issue constitute merchandise “altered in form or appearance in minor respects” from in-scope merchandise, within the meaning of section 781(c)(1) of the Act. Also, we preliminarily determine that the affirmative circumvention finding should be applied on a country-wide basis.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and

Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(2), we will direct U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of previously suspended entries and to suspend liquidation of non-refillable cylinders with water capacities between 100 and 299 cubic inches produced in China and exported to the United States that are entered, or withdrawn from warehouse, for consumption on or after June 1, 2023 (*i.e.*, the date of the initiation of this inquiry).⁹ Pursuant to 19 CFR 351.225(l)(2), we will also instruct CBP to require cash deposits of estimated duties equal to the AD and CVD rates in effect for non-refillable cylinders for each unliquidated entry of non-refillable cylinders with water capacities between 100 and 299 cubic inches produced in China and exported to the United States that are entered, or withdrawn from warehouse, for consumption on or after June 1, 2023. The suspension of liquidation instructions will remain in effect until further notice.

Public Comment

Interested parties are invited to comment on this preliminary determination of circumvention and may submit case briefs and/or written comments within 14 days of the publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date on which case briefs are due.¹⁰ Pursuant to 19 CFR 351.226(f)(4), rebuttal briefs must be limited to issues raised in the case briefs.¹¹ Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹² Note that Commerce has amended certain of its

⁵ See *Carbon and Certain Alloy Steel Wire Rod from Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order*, 83 FR 5405 (February 7, 2018) (citing S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987)).

⁶ *Id.*; see also *Deacero S.A. de C.V. v. United States*, 817 F.3d 1332 (Fed. Cir. 2016).

⁷ See, e.g., *Certain Uncoated Paper from Australia, Brazil, the People’s Republic of China, Indonesia, and Portugal: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders*, 82 FR 26778 (June 9, 2017), and accompanying Preliminary Decision Memorandum at “IV. Statutory and Regulatory Framework.”

⁸ *Id.*; see also, e.g., *Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Steel Plate from the People’s Republic of China*, 74 FR 33991, 33992–93 (July 14, 2009); *Brass Sheet and Strip from West Germany: Negative Preliminary Determination of Circumvention of Antidumping Duty Order*, 55 FR 32655 (August 10, 1990), unchanged in *Brass Sheet and Strip from Germany: Negative Final Determination of Circumvention of Antidumping Duty Order*, 56 FR 65884 (December 19, 1991); and *Small Diameter Graphite Electrodes from the People’s Republic of China: Initiation of Anticircumvention Inquiry*, 77 FR 37873 (June 25, 2012).

⁹ See *Initiation Notice*.

¹⁰ See 19 CFR 351.226(f)(4).

¹¹ See also 19 CFR 351.303 (for general filing requirements).

¹² See 19 CFR 351.309(c)(2) and (d)(2); see also 19 CFR 351.303 (for general filing requirements).

requirements pertaining to the service of documents in 19 CFR 351.303(f).¹³

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the publication of this notice. Requests should contain the party's name, address, telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless the deadline is extended, Commerce intends to issue the final determination of this inquiry, including the results of its analysis of the issues raised in any written briefs, no later than 300 days from the date of initiation of the inquiry, pursuant to 19 CFR 351.226(e)(2). As such, the deadline to issue the final determination is currently March 27, 2024.

Notification to Interested Parties

Commerce is issuing and publishing this affirmative preliminary determination of circumvention in accordance with sections 781(c) of the Act, 19 CFR 351.226(j), and 19 CFR 351.226(g)(1).

Dated: November 14, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Orders
- IV. Merchandise Subject to the Circumvention Inquiry
- V. Statutory and Regulatory Framework
- VI. Circumvention Analysis
- VII. Preliminary Affirmative Determination of Circumvention
- VIII. Recommendation

[FR Doc. 2023–25689 Filed 11–20–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–331–806; C–533–921; C–560–843; C–552–838]

Frozen Warmwater Shrimp From Ecuador, India, Indonesia, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 14, 2023.

FOR FURTHER INFORMATION CONTACT: Zachary Shaykin (Ecuador), Steven Seifert (India), Kelsie Hohenberger (Indonesia), and Adam Simons (Vietnam), AD/CVD Operations, Offices II, IV, V, and IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2630, (202) 482–3350, (202) 482–2517, or (202) 482–6172, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On October 25, 2023, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) petitions concerning imports of frozen warmwater shrimp (shrimp) from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam (Vietnam) filed in proper form on behalf of the American Shrimp Processors Association (ASPA or the petitioner).¹ The CVD petitions were accompanied by antidumping duty (AD) petitions concerning imports of shrimp from Ecuador and Indonesia.²

On October 27, 2023, through November 9, 2023, Commerce requested supplemental information pertaining to certain aspects of the Petitions.³ On

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam," dated October 25, 2023 (Petitions).

² *Id.*

³ See Commerce's Letters, "Petition for the Imposition of Countervailing Duties on Imports of Frozen Warmwater Shrimp from Ecuador: Supplemental Questions," dated October 27, 2023; "Petition for the Imposition of Countervailing Duties on Imports of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Supplemental Questions," dated October 27, 2023; "Petition for the Imposition of Countervailing Duties on Imports of Frozen Warmwater Shrimp from Ecuador: Supplemental Questions," dated October 27, 2023; "Petitions for

October 26, 2023, the petitioner filed an amendment to the proposed scope.⁴ On October 31, through November 13, 2023, the petitioner filed timely responses to these requests for additional information.⁵

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of Ecuador (GOE), Government of India (GOI), the

the Imposition of Antidumping and Countervailing Duties on Imports of Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam: Supplemental Questions," dated October 30, 2023 (General Issues Supplemental Questionnaire); "Petition for the Imposition of Countervailing Duties on Imports of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Additional Supplemental Questions," dated October 31, 2023; "Petition for the Imposition of Countervailing Duties on Imports of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Additional Supplemental Questions," dated November 8, 2023; Memorandum, "Phone Call with Counsel to the Petitioner," dated November 6, 2023 (November 6 Memorandum); and Memorandum, "Phone Call with Counsel to the Petitioner," dated November 9, 2023.

⁴ See Petitioner's Letter, "Amendment to Petitions for the Imposition of Antidumping and Countervailing Duties on Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam," dated October 26, 2023 (Scope Amendment).

⁵ See Petitioner's Letters, "Countervailing Duty Investigation of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Amendment to the Petition for the Imposition of Countervailing Duties on Frozen Warmwater Shrimp from Vietnam," dated October 31, 2023; "Petition for the Imposition of Countervailing Duties on Frozen Warmwater Shrimp from Indonesia: Petition Supplemental Questions Response," dated October 31, 2023; "Petition for the Imposition of Countervailing Duties on Warmwater Shrimp from India: Petition Supplemental Questions Response," dated October 31, 2023; "Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam: Petition Supplemental Questions Response," dated November 1, 2023 (First General Issues Supplement); "Petition for the Imposition of Countervailing Duties on Frozen Warmwater Shrimp from Ecuador: Petition Supplemental Questions Response," dated November 1, 2023; "Countervailing Duty Investigation of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Second Amendment to the Petition for the Imposition of Countervailing Duties on Frozen Warmwater Shrimp from Vietnam," dated November 2, 2023; "Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam: Second Supplemental Questions Response," dated November 8, 2023 (Second General Issues Supplement); "Countervailing Duty Investigation of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Third Amendment to the Petition for the Imposition of Countervailing Duties on Frozen Warmwater Shrimp from Vietnam," dated November 9, 2023; and "Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam: Petition 3rd Supplemental Question Response," dated November 13, 2023 (Third General Issues Supplement).

¹³ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings: Final Rule*, 88 FR 67069 (September 29, 2023).

Government of Indonesia (GIND), and the Government of Vietnam (GOV) (collectively, Governments) are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of shrimp from Ecuador, India, Indonesia, and Vietnam, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing shrimp in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating CVD investigations, the Petitions were accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(E) of the Act.⁶ Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigations.⁷

Periods of Investigation

Because the Petitions were filed on October 25, 2023, the periods of investigation (POI) for Ecuador, India, Indonesia, and Vietnam are January 1, 2022, through December 31, 2022.⁸

Scope of the Investigations

The merchandise covered by these investigations is shrimp from Ecuador, India, Indonesia, and Vietnam. For a full description of the scope of these investigations, *see* the Appendix to this notice.

Comments on the Scope of the Investigations

On October 30, 2023, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.⁹ On October 26, 2023, and November 1, 2023, the petitioner revised the scope.¹⁰ The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these revisions.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage

(*i.e.*, scope).¹¹ Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information, all such factual information should be limited to public information.¹² To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on December 4, 2023, which is 20 calendar days from the signature date of this notice.¹³ Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on December 14, 2023, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that the parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All scope comments must also be filed simultaneously on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.¹⁴ An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the Governments of the receipt of the Petitions and provided an opportunity for consultations with respect to the

Petitions.¹⁵ Commerce held consultations with the GOI on November 13, 2023, the GIND on November 9, 2023, and the GOV on November 8, 2023.¹⁶ The GOE did not request consultations.

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. In investigations involving processed agricultural products, the statute allows Commerce to also include growers or producers of the raw agricultural product within the definition of the domestic industry.¹⁷ Thus, to determine

¹⁵ See Commerce's Letters, "Countervailing Duty Petition on Frozen Warmwater Shrimp from India: Invitation for Consultations to discuss the Countervailing Duty Petition," dated October 26, 2023; "Countervailing Duty Petition on Frozen Warmwater Shrimp from Ecuador: Invitation for Consultations to discuss the Countervailing Duty Petition," dated October 27, 2023; "Countervailing Duty Petition on Frozen Warmwater Shrimp from Indonesia: Invitation for Consultations to discuss the Countervailing Duty Petition," dated October 27, 2023; and "Countervailing Duty Petition on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Invitation for Consultations to discuss the Countervailing Duty Petition," dated October 27, 2023.

¹⁶ See Memoranda, "Countervailing Duty Petition Regarding Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Consultations with the Government of Vietnam," dated November 8, 2023; "Consultations with the Government of Indonesia on the Countervailing Duty Petition Regarding Frozen Warmwater Shrimp from Indonesia," dated November 9, 2023; and "Consultations with Officials from the Government of India," dated November 13, 2023.

¹⁷ See section 771(4)(E) of the Act. For a full discussion of this provision of the Act and Commerce's analysis, *see* Countervailing Duty

⁶ See Petitions at Volume I (page 2).

⁷ See "Determination of Industry Support for the Petitions" section, *infra*.

⁸ See 19 CFR 351.204(b)(2).

⁹ See General Issues Supplemental Questionnaire.

¹⁰ See Scope Amendment at Exhibit 1; *see also* First General Issues Supplement at 3 and Exhibit 1.

¹¹ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹² See 19 CFR 351.102(b)(21) (defining "factual information").

¹³ See 19 CFR 351.303(b)(1).

¹⁴ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); *see also* *Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.

whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,¹⁸ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹⁹

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.²⁰ Based on our analysis

of the information submitted on the record, we have determined that shrimp, as described in the domestic like product definition set forth in the Petitions, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.²¹

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the “Scope of the Investigations,” in the appendix to this notice.

To establish industry support for fresh shrimp and frozen shrimp, the petitioner provided the 2022 production of ASPA members, as well as the 2022 production of frozen shrimp for three additional processors that support the Petitions.²² In addition, the petitioner provided letters of support from over 800 shrimp fishermen, expressing support for the Petitions and establishing each vessel’s 2022 production (harvested quantity) of fresh shrimp.²³ On October 27, 2023, and November 6, 9, and 14, 2023, we received submissions from the Ad Hoc Shrimp Trade Action Committee (AHSTAC) providing letters of support from six additional processors and 49 additional shrimp fishermen.²⁴

To establish total production of fresh shrimp, the petitioner relied on 2022 U.S. commercial landings data for fresh shrimp reported for the Gulf and South Atlantic regions in 2022 reported by the National Oceanic and Atmospheric Administration’s (NOAA’s) National Marine Fisheries Service (NMFS) Fisheries One Stop Shop (FOSS) database and added an estimate for farmed shrimp based on information from the ITC’s publication for *Shrimp*

2023 Sunset to arrive at total U.S. production of fresh shrimp.²⁵ Because data on the production of frozen shrimp were not available from NOAA, to establish total production of frozen shrimp, the petitioner relied on the same NOAA NFMS FOSS data on U.S. commercial landings in the Gulf and South Atlantic regions, as well as the same farmed shrimp estimate from the ITC’s 2023 sunset review, and added total 2022 U.S. imports of fresh shrimp, as reported in official import statistics, to account for imported fresh shrimp that is further processed into frozen shrimp in the United States.²⁶ To establish total production of fresh shrimp and frozen shrimp by the U.S. shrimp industry, the petitioner combined the total 2022 U.S. production of fresh shrimp with the total 2022 U.S. production of processed shrimp.²⁷ To establish industry support, the petitioner provided three separate calculations comparing the supporters’ production of frozen shrimp, fresh shrimp, and combined frozen and fresh shrimp to the respective totals for the entire U.S. industry.²⁸ We relied on data provided by the petitioner and AHSTAC for purposes of measuring industry support.²⁹

Our review of the data provided in the Petitions, the First General Issues Supplement, the Second General Issues Supplement, the AHSTAC Letters, the Third General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.³⁰ First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to

Investigation Initiation Checklists: Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam (Country-Specific CVD Initiation Checklists), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam (Attachment II). These checklists are dated concurrently with this notice and are on file electronically via ACCESS.

¹⁸ See section 771(10) of the Act.

¹⁹ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

²⁰ See Petitions at Volume I (pages 2–5 and Exhibits 1–2 through I–4 (containing *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam*, Inv. No. 731–TA–1063–1068 (Preliminary), USITC Pub. 3672 (February 2004) at 13–14; *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam*, Inv. No. 731–TA–1063–1068, USITC Pub. 3478 (January 2005) at 6; *Frozen Warmwater Shrimp From China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam*, Inv. Nos. 701–TA–491–497 (Preliminary), USITC Pub. 4830 (February 2013) at 8–10; *Frozen Warmwater Shrimp from China, Ecuador, India, Malaysia, and Vietnam*, Inv. Nos. 701–TA–491–493, 495, and 497 (Final), USITC Pub. 4429 (October 2013) at 9; and *Frozen Warmwater Shrimp from China, India, Thailand, and Vietnam*, Inv. No. 731–

TA–1064 and 1066–1068, USITC Pub. 5432 (June 2023) (*Shrimp 2023 Sunset*) at 14–15, I–43, I–44, III–19, and III–30).

²¹ For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, see Country-Specific CVD Initiation Checklists at Attachment II.

²² See Petitions at Volume I (page 7–8 and Exhibits I–9 and I–10); see also First General Issues Supplement at Exhibits 4 and 10–13; and Second General Issues Supplement at 2–4 and Exhibits 1 and 4.

²³ See Petitions at Volume I (pages 7–8 and Exhibit I–11); see also First General Issues Supplement at 7–8 and Exhibits 10–12; and Second General Issues Supplement at 3–4 and Exhibits 1 and 4.

²⁴ See AHSTAC’s Letters, “Additional Support for the Petitions,” dated October 27, 2023; “Additional Support for the Petitions,” dated November 6, 2023; “Further Additional Support for the Petitions,” dated November 6, 2023; “Additional Support for Petitions,” dated November 9, 2023; and “Additional Support for Petitions,” dated November 14, 2023 (collectively, AHSTAC Letters).

²⁵ See Petitions at Volume I (page 6 and Exhibit I–4 (containing *Shrimp 2023 Sunset* at IV–31 and IV–32) and I–8); see also First General Issues Supplement at 5–6 and Exhibits 5 and 9; and Second General Issues Supplement at Exhibit 1.

²⁶ See Petitions at Volume I (pages 6–8 and Exhibits I–4, I–7, and I–8); see also First General Issues Supplement at Exhibits 5–8; and Second General Issues Supplement at 2 and Exhibits 1–3.

²⁷ See Petitions at Volume I (page 8); see also First General Issues Supplement at Exhibit 8; and Second General Issues Supplement at 2 and Exhibit 1.

²⁸ See Petitions at Volume I (page 8); see also First General Issues Supplement at Exhibit 8; and Second General Issues Supplement at 2–4 and Exhibit 1.

²⁹ See Petitions at Volume I (pages 6–8 and Exhibits I–4 (containing *Shrimp 2023 Sunset* at IV–31 and IV–32) and I–5 through I–11); see also First General Issues Supplement at 3–9 and Exhibits 2–13; Second General Issues Supplement at 2–4 and Exhibits 1–4; and AHSTAC Letters. For further discussion, see Attachment II of the Country-Specific CVD Initiation Checklists.

³⁰ See Attachment II of the Country-Specific CVD Initiation Checklists.

evaluate industry support (e.g., polling).³¹ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.³² Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.³³ Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.³⁴

Injury Test

Because Ecuador, India, Indonesia, and Vietnam are “Subsidies Agreement Countries” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from Ecuador, India, Indonesia, and/or Vietnam materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports from India, Indonesia, and Vietnam exceed the negligibility threshold provided for under section 771(24)(A) of the Act.³⁵ In CVD petitions, section 771(24)(B) of the Act provides that imports of subject merchandise from developing and least-developed countries must exceed the negligibility threshold of four percent. The petitioner also demonstrates that subject imports from Ecuador, which has been designated as a developing country under section 771(36)(A) of the

Act,³⁶ exceed the negligibility threshold of four percent.³⁷

The petitioner contends that the industry’s injured condition is illustrated by the significant volume of subject imports; declining market share; underselling and price depression and/or suppression; lost sales and revenues; inventory overhang; and negative impact on the production, shipments, and financial performance.³⁸ We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.³⁹

Initiation of CVD Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating CVD investigations to determine whether imports of shrimp from Ecuador, India, Indonesia, and Vietnam benefit from countervailable subsidies conferred by the GOE, GOI, GIND, and GOV. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of these initiations.

Ecuador

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on 15 of the 22 programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate on each program, *see* the Ecuador CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

India

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on all 19 of the programs alleged by the petitioner. For a full

discussion of the basis for our decision to initiate on each program, *see* the India CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Indonesia

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on 15 of the 16 programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate on each program, *see* the Indonesia CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Vietnam

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on all 40 of the programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate on each program, *see* the Vietnam CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

The petitioner identified 227 companies in Ecuador, 675 companies in India, 276 companies in Indonesia, and 1046 companies in Vietnam as producers and/or exporters of shrimp.⁴⁰ Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in these investigations. In the event that Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce’s resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of shrimp from Ecuador, India, Indonesia, and Vietnam during the POI under the appropriate Harmonized Tariff Schedule of the United States subheadings listed in the “Scope of the Investigations” in the Appendix.

On November 13, 2023, Commerce released CBP data on U.S. imports of shrimp from Ecuador, India, Indonesia, and Vietnam, under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data and/or respondent selection must do so within three business days after

³¹ *Id.*; *see also* section 702(c)(4)(D) of the Act.

³² *See* Attachment II of the Country-Specific CVD Initiation Checklists.

³³ *Id.*

³⁴ *Id.*

³⁵ *See* Petitions at Volume I (page 15 and Exhibit I-14).

³⁶ *See Designations of Developing and Least-Developed Countries under the Countervailing Duty Law*, 85 FR 7613, 7615 (February 10, 2020).

³⁷ *See* Petitions at Volume I (page 15 and Exhibit I-14).

³⁸ *Id.* at Volume I (pages 14–30 and Exhibits I-4, I-8, I-9, I-14, I-17, and I-18); *see also* Second General Issues Supplement at 5 and Exhibit 5.

³⁹ *See* Country-Specific CVD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam.

⁴⁰ *See* Petitions at Volume I at 12 (Exhibit I-16).

the publication date of the notice of initiation of these investigations.⁴¹ Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petitions has been provided to the GOE, GOI, GIND, and GOV via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions was filed, whether there is a reasonable indication that imports of shrimp from Ecuador, India, Indonesia, and/or Vietnam are materially injuring, or threatening material injury to, a U.S. industry.⁴² A negative ITC determination for any country will result in the investigation being terminated with respect to that country.⁴³ Otherwise, these CVD investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which

subsection of 19 CFR 351.102(b)(21) the information is being submitted⁴⁴ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.⁴⁵ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.⁴⁶ For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.⁴⁷

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.⁴⁸

Parties must use the certification formats provided in 19 CFR 351.303(g).⁴⁹ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (e.g., by filing the required letters of appearance). Note that Commerce has modified its regulations to make permanent certain changes to its service procedures that were adopted on a temporary basis due to COVID-19, as well as to make additional clarifications and corrections to its AD/CVD regulations.⁵⁰

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: November 14, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Investigations

The scope of these investigations includes certain frozen warmwater shrimp and prawns whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form. “Tails” in this context means the tail fan, which includes the telson and the uropods.

The frozen warmwater shrimp and prawn products included in the scope, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not

⁴¹ See Memoranda, “Frozen Warmwater Shrimp from Ecuador Countervailing Duty Petition: Release of U.S. Customs and Border Protection Entry Data,” dated November 13, 2023; “Frozen Warmwater Shrimp from India Countervailing Duty Petition: Release of U.S. Customs and Border Protection Entry Data,” dated November 13, 2023; “Frozen Warmwater Shrimp from Indonesia Countervailing Duty Petition: Release of U.S. Customs and Border Protection Entry Data,” dated November 13, 2023; and “Frozen Warmwater Shrimp from the Socialist Republic of Vietnam Countervailing Duty Petition: Release of U.S. Customs and Border Protection Entry Data,” dated November 13, 2023.

⁴² See section 703(a)(1) of the Act.

⁴³ *Id.*

⁴⁴ See 19 CFR 351.301(b).

⁴⁵ See 19 CFR 351.301(b)(2).

⁴⁶ See 19 CFR 351.302.

⁴⁷ See 19 CFR 351.301; see also *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at <https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>.

⁴⁸ See section 782(b) of the Act.

⁴⁹ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also frequently asked questions regarding the *Final Rule*, available at https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

⁵⁰ Effective October 30, 2023, these changes apply to all AD/CVD proceedings that are ongoing on the effective date and all AD/CVD proceedings initiated on or after the effective date. See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope.

Excluded from the scope are: (1) breaded shrimp and prawns (HTSUS subheading 1605.21.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.36.0020 and 0306.36.0040); (4) shrimp and prawns in prepared meals (HTSUS subheadings 1605.21.0500 and 1605.29.0500); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.29.1040); and (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (IQF) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the scope are currently classified under the following HTSUS subheadings: 0306.17.0004, 0306.17.0005, 0306.17.0007, 0306.17.0008, 0306.17.0010, 0306.17.0011, 0306.17.0013, 0306.17.0014, 0306.17.0016, 0306.17.0017, 0306.17.0019, 0306.17.0020, 0306.17.0022, 0306.17.0023, 0306.17.0025, 0306.17.0026, 0306.17.0028, 0306.17.0029, 0306.17.0041, 0306.17.0042, 1605.21.1030, and 1605.29.1010. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope is dispositive.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD506]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Geophysical Survey in the Ross Sea, Antarctica

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

ACTION: Notice; issuance of renewal incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a renewal incidental harassment authorization (IHA) to the United States National Science Foundation (NSF) to incidentally harass marine mammals incidental to a geophysical survey in the Ross Sea, Antarctica.

DATES: This renewal IHA is valid from December 15, 2023 through December 14, 2024.

ADDRESSES: Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-national-science-foundation-office-polar-programs-geophysical>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the 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 promulgated or, if the

taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). NMFS must also prescribe requirements pertaining to monitoring and reporting of such takings. The definition of key terms such as “take,” “harassment,” and “negligible impact” can be found in the MMPA and NMFS’s implementing regulations (see 16 U.S.C. 1362; 50 CFR 216.103).

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial IHA, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals>.

History of Request

On December 15, 2022, NMFS issued an IHA to NSF to take marine mammals incidental to conducting a low energy seismic survey and icebreaking in the Ross Sea (87 FR 77,796, December 20, 2022), effective from December 15, 2022 through December 14, 2023. On September 7, 2023, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal IHA, the activities for which incidental take authorization is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-national-science-foundation-office-polar-programs-geophysical>), which confirms that the applicant has implemented the required mitigation and monitoring and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result

of the activities conducted. The notice of the proposed renewal IHA was published on October 18, 2023 (88 FR 71840).

Description of the Specified Activities and Anticipated Impacts

NSF initially described their activities as including two main survey areas (*i.e.*, the Ross Bank and the Drygalski Trough). The purpose of the survey was to collect low energy 2D seismic reflection data, along with oceanographic and sediment samples to understand if, how, when, and why the Ross Ice Shelf unpinned from the Ross Bank in the recent geologic past.

The initial planned survey involved one source vessel, Research Vessel Ice Breaker (RVIB) *Palmer*, using an airgun array cluster consisting of two 105 cubic inches (in³) GI guns, with a total discharge volume of 210 in³, deployed at a depth of approximately 1–4 meters (m) below the surface to conduct both of the survey segments. During the Ross Bank survey, ~1920 kilometers (km) of seismic data was planned to be collected and during the Drygalski Trough survey, ~1800 km of seismic acquisition was planned to occur, for a total of 3720 line km. During the Drygalski Trough survey portion, 2 deployments of 10 Ocean Bottom Seismometers (OBS) were planned to occur along 2 different seismic refraction lines.

The seismic surveys would occur within the Ross Sea in water depths ranging from ~150 to 1100 m. The initial survey was expected to consist of 31 days at sea, including approximately 19 days of seismic operations (including 2 days of sea trials and/or contingency), 1 day of OBS deployment/recovery, and approximately 11 days of transit.

Due to logistical challenges, the initial survey was not successfully completed. There was a long delay in leaving New Zealand due to an enforced quarantine after survey members tested positive for COVID-19 and only a subset of the survey activities in the initial IHA were completed. Specifically, under the initial IHA, the NSF completed surveys within the Ross Bank Area but not the Drygalski Trough area.

This renewal request is to cover a subset of the activities covered in the initial IHA that will not be completed during the effective period of the initial IHA due to the aforementioned logistical challenges. The remaining survey activities would include the survey within the Drygalski Trough area and icebreaking and are expected to occur during February 2024 (11 days of transit, 9 days of seismic surveys, and 1 day of OBS deployment and retrieval).

The likely or possible impacts of the NSF's activity on marine mammals could involve acoustic stressors and are unchanged from the impacts described in the initial IHA. Acoustic stressors include effects of the airgun array from the low-energy seismic surveys and icebreaking. The effects of underwater disturbance from the NSF's activities have the potential to result in Level B harassment of marine mammals in the specified geographic region.

Detailed Description of the Activity

A detailed description of the survey activities for which incidental take is authorized here may be found in the notices of the proposed and final IHAs for the initial authorization (87 FR 59204, September 29, 2022; 87 FR 77796, December 20, 2022). As previously mentioned, this request is for a subset of the activities analyzed for the initial IHA that would not be completed prior to its expiration due to logistical challenges. The timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notice for the initial IHA. The renewal IHA would be effective from December 15, 2023 through December 14, 2024.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which renewal authorization of take is authorized here, including information on abundance, status, distribution, and hearing, may be found in the notice of the proposed IHA for the initial authorization (87 FR 59204, September 29, 2022). NMFS has reviewed the monitoring data from the initial IHA, recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature and determined there is no new information that affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA (87 FR 59204, September 29, 2022).

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which an authorization of incidental take is proposed here may be found in the notice of the proposed IHA for the initial authorization (87 FR 59204, September 29, 2022). NMFS has reviewed the monitoring data from the initial IHA, recent Stock Assessment

Reports, information on relevant Unusual Mortality Events, and other scientific literature and determined that there is no new information that affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the

notices of the proposed and final IHAs for the initial authorization (87 FR 59204, September 29, 2022; 87 FR 77796, December 20, 2022). Specifically, the number of survey days, specified geographic region, specified activities and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, take estimates and type

of take (*i.e.*, Level B harassment) remain unchanged from the previously issued IHA. The number of takes authorized in this renewal IHA are a subset of the initial authorized takes that better represent the amount of activity NSF has left to complete. These estimated takes, which reflect the remaining survey days and icebreaking activities, are indicated below in Table 1.

TABLE 1—PROPOSED NUMBER OF TAKES BY LEVEL B HARASSMENT BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Species	Level B take		Total take proposed	Population abundance	Percent of population
	Drygalski Survey	Icebreaking			
Humpback whale	159	266	425	42,000	1.0
Fin whale	152	254	405	38,200	1.1
Blue whale	32	54	86	1,700	5.1
Sei whale	23	38	61	10,000	0.6
Antarctic minke whale	418	700	1,118	515,000	0.2
Sperm whale	49	82	131	12,069	1.1
Southern bottlenose whale	58	98	156	599,300	<0.1
Arnoux's beaked whale	66	111	178	599,300	<0.1
Strap-toothed beaked whale	22	37	59	599,300	<0.1
Killer whale	103	173	276	25,000	1.1
Long-finned pilot whale	198	331	529	200,000	0.3
Hourglass dolphin	94	157	251	144,300	0.2
Crabeater seal	3,361	5,629	8,990	1,700,000	0.5
Leopard seal	132	221	353	220,000	0.2
Ross seal	82	138	220	250,000	0.1
Weddell seal	527	883	1,410	1,000,000	0.1
Southern elephant seal	1	1	2	750,000	<0.1

Description of Mitigation, Monitoring, and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the initial IHA and the discussion of the least practicable adverse impact determination included in **Federal Register** notice announcing the issuance of the initial IHA remains applicable and accurate (87 FR 77796, December 20, 2022). The following mitigation, monitoring, and reporting measures are proposed for this renewal:

- Mitigation measures that would be adopted during the planned survey include, but are not limited to: (1) Vessel speed or course alteration, provided that doing so would not compromise operation safety requirements. (2) GI-airgun shut down within shutdown zones, and (3) ramp-up procedures;
- During survey operations (*e.g.*, any day on which use of the acoustic source is planned to occur, and whenever the acoustic source is in the water, whether activated or not), a minimum of one protected species observer (PSO) must be on duty and conducting visual

observations at all times during daylight hours (*i.e.*, from 30 minutes prior to sunrise through 30 minutes following sunset) and 30 minutes prior to and during ramp-up of the airgun array. Visual monitoring of the exclusion and buffer zones must begin no less than 30 minutes prior to ramp-up and must continue until 1 hour after use of the acoustic source ceases or until 30 minutes past sunset. Visual PSOs must coordinate to ensure 360 degree visual coverage around the vessel from the most appropriate observation posts, and must conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner;

- The PSOs would establish a minimum exclusion zone (EZ) with a 100 m radius with an additional 100 m buffer zone (total of 200 m). The 200 m zone would be based on radial distance from the edge of the airgun array (rather than being based on the center of the array or around the vessel itself);
- An extended 500 m exclusion zone must be established for beaked whales, large whales with a calf (defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult), and an

aggregation of six or more whales during all survey effort. No buffer zone is required;

- Ramp-up is the gradual and systematic increase of emitted sound levels from an airgun array. Ramp-up would begin with one GI airgun 45 in³ first being activated, followed by the second after 5 minutes. The intent of pre-clearance observation (30 minutes) is to ensure no marine mammals are observed within the buffer zone prior to the beginning of ramp-up. During pre-clearance is the only time observations of marine mammals in the buffer zone would prevent operations (*i.e.*, the beginning of ramp-up). The intent of ramp-up is to warn protected species of pending seismic operations and to allow sufficient time for those animals to leave the immediate vicinity. A ramp-up procedure, involving a stepwise increase in the number of airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source;
- The shutdown of an airgun array requires the immediate de-activation of all individual airgun elements of the array. Any PSO on duty will have the authority to delay the start of survey operations or to call for shutdown of the

acoustic source if a marine mammal is detected within the applicable exclusion zone. The operator must also establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. When the airgun array is active (*i.e.*, anytime one or more airguns is active, including during ramp-up) and a marine mammal appears within or enters the applicable exclusion zone, the acoustic source will be shut down. When shutdown is called for by a PSO, the acoustic source will be immediately deactivated and any dispute resolved only following deactivation;

- Following a shutdown, airgun activity would not resume until the marine mammal has cleared the EZ. The animal would be considered to have cleared the EZ if it is visually observed to have departed the EZ, or it has not been seen within the EZ for 15 minutes in the case of small odontocetes and pinnipeds, and 30 minutes for mysticetes and all other odontocetes, including sperm and beaked whales, with no further observation of the marine mammal(s);

- The NSF must deploy vessel strike avoidance measures;

- The NSF must submit a draft report detailing all activities and monitoring results within 90 calendar days of the completion of the survey or expiration of the IHA, whichever comes sooner;

- The NSF must submit a final report within 30 days following resolution of comments on the draft report from NMFS; and

- The NSF must report injured or dead marine mammals.

Comments and Responses

A notice of NMFS' proposal to issue a renewal IHA to NSF was published in the **Federal Register** on October 18, 2023 (88 FR 71840). That notice either described, or referenced descriptions of, NSF's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring and reporting measures. NMFS received no public comments.

Determinations

NSF's activities consist of a subset of activities analyzed in the initial IHA. In analyzing the effects of the activities for the initial IHA, NMFS determined that NSF's activities would have a negligible impact on the affected species or stocks and that authorized take numbers of

each species or stock were small relative to the relevant stocks (*e.g.*, less than one-third the abundance of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis 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; (4) NSF's 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, and; (5) appropriate monitoring and reporting requirements are included.

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 action (*i.e.*, the issuance of an IHA renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) 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 determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

Endangered Species Act

The NMFS Office of Protected Resources (OPR) Endangered Species Act (ESA) Interagency Cooperation Division issued a Biological Opinion under section 7 of the ESA (16 U.S.C. 1531 *et seq.*) on the issuance of an IHA

and potential renewal IHA to NSF under section 101(a)(5)(D) of the MMPA by the NMFS OPR Permits and Conservation Division. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of ESA-listed blue whales, fin whales, sei whales, and sperm whales.

Renewal

NMFS has issued a renewal IHA to NSF for the take of marine mammals incidental to conducting a geophysical survey in the Ross Sea, Antarctica, from December 15, 2023 through December 14, 2024.

Dated: November 16, 2023.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023-25716 Filed 11-20-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD545]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public online meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) ad-hoc Klamath River Fall Chinook Workgroup will hold an online meeting.

DATES: The online meeting will be held Tuesday, December 12, 2023 from 9 a.m. until 3 p.m., Pacific Standard Time, or until business for the day concludes. If needed, the meeting will resume on Thursday, December 14, 2023, from 9 a.m. until 3 p.m., Pacific Standard Time, or until for the day business concludes.

ADDRESSES: These meetings will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503) 820-2280, extension 412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT:

Robin Ehlke, Staff Officer, Pacific Council; telephone: (503) 820-2410.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to discuss and develop preliminary recommendations to inform Pacific Council decision making at the March and April 2024 Pacific Council meetings for the 2024 salmon pre-season management process as it relates to Klamath River Fall Chinook management. Additional discussion on Klamath River Dam removal, monitoring, hatchery production, etc. and workload planning may also occur.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820-2412) at least 10 days prior to the meeting date.

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

Dated: November 16, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023-25725 Filed 11-20-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648-XD549]

Fisheries of the Exclusive Economic Zone Off Alaska; Alaska Groundfish and Halibut Seabird Working Group; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: NMFS Alaska Groundfish and Halibut Seabird Working Group will meet to discuss seabird-fisheries interactions (vessel collisions),

development of an Alaska coordinated strategic plan for reporting and monitoring fisheries interactions with seabirds listed under the Endangered Species Act, and an update on whether or not the short-tailed albatross is actually two distinct species.

DATES: The meeting will be held on December 6, 2023, from 1 p.m. to 4:30 p.m., and on December 7, 2023, from 9 a.m. to 4:30 p.m., Alaska Daylight Time.

ADDRESSES: The meeting will be held virtually.

FOR FURTHER INFORMATION CONTACT: Josh Moffi, 907-586-7072.

SUPPLEMENTARY INFORMATION: The Alaska Groundfish and Halibut Seabird Working Group formed as a result of the 2015 biological opinion on effects of the Fishery Management Plans for the Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fisheries on short-tailed albatross. The working group is tasked with reviewing information for mitigating effects of the groundfish and halibut fisheries on short-tailed albatross and other seabirds. The workgroup will hold a virtual meeting December 6 and 7, 2023. Meeting topics include seabird/fisheries interactions (vessel collisions), development of an Alaska coordinated strategic plan for reporting and monitoring fisheries interactions with birds listed under the Endangered Species Act, and update on the short-tailed albatross population. For participation information and meeting agenda, please contact Josh Moffi (joshua.moffi@noaa.gov).

NMFS will keep the North Pacific Fisheries Management Council (Council) apprised of the working group's activities and any resulting recommendations for methods to reduce seabird bycatch. Any changes to seabird avoidance regulations are expected to follow the standard Council process.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Josh Moffi, 907-586-7072, at least 5 working days prior to the meeting date.

Dated: November 16, 2023.

Kelly Denit,

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

[FR Doc. 2023-25695 Filed 11-20-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Sanctuary System Business Advisory Council: Public Meeting**

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open public meeting.

SUMMARY: Notice is hereby given of a meeting of the Sanctuary System Business Advisory Council (council). The meeting is open to the public, and an opportunity for oral and written comments will be provided.

DATES: The meeting will be held on Wednesday, December 6, 2023 from 12 p.m. to 1:30 p.m. Eastern Time (ET), and an opportunity for public comment will be provided around 1:15 p.m. ET. Both times and agenda topics are subject to change.

ADDRESSES: The meeting will be held virtually using Google Meet. To participate, please use the weblink provided below. If you are unable to participate online, you can also connect to the public meeting using the phone number provided.

- *Weblink:* meet.google.com/eqw-wnkm-dab
- *Phone:* +1 347-486-7095 PIN: 606 316 454#

To provide an oral public comment during the virtual meeting, please sign up prior to or during the meeting by contacting Sage Riddick by phone (240-560-3365) or email (sage.riddick@noaa.gov). To provide written public comment, please send the comment to Sage Riddick prior to or during the meeting via email (sage.riddick@noaa.gov). Please note, the meeting will not be recorded. However, public comments, including any associated names, will be captured in the minutes of the meeting, will be maintained by the Office of National Marine Sanctuaries (ONMS) as part of its administrative record, and may be subject to release pursuant to the Freedom of Information Act. The entirety of the comment, including the name of the commenter, email address, attachments, and other supporting materials, will be publicly accessible. Sensitive personally identifiable information, such as account numbers and Social Security numbers, should not be included with the comment. By signing up to provide a public comment, you agree that these communications,

including your name and comment, will be maintained as described here.

FOR FURTHER INFORMATION CONTACT: Sage Riddick, Office of National Marine Sanctuaries, 1305 East West Highway, Silver Spring, Maryland 20910 (Phone: 240-560-3365; Email: sage.riddick@noaa.gov).

SUPPLEMENTARY INFORMATION: ONMS serves as the trustee for a network of underwater parks encompassing more than 620,000 square miles of marine and Great Lakes waters from Washington State to the Florida Keys, and from Lake Huron to American Samoa. The network includes a system of 15 national marine sanctuaries and Papahānaumokuākea and Rose Atoll marine national monuments. National marine sanctuaries protect our Nation's most vital coastal and marine natural and cultural resources, and through active research, management, and public engagement, sustain healthy environments that are the foundation for thriving communities and stable economies.

One of the many ways ONMS ensures public participation in the designation and management of national marine sanctuaries is through the formation of advisory councils. The Sanctuary System Business Advisory Council (council) has been formed to provide advice and recommendations to the Director regarding the relationship of ONMS with the business community. Additional information on the council can be found at <https://sanctuaries.noaa.gov/management/bac/>.

Matters to be discussed: The primary purpose of this meeting is to hear updates from members, provide a program update, and discuss potential work plan activities for 2024. For a complete agenda, including times and topics, please visit <http://sanctuaries.noaa.gov/management/bac/meetings.html>.

Authority: 16 U.S.C. 1431, *et seq.*

John Armor,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023-25708 Filed 11-20-23; 8:45 am]

BILLING CODE 3510-NK-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO-P-2023-0049]

Grant of Interim Extension of the Term of U.S. Patent No. 7,329,689; DUVYZAT™ (Givinostat hydrochloride monohydrate)

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

ACTION: Notice of interim patent term extension.

SUMMARY: The United States Patent and Trademark Office has issued an order granting a one-year interim extension of the term of U.S. Patent No. 7,329,689 ('689 patent).

FOR FURTHER INFORMATION CONTACT: Ali Salimi, Senior Legal Advisor, Office of Patent Legal Administration, at 571-272-0909 or ali.salimi@uspto.gov; or Josephine Chang, Legal Advisor, Office of Patent Legal Administration, at 571-270-3522 or josephine.chang@uspto.gov.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 156 generally provides that the term of a patent may be extended for a period of up to five years, if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review. 35 U.S.C. 156(d)(5) generally provides that the term of such a patent may be extended for no more than five interim periods of up to one year each, if the approval phase of the regulatory review period (RRP) is reasonably expected to extend beyond the expiration date of the patent.

On July 31, 2023, Italfarmaco SPA, the owner of record of the '689 patent, timely filed an application under 35 U.S.C. 156(d)(5) for an interim extension of the term of the '689 patent. The '689 patent claims the drug product known by the tradename DUVYZAT™ (Givinostat hydrochloride monohydrate). The application for interim patent term extension indicates that the approval phase of the RRP, as described in 35 U.S.C. 156(g)(1)(B)(ii), began on April 21, 2023, for DUVYZAT™ (Givinostat hydrochloride monohydrate) and is ongoing before the Food and Drug Administration for permission to market and use the product commercially.

Review of the interim patent term extension application indicates that, except for permission to market or use the product commercially, the '689 patent would be eligible for an extension of the patent term under 35

U.S.C. 156. Because it appears reasonable to expect the approval phase of the RRP to continue beyond the expiration date of the patent, *i.e.*, January 15, 2024, interim extension of the '689 patent's term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 7,329,689 is granted for a period of one year from the original expiration date of the '689 patent.

Brian Hanlon,

Acting Deputy Commissioner for Patents, United States Patent and Trademark Office.

[FR Doc. 2023-25697 Filed 11-20-23; 8:45 am]

BILLING CODE 3510-16-P

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces that on December 14, 2023, from 9 a.m. to 12 p.m. (Eastern Standard Time), the Agricultural Advisory Committee (AAC or Committee) will hold an in-person public meeting at the CFTC's Washington, DC headquarters with options for the public to attend virtually. At this meeting, the AAC will discuss topics related to the agricultural economy, including geopolitical and sustainability issues, as well as recent developments in the agricultural derivatives markets.

DATES: The meeting will be held on December 14, 2023, from 9 a.m. to 12 p.m. (Eastern Standard Time). Members of the public who wish to submit written statements in connection with the meeting should submit them by December 21, 2023.

ADDRESSES: The meeting will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. You may submit public comments, identified by "Agricultural Advisory Committee," through the CFTC website at <https://comments.cftc.gov>. Follow the instructions for submitting comments through the Comments Online process on the website. If you are unable to submit comments online, contact Swati Shah, Designated Federal Officer, via the contact information listed below to discuss alternate means of submitting your comments. Any statements submitted in connection with the

committee meeting will be made available to the public, including publication on the CFTC website, <https://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT: Swati Shah, AAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC; (202) 418–5042; or aac@cftc.gov.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen to the meeting by telephone by calling a domestic or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

Domestic Toll-Free Numbers: 833–568–8864 or 833–435–1820.

Domestic Toll Numbers: 1–669–254–5252 or 1–646–964 1167 or 1–646–828–7666 or 1–669–216–1590 or 1–415–449–4000 or 1–551–285–1373.

International Toll- and Toll-Free Numbers: Will be posted on the CFTC's website, <https://www.cftc.gov>, on the page for the meeting, under Related Links.

Call-In/Webinar ID: 161 858 6497.

Pass Code/Pin Code: 018414.

Members of the public may also view a live webcast of the meeting via the <https://www.cftc.gov> website. The meeting agenda may change to accommodate other Committee priorities. For agenda updates, please visit <https://www.cftc.gov/About/AdvisoryCommittees/AAC>.

After the meeting, a transcript of the meeting will be published through a link on the CFTC's website, <https://www.cftc.gov>. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

(Authority: 5 U.S.C. 1009(a)(2).)

Dated: November 16, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–25748 Filed 11–20–23; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection

Activities: Notice of Intent To Renew Collection 3038–0082, Whistleblower Provisions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is announcing an opportunity for public comment on the extension of a proposed collection of certain information by the Agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the reporting requirements related to the Whistleblower Provision.

DATES: Comments must be submitted on or before January 22, 2024.

ADDRESSES: You may submit comments, identified by OMB Control No. 3038–0082 by any of the following methods:

- The Agency's website, at <https://comments.cftc.gov>. Follow the instructions for submitting comments through the website.
- *Mail:* Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT:

Christina McGlosson, Acting Director, Whistleblower Office, Commodity Futures Trading Commission, (202) 418–5051; email: cmcglosson@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information the agency conducts or sponsors. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing

notice of the proposed collection of information listed below.¹

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who choose 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.

Title: The Whistleblower Provision of Section 23 of the Commodity Exchange Act (“CEA”), OMB Control Number 3038–0082. This is a request for extension of a currently approved information collection.

Abstract: 17 CFR 165.3(a) requires the submission of information to the Commission on a Form TCR. The Form TCR, “Tip, Complaint, or Referral,” and the instructions thereto, are designed to capture basic identifying information about a complainant and elicit sufficient information to determine whether the conduct alleged suggests a violation of the Commodity Exchange Act. 17 CFR 165.7(b)(1) requires the submission of information to the Commission on a Form WB–APP. The Form WB–APP, “Application for Award for Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act,” and the instructions thereto, are designed to elicit sufficient information to determine whether and to what extent a claimant qualifies for a whistleblower award.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according

¹ 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. 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8(b)(3)(vi).

to the procedures established in § 145.9 of the Commission's regulations.²

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Review will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The respondent burden for this collection is estimated to be 0.5 hours per response.

- **Respondents/Affected Entities:** Individuals.
- **Estimated number of respondents:** 1800 per year.
- **Estimated total annual burden on respondents:** 900 hours.
- **Frequency of collection:** Once.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: November 16, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023-25692 Filed 11-20-23; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2023-SCC-0126]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Gaining Early Awareness and Readiness for Undergraduate Programs Final Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before December 21, 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 Caroline Chung, (202)-987-1434.

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: Gaining Early Awareness and Readiness for Undergraduate Programs Final Performance Report.

OMB Control Number: 1840-0782.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 172.

Total Estimated Number of Annual Burden Hours: 11,180.

Abstract: The purpose of this information collection is to determine whether recipients of Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) have made substantial progress towards meeting the objectives of their respective projects, as outlined in their grant applications and/or subsequent work plans. In addition, the final report will enable the Department to evaluate each grant project's fiscal operations for the entire grant performance period, and

compare total expenditures relative to federal funds awarded, and actual cost-share/matching relative to the total amount in the approved grant application. This report is a means for grantees to share the overall experience of their projects and document achievements and concerns, and describe effects of their projects on participants being served; project barriers and major accomplishments; and evidence of sustainability. The report will be GEAR UP's primary method to collect/analyze data on students' high school graduation and immediate college enrollment rates.

The form has been revised to include additional questions collecting data on the scholarship component that is required by statute.

Dated: November 16, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023-25704 Filed 11-20-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2023-SCC-0152]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Annual Performance Report for Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) Program

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before December 21, 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*

² 17 CFR 145.9.

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 Nicole Josemans, (202) 219–6082.

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: Annual Performance Report for Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) Program.

OMB Control Number: 1840–0777.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments; private sector *Total Estimated Number of Annual Responses:* 159.

Total Estimated Number of Annual Burden Hours: 3,180.

Abstract: Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP), created in the Higher Education Act Amendments of 1998 (title IV, section 404A–404H), is a discretionary grant program which encourages applicants to provide support and maintain a commitment to eligible low-income students, including students with disabilities, to assist the students in obtaining a secondary school diploma and preparing for and succeeding in postsecondary education. GEAR UP provides grants to states and partnerships to provide services at high-poverty middle and high schools. GEAR UP grantees serve an entire cohort of students beginning no later than the seventh grade and follow them through graduation and, optionally, the first year of college.

The Annual Performance Report (APR) for Partnership and State Projects

for GEAR UP is a required report that grant recipients must submit annually. The purpose of this information collection is for accountability. The data is used to report on progress in meeting the performance objectives of GEAR UP, program implementation, and student outcomes. The data collected includes budget data on Federal funds and match contributions, demographic data, and data regarding services provided to students.

This submission requests to revise the APR in several places. New questions were added regarding the grant’s scholarship component and student postsecondary participation outcomes, and changes were made to questions about project financial status, participant demographics, and project services.

Dated: November 16, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–25705 Filed 11–20–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0138]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Report of Children Receiving Early Intervention Services in Accordance With Part C; Report of Program Settings in Accordance With Part C; Report on Infants and Toddlers Exiting Part C

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before December 21, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting “Department of Education”

under “Currently Under Review,” then check the “Only Show ICR for Public Comment” checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the “View Information Collection (IC) List” link. Supporting statements and other supporting documentation may be found by clicking on the “View Supporting Statement and Other Documents” link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Amy Bae, 202–987–1557.

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: Report of Children Receiving Early Intervention Services in Accordance With Part C; Report of Program Settings in Accordance With Part C; Report on Infants and Toddlers Exiting Part C.

OMB Control Number: 1820–0557.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 6,410.

Abstract: This is a request for revision of the approved Information Collection 1820–0557—Report of Children Receiving Early Intervention Services in Accordance With Part C; Report of Program Settings Where Early Intervention Services are Provided to Children With Disabilities and Their Families in Accordance to Part C; Report on Infants and Toddlers Exiting Part C Section 618 of the Individuals with Disabilities Education Act (IDEA), Public Law 108–446, directs the Secretary of Education to obtain data on: (1) the number and percentage of infants and toddlers with disabilities, by race, ethnicity, and gender, who are receiving early intervention services; (2) the

number and percentage of infants and toddlers, by race and ethnicity, who are at risk of having substantial developmental delays (as described in Section 632), and who are receiving early intervention services under Part C; and (3) the number and percentage of children with disabilities, by race, ethnicity, and gender, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons. The specific legislative authority for these data collections may be found in section 618(a)(1)(B), section 618(a)(1)(C), section 618(a)(2) and section 618(a)(3). The purposes of such data are: (1) to assess the progress, impact, and effectiveness of State and local efforts to implement the legislation and (2) to provide Congress, the public, and Federal, State, and local educational agencies with relevant information. OSEP also uses these data for monitoring activities, planning purposes, congressional reporting, and disseminating data to individuals and groups. This revision adds meta data questions to the Report on Infants and Toddlers Exiting Part C and the Report of Children Receiving Early Intervention Services in Accordance with Part C, as well as technical edits to the Report of Program Settings Where Early Intervention Services Are Provided.

Dated: November 15, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–25651 Filed 11–20–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0195]

Agency Information Collection Activities; Comment Request; Connecting Adults to Success: Career Navigator Training Study (CATS Study)

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before January 22, 2024.

ADDRESSES: To access and review all the documents related to the information

collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2023–SCC–0195. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Melanie Ali, (202) 245–8345.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Connecting Adults to Success: Career Navigator Training Study (CATS Study).

OMB Control Number: 1850–0973.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 30,823.

Total Estimated Number of Annual Burden Hours: 2,340.

Abstract: The Institute of Education Sciences within the U.S. Department of Education requests clearance for a revision to the Connecting Adults to Success: Evaluation of Career Navigator Training (1850–0973, approved on July 18, 2022). This demonstration study examines the impact of training for career navigators—local adult education provider staff who provide services to address the challenges that learners face navigating the transition to the workforce and to further education and training. The study compares the education and employment outcomes of learners enrolled in adult education sites whose career navigators are assigned by lottery to receive the study's training (the treatment group) with the outcomes of learners enrolled in the business-as-usual sites who are assigned by lottery to receive the study's training after the study period (the comparison group). Approximately 64 adult education sites nationally are participating in the study. Impacts on learners' education and employment outcomes will be examined after 18 and 30 months. The revision is for the purpose of shifting one component of the approved data collection plan—frequent adult education career navigator-completed logs—to add a single follow-up survey to ensure the study can still examine whether the training leads to changes in these practices. The survey is now needed because of concerns about low response rates and data quality from early rounds of those logs.

Dated: November 15, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–25678 Filed 11–20–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. CP23–519–000]

**Rio Bravo Pipeline Company, LLC;
Notice of Availability of the
Environmental Assessment for the
Proposed Rio Bravo Pipeline Route
Amendment**

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Rio Bravo Pipeline Route Amendment (Route Amendment), proposed by Rio Bravo Pipeline Company, LLC (RB Pipeline) in the above-referenced docket.¹ The EA assesses the potential environmental effects of the construction and operation of the Route Amendment in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Route Amendment, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The proposed Route Amendment includes the following four pipeline route adjustments, all within the State of Texas:

- adjust the certificated route between approximate milepost (MP) 69.8 to approximate MP 79.4 in Willacy County to conform to the U.S. Fish and Wildlife Service's Biological Opinion issued for the Rio Bravo Pipeline Project and to minimize impacts on potential ocelot habitat (the "U.S. Fish and Wildlife Service Route Adjustment");
- adjust the certificated route between approximate MP 92.4 and MP 93.0 in Willacy County to accommodate requirements of the International Boundary and Water Commission and landowner requests (the "North Floodway Route Adjustment");
- adjust the certificated route between approximate MP 99.7 and MP 100.5 in Willacy and Cameron Counties to accommodate a landowner request (the "Arroyo Colorado Route Adjustment"); and
- relocate a meter station and extend the approved Rio Bravo Pipeline route

approximately 0.6 mile in Cameron County from the currently certificated terminus site to the meter station within the fence line of the approved Rio Grande LNG Terminal site (the "Terminus Adjustment").

The Commission mailed a copy of the *Notice of Availability* of the EA to Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Route Amendment area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (www.ferc.gov), on the natural gas environmental documents page (<https://www.ferc.gov/industries-data/natural-gas/environmental-documents>). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (<https://elibrary.ferc.gov/eLibrary/search>), select "General Search" and enter the docket number in the "Docket Number" field, excluding the last three digits (*i.e.*, CP23–519). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this Route Amendment, it is important that we receive your comments in Washington, DC on or before 5 p.m. eastern time on December 14, 2023.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (www.ferc.gov) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You must select the type of filing you are making. If you are filing a comment on a particular project, please select "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the Route Amendment docket number (CP23–519–000) on your letter. 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.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at <https://www.ferc.gov/how-intervene>.

Additional information about the Route Amendment is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (www.ferc.gov) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

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

¹ As authorized, the Rio Bravo Pipeline System consists of 135.7 miles of dual (parallel) pipelines; one 42 inches in diameter and the other 48 inches in diameter; one new compressor station; and associated meter stations and valves and related facilities. The Rio Bravo Pipeline Project was approved by the Commission on November 22, 2019, in Docket No. CP16–455–000, and amended (and approved by the Commission) on April 21, 2023, in Docket no. CP20–481–000.

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*.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Dated: November 14, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-25674 Filed 11-20-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Elgin Energy Center, LLC; Rocky Road Power, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On November 14, 2023, the Commission issued an order in Docket Nos. EL24-7-000 and EL24-9-000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether Elgin Energy Center, LLC and Rocky Road Power, LLC's (collectively, the Project Companies) Rate Schedules are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Elgin Energy Ctr., LLC*, 185 FERC ¶ 61,114 (2023).

The refund effective date in Docket Nos. EL24-7-000 and EL24-9-000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket Nos. EL24-7-000 and EL24-9-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2022), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal**

Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFile" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The 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: November 15, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-25741 Filed 11-20-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR24-10-000.

Applicants: Altus Midstream Pipeline LP.

Description: Compliance filing 2023 to be effective N/A.

Filed Date: 11/14/23.

Accession Number: 20231114-5129.

Comment Date: 5 p.m. ET 12/5/23.

Docket Numbers: PR24-11-000.

Applicants: Southern California Gas Company.

Description: 284.123(g) Rate Filing: Offshore Delivery Service Rate Revision August 2023 to be effective 11/14/2023.

Filed Date: 11/14/23.

Accession Number: 20231114-5151.

Comment Date: 5 p.m. ET 12/5/23.

284.123(g) Protest: 5 p.m. ET 1/16/24.

Docket Numbers: RP24-153-000.

Applicants: LA Storage, LLC.

Description: 4(d) Rate Filing: Filing of Negotiated Rate I/W Agreements 11.14.23 to be effective 11/15/2023.

Filed Date: 11/14/23.

Accession Number: 20231114-5121.

Comment Date: 5 p.m. ET 11/27/23.

Docket Numbers: RP24-154-000.

Applicants: Equitrans, L.P.

Description: 4(d) Rate Filing: Negotiated Rate Agreement—11/15/2023 to be effective 11/15/2023.

Filed Date: 11/14/23.

Accession Number: 20231114-5155.

Comment Date: 5 p.m. ET 11/27/23.

Docket Numbers: RP24-155-000.

Applicants: Gulf South Pipeline Company, LLC.

Description: 4(d) Rate Filing: Amendment to NC Neg Rate Agmt (BP 46441 eff 11-15-2023) to be effective 11/15/2023.

Filed Date: 11/15/23.

Accession Number: 20231115-5035.

Comment Date: 5 p.m. ET 11/27/23.

Docket Numbers: RP24-156-000.

Applicants: Discovery Gas Transmission LLC.

Description: 4(d) Rate Filing: 2024 HMRE Surcharge Filing to be effective 1/1/2024.

Filed Date: 11/15/23.

Accession Number: 20231115-5061.

Comment Date: 5 p.m. ET 11/27/23.

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: November 15, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-25738 Filed 11-20-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6440-010]

Lakeport Hydroelectric One, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 6440-010.

c. *Date Filed:* August 30, 2021.

d. *Applicant:* Lakeport Hydroelectric One, LLC (Lakeport).

e. *Name of Project:* Lakeport Hydroelectric Project (project).

f. *Location:* On the Winnepesaukee River in Laconia, Belknap County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Ms. Jody Smet, Lakeport Hydroelectric One, LLC c/o Eagle Creek Renewable Energy, LLC; 7315 Wisconsin Avenue, Suite 1100W; Bethesda, MD 20814; (240) 482-2700; or email at jody.smet@eaglecreekre.com.

i. *FERC Contact:* Erin Kimsey, (202) 502-8621 or erin.kimsey@ferc.gov.

j. *Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at <https://ferconline.ferc.gov/FEROnline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FEROnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Lakeport Hydroelectric Project (P-6440-010).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is now ready for environmental analysis.

The Council on Environmental Quality (CEQ) issued a final rule on April 20, 2022, revising the regulations under 40 CFR parts 1502, 1507, and 1508 that Federal agencies use to implement the National Environmental Policy Act (NEPA) (see National Environmental Policy Act Implementing Regulations Revisions, 87 FR 23453-70). The final rule became effective on May 20, 2022. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

l. The Lakeport Hydroelectric Project consists of the following existing facilities: (1) a 359-foot-long, 12.34-foot-high concrete gravity dam that includes the following sections: (a) a 60-foot-long west abutment section; (b) a 78-foot-long, 4-foot high section topped with three 10-foot-high, 18-foot-wide slide gates with a crest elevation of 505.31 feet¹ at the top of the slide gates; (c) an approximately 15 foot-long overflow section topped with 6-inch-high flashboards with a crest elevation of 504.7 feet at the top of the flashboards; (d) an approximately 21-foot-long, 10-foot-wide center pier topped with 6-inch-high flashboards with a crest elevation of 504.7 feet at the top of the flashboards; (e) a 25-foot-long, 12.33-foot-high stoplog section; (f) a 44-foot-long, 42.17-foot-wide concrete section that is integral with the dam and that contains three 200-kW vertical submersible Flygt turbine-generator units located on outdoor concrete pilings for a total installed capacity of 600 kW and (g) an approximately 116-foot-long east abutment section that extends upstream; (2) a 220-foot-long stone training wall that extends downstream; (3) an impoundment (Lake Winnepesaukee) with a surface area of approximately 46,208 acres and a storage capacity of 165,800 acre-feet at an elevation of 504.32 feet; (4) a 2,800-square-foot forebay area; (5) a 44-foot-wide, 13-foot-high concrete and granite intake structure that is equipped with three 6-foot-diameter cylindrical headgates and a trashrack with 0.75-inch clear bar spacing; (6) a 23-foot-long, 30.5-foot-wide concrete and lumber control building adjacent to the turbine-generator units; (7) an 80-foot-long, 50-foot-wide tailrace that discharges into the Winnepesaukee River; (8) a downstream fish passage facility that consists of a collection box and a 70-foot-long, 10-inch-diameter PVC pipe; (9) three 30- to 55-foot-long, 0.48-kilovolt (kV) generator leads, three 0.48/12.4-kV step-up transformers at a substation adjacent to the control building that connect the project to the local utility distribution system; and (10) appurtenant facilities.

The New Hampshire Department of Environmental Services (New Hampshire DES) owns the dam and the land occupied by the project. Lakeport leases the project land and dam from the NHDES, and operates the project in accordance with NHDES's management objectives. Lake Winnepesaukee is managed under the following schedule: Beginning on January 1, the lake is

¹ Elevation data are presented using the National Geodetic Vertical Datum of 1929 (NGVD29).

drawn down from 503.50 to 502.32 feet by the first week of March. Then, the lake is refilled to between 504.10 and 504.32 feet by June 1. From June 1 to Columbus Day, the lake elevation is maintained between 502.80 and 504.32 feet for summer recreation. From Columbus Day through December 31, the lake elevation is maintained between 503.00 and 503.50 feet for shoreline maintenance. A year-round minimum flow of 200 cubic feet per second (cfs) or greater is provided from the spillway or the powerhouse to the Winnepesaukee River.

The applicant is not proposing any changes to the project facilities or project operation.

m. A copy of the application can be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must: (1) bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at <https://www.ferc.gov/ferc-online/overview> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. The applicant must file no later than 60 days following the date of issuance of this notice: (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

p. Procedural Schedule: The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Filing of Comments, Recommendations, Terms and Conditions, and Prescriptions.	January 2024.
Filing of Reply Comments	February 2024.

q. 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: November 14, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-25673 Filed 11-20-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10615-058]

Tower Kleber Limited Partnership; Notice of Tribal Consultation Meeting and Environmental Site Review

On December 6, 2023, Commission staff will hold a Tribal consultation meeting and environmental site review on the proposed relicensing of the Tower and Kleber Hydroelectric Project No. 10615 (project).

Tribal Consultation Meeting

On December 6, 2023, at 1:00 p.m. EST, Commission staff will hold a meeting to consult with Tribes on the project's relicensing and cultural resources at the project. Discussion topics for the consultation meeting are noted in Appendix A.

The consultation meeting is open to all. Participation in the discussion, however, will be limited to the Tribes and Commission staff. The relicense applicant, Tower Kleber Limited Partnership, will be given an opportunity to describe its relicensing proposal for the project. Others attending may do so as observers only.

There will be no transcript of the meeting, but a summary of the meeting will be prepared for the project record. In accordance with the requirements of section 304 of the National Historic Preservation Act and implementing regulations,¹ if the Tribes decide to disclose information about a specific location that could create a risk or harm to an archeological site or Native American cultural resource, attendees will be excused for that portion of the meeting and can return to the meeting after such information is disclosed. Commission staff's meeting summary will include an unredacted privileged version and a redacted public version that excludes information about the specific location of the archeological site or Native American cultural resource.

The consultation meeting will be held in person at the Onaway City Hall located at 20774 State Street, Onaway, Michigan 49765. A teleconference option will be available for stakeholders that cannot attend the meeting in person. If you are interested in attending via teleconference, please contact Arash Barsari at (202) 502-6207 or Arash.JalaliBarsari@ferc.gov by December 4, 2023, to receive specific instructions on how to participate.

¹ See 54 U.S.C. 307103; 36 CFR 800.11(c).

Environmental Site Review

On December 6, 2023, at 9:00 a.m. EST, Tower Kleber Limited Partnership will conduct an environmental site review of the project. All interested persons are invited to participate.

The site review will include the facilities associated with the two hydropower developments of the project (*i.e.*, the Tower Development and Kleber Development). The site review will commence at the parking area adjacent to the Tower Development powerhouse. Please note that all participants are responsible for their own transportation to/from the project and during the site review tour. If you are interested in attending, or have questions regarding the site review, please contact Jim Tucker of Tower Kleber Limited Partnership via email at tuckerjkgam@aol.com, or telephone at (989) 370-1704 by Friday, December 1, 2023.

Participants will meet at the parking area adjacent to the Tower Development powerhouse at 9660 Co-Op Road, Onaway, Michigan 49765. Participants should arrive early for coordination purposes and to begin the tour promptly at 9:00 a.m. EST. Additionally, participants must wear sturdy, closed-toe shoes or boots.

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: November 15, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

Appendix A—Tribal Consultation Meeting Discussion Topics

1. Introduction
2. Relicensing process
3. Project description
4. Scope of issues in NEPA document
5. Treaty rights
6. Culturally significant resources and habitats
7. Conclusion

[FR Doc. 2023-25740 Filed 11-20-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24-13-000]

MountainWest Overthrust Pipeline, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on November 2, 2023, MountainWest Overthrust Pipeline, LLC (Overthrust), 333 S. State St., 3rd Floor, Salt Lake City, Utah 84111, filed an application under section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization for its Westbound Compression Expansion Project (Project). The Project is an incremental expansion of Overthrust's existing pipeline system that will enable Overthrust to provide an additional 325,000 dekatherms per day of westbound firm transportation capacity. Overthrust proposes to install one 15,900 ISO-rated horsepower (HP), gas-fired turbine compressor unit each at its Point of Rocks and Rock Springs Compressor Stations and appurtenances, all located in Lincoln and Sweetwater Counties, Wyoming. Overthrust estimates the total cost of the Project to be \$116,900,000. Overthrust proposes an incremental recourse reservation rate applicable to the firm transportation service under the Project. The Project shipper has elected to pay a negotiated reservation rate, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (www.ferc.gov) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at FercOnlineSupport@ferc.gov or call toll-free, (886) 208-3676 or TTY (202) 502-8659.

Any questions regarding the proposed project should be directed to Greg Williams, Regulatory Analyst Lead, MountainWest Overthrust Pipeline, LLC, 333 S. State St., 3rd Floor, Salt Lake City, Utah 84111 by phone at (801) 209-6764, or by email at greg.williams@williams.com.

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,¹ within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on December 6, 2023. How to file protests, motions to intervene, and comments is explained below.

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*.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

¹ 18 CFR (Code of Federal Regulations) 157.9.

Protests

Pursuant to sections 157.10(a)(4)² and 385.211³ of the Commission's regulations under the NGA, any person⁴ may file a protest to the application. Protests must comply with the requirements specified in section 385.2001⁵ of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protester states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before December 6, 2023.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP24–13–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Comment on a Filing"; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP24–13–000).

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,⁶ has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁷ and the regulations under the NGA⁸ by the intervention deadline for the project, which is December 6, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to/intervene.asp>.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP24–13–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on

"eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Intervention." The eFiling feature includes a document-less intervention option; for more information, visit <https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf>; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP24–13–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail or email at: Greg Williams, Regulatory Analyst Lead, MountainWest Overthrust Pipeline, LLC, 333 S. State St., 3rd Floor, Salt Lake City, Utah 84111 or by email at greg.williams@williams.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed⁹ motions to intervene are automatically granted by operation of Rule 214(c)(1).¹⁰ Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.¹¹ A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

² 18 CFR 157.10(a)(4).

³ 18 CFR 385.211.

⁴ Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

⁵ 18 CFR 385.2001.

⁶ 18 CFR 385.102(d).

⁷ 18 CFR 385.214.

⁸ 18 CFR 157.10.

⁹ The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

¹⁰ 18 CFR 385.214(c)(1).

¹¹ 18 CFR 385.214(b)(3) and (d).

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website at www.ferc.gov using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

Intervention Deadline: 5:00 p.m. Eastern Time on December 6, 2023.

Dated: November 15, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-25710 Filed 11-20-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14851-003]

White Pine Waterpower, LLC; Notice of Revised Schedule for White Pine Pumped Storage Project

This notice revises the Federal Energy Regulatory Commission's (Commission) schedule for processing White Pine Waterpower, LLC's license application for the White Pine Pumped Storage Project. A prior notice issued on May 11, 2023, identified an anticipated schedule for issuance of draft and final National Environmental Policy Act (NEPA) documents and a final order for the project. After the issuance of that notice, White Pine Waterpower, LLC indicated that it will be conducting a hydrogeologic study that provides data on local aquifer stratigraphy, groundwater elevation, and water quality needed to support the design of the project's water supply wellfield. White Pine Waterpower, LLC stated that it would file the study results by "November 2024". On October 26, 2023, Commission staff issued a letter requiring White Pine Waterpower, LLC to file the corresponding study results with the Bureau of Land Management

before filing them with the Commission by January 31, 2025. To account for the additional time needed for White Pine Waterpower, LLC to complete the studies and file the study results, the application will be processed according to the following revised schedule.

Notice of Ready for Environmental

Analysis: April 14, 2025

Draft NEPA Document: January 9, 2026

Final NEPA Document: July 24, 2026

In addition, in accordance with Title 41 of the Fixing America's Surface Transportation Act, enacted on December 4, 2015, agencies are to publish completion dates for all federal environmental reviews and authorizations. This notice identifies the Commission's anticipated schedule for issuance of the final order for the project, which is based on the revised issuance date for the final NEPA document. Accordingly, we currently anticipate issuing a final order for the project no later than:

Issuance of Final Order November 19, 2026

If a schedule change becomes necessary, an additional notice will be provided so that interested parties and government agencies are kept informed of the project's progress.

Dated: November 15, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-25709 Filed 11-20-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD23-9-000]

Reliability Technical Conference; Notice Inviting Post-Technical Conference Comments

On Thursday, November 9, 2023, the Federal Energy Regulatory Commission (Commission) convened its annual Commissioner-led Reliability Technical Conference to discuss policy issues related to the reliability of the Bulk-Power System, and the impact of the Environmental Protection Agency's proposed rule under section 111 of the Clean Air Act on electric reliability.¹

¹ New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 88 FR 33240 (proposed May 23, 2023) (to be codified at 40 CFR part 60).

All interested persons are invited to file post-technical conference comments to address issues raised during the technical conference and identified in the Second Supplemental Notice for this Technical Conference issued on October 30, 2023. For reference, the questions included in the Second Supplemental Notice are included below. Commenters need not answer all of the questions, but are encouraged to organize responses using the numbering and order in the below questions. Commenters are also invited to reference material previously filed in this docket, but are encouraged to avoid repetition or replication of their previous comments. Comments must be submitted on or before 30 days from the date of this Notice.

Comments, identified by docket number, may be filed electronically or paper-filed. Electronic filing through <https://www.ferc.gov> is preferred. Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format. Instructions are available on the Commission's website: <http://www.ferc.gov/docs-filing/efiling.asp>.

Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, submissions sent via the U.S. Postal Service must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to:

Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For more information about this

Notice, please contact:

Michael Gildea (Technical Information), Office of Energy Reliability, (202) 502-8420, Michael.Gildea@ferc.gov.

Gonzalo E. Rodriguez (Legal Information), Office of the General Counsel, (202) 502-8568, Gonzalo.Rodriguez@ferc.gov.

Dated: November 14, 2023.

Kimberly D. Bose,

Secretary.

Post Technical Conference Questions

1. State of Bulk Power System Reliability With a Focus on the Changing Resource Mix and Resource Adequacy

The transformation of the Bulk-Power System is resulting in significant changes to the nation's power supply portfolio. These changes include increased penetrations of inverter-based resources, the increased use and importance of natural gas generating units for system balancing, and the

participation of distributed energy resources. Ensuring the adequate supply of electric energy to service loads during peak hours and during extreme weather conditions is also becoming more challenging in many regions of North America.

What should the Commission's top reliability priorities be for the next one to three years? What are potential actions the Commission could take to improve reliability regarding these priorities?

(a) What trends and risks identified in NERC's 2023 State of Reliability Report and the 2023 ERO Reliability Risk Priorities Report warrant the most attention and effort?

(b) Resource adequacy traditionally has been characterized in terms of planning reserve margin, which assesses the excess generating capacity required to meet peak load. NERC and industry have recently been discussing the notion of energy adequacy, which assesses whether there is sufficient energy—power over time—to meet customers' energy needs. Is energy adequacy a more appropriate metric to characterize reliability risks given the changing grid?

(c) NERC has highlighted essential reliability services (*e.g.*, frequency response, voltage control, and ramping capability) as core to maintaining reliable operation of the grid. How does the changing resource mix and characteristics of load affect the needed amount and provision of these essential reliability services? What actions, and by whom, are necessary to ensure adequate levels of these services?

(d) The electric grid is undergoing its most significant changes in a century. How should reliability oversight adapt to this change? Is the existing reliability oversight model flexible and agile enough to help lead the change?

(e) In recent years, reliance on natural gas as a fuel for electric generation has steadily increased. At the Commission's recommendation, the North American Energy Standards Board (NAESB) held forums between August 2022 and July 2023 to discuss the growing interdependence between the natural gas and electric sectors. NAESB issued recommendations to enhance market coordination to address challenges posed by this growing interdependence. Should the Commission prioritize pursuing any specific NAESB recommendation?

(f) Wildfires are no longer considered only a California or Western states issue for grid reliability, as drought conditions are expanding into additional regions including MISO, ERCOT and SPP creating further

reliability impacts. What preparations have you taken (or are you considering) to address emerging wildfire and drought reliability risks in your region?

2. CIP Reliability Standards and the Evolving Grid

Cybersecurity vulnerabilities and threats continue to evolve at a pace that tests utility cybersecurity programs. These quickly evolving threats present a challenge when assessing whether security controls, including the CIP Reliability Standards, adequately respond to the latest cyber risks. Most utilities and other electric sector stakeholders with mature cybersecurity programs implement an overarching cybersecurity program to oversee all aspects of their cybersecurity activities, including identification of the assets to be protected, staffing, technology selection and procurement, and compliance with the CIP Reliability Standards. However, ongoing and anticipated changes to the interconnected electric grid, such as the shift in the types of energy sources used to generate electricity may disrupt cyber programs. Utilities are digitizing their grids while managing an increasing number of grid-connected devices. As a consequence, utilities require more advanced tools to process and analyze large amounts of data for grid planning, operations, and security. These changes are also leaving uncertainty as to where these digital assets will fit into the cybersecurity regulatory framework and what tools can be used to effectively manage them or even what the future may bring as cyberattacks continue to grow in sophistication.

(a) Discuss the primary security issues facing electric utilities and describe the prioritization of resources and investment. What are some lessons learned and best practices?

(b) With regard to evolving cyber threats, describe how your cybersecurity program identifies and responds to such conditions. When responding, how do you assess the risk posed to your systems by the threats?

(c) Describe the benefits and challenges of implementing and maintaining a cybersecurity program as the resource mix continues to evolve. How does this program interact with actions to comply with the CIP Reliability Standards? How does such a program help to identify and prioritize security concerns, and what actions are taken to address those concerns, including the application of best practices?

(d) Describe how supply chain security and the use of third-party systems, such as cloud services, are

addressed in your risk assessments and implemented in the cybersecurity program. What concerns still exist related to supply chain and third-party systems?

(e) What additional actions can the Commission, NERC, and industry take to further protect the grid from security threats, both physical and cyber?

3. Reliability Implications of EPA's Proposed Rule on "Greenhouse Gas Standards and Guidelines for Fossil Fuel-Fired Power Plants"

On May 23, 2023, the EPA issued a notice of proposed rulemaking under section 111 of the Clean Air Act. The proposed rule would set New Source Performance Standards for new power plants that run on fossil gas.

(a) Will the rule, if implemented as proposed, affect electric reliability? In what ways?

(b) What tools and processes should the Commission, other federal and state agencies, and industry consider in order to implement the proposed rule? What authority should the Commission and other federal and state agencies have in order to address potential reliability issues that could arise during implementation of the proposed rule?

(c) What existing processes for coordination will enable federal and state agencies, planning entities, and industry stakeholders to share ongoing developments relevant to the implementation of the proposed rule?

(d) What specific tools are currently available to agencies to consider impacts to retail consumers? Are there additional tools that should be developed to consider these issues?

[FR Doc. 2023–25672 Filed 11–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5679–041]

Energy Stream, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: Subsequent Minor License.

b. *Project No.*: 5679–041.

c. *Date Filed*: July 15, 2022.

d. *Applicant*: Energy Stream, LLC.

e. *Name of Project*: M.S.C.

Hydroelectric Project (project).

f. *Location*: On the Quinebaug River in Windham County, Connecticut.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Rolland Zeleny, Energy Stream, LLC, 18 Washington St., Suite 18, Canton, MA 02021; Phone at (603) 498–8089, or email at indigoharbor@yahoo.com.

i. *FERC Contact*: John Baummer at (202) 502–6837, or john.baummer@ferc.gov.

j. *Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions*: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at <https://ferconline.ferc.gov/FEROnline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FEROnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: M.S.C. Hydroelectric Project (P–5679–041).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

1. The M.S.C. Project consists of the following existing facilities: (1) a 296-foot-long, 14.3-foot-high granite block and concrete dam that includes: (a) an approximately 38-foot-long headgate structure with four aluminum sluice gates that are each 4 feet wide by 10 feet high; (b) a 115-foot-long granite block spillway section with a concrete cap, 16-inch-high flashboards, and a crest elevation of 287.80 feet mean sea level (msl) at the top of the flashboards; (c) a 5-foot-wide abutment at the northwest end of the spillway; (d) a 7-foot-wide pier at the southwest end of the spillway; (e) a 91-foot-long auxiliary concrete gravity spillway section with a crest elevation of 288.70 feet msl; (f) an 8-foot-wide abutment at the southwest end of the auxiliary spillway; and (g) a 32-foot-long retaining wall section with a 10-foot-wide, 10-foot-high stoplog gate and a crest elevation of 289.7 feet msl; (2) an impoundment with a surface area of 52 acres at an elevation of 287.8 feet msl; (3) a 38-foot-wide, 24-foot-long stone and concrete forebay downstream of the headgate structure; (4) a 19-foot-wide, 11-foot-high intake structure at the downstream end of the forebay with a 19-foot-wide, 16.5-foot-high trashrack with 1.6-inch clear bar spacing; (5) a 2-foot-wide, 3-foot-high low-level outlet gate adjacent to the trashrack; (6) a 30-foot-long, 14-foot-wide steel and reinforced concrete powerhouse containing a 400-kilowatt (kW) Kaplan turbine-generator unit and a 112-kW Francis turbine-generator unit, for a total installed capacity of 512 kW; (7) a 50-foot-long, 26-foot-wide tailrace; (8) three 50-foot-long, 2.4-kilovolt (kV) lead lines that connect the generators to three 2.4/23-kV step-up transformers, which connect to the regional grid; and (9) appurtenant facilities. The project creates an approximately 65-foot-long bypassed reach of the Quinebaug River.

Article 401 of the current license requires Energy Stream, LLC to operate the project in a run-of-river mode, such that project outflow approximates inflow. Energy Stream, LLC maintains the impoundment at the flashboard crest elevation of 288.74 feet msl. To protect aquatic resources, Article 26 of the current license requires Energy Stream, LLC to release a continuous minimum flow of 144 cubic feet per second (cfs) or inflow to the impoundment, whichever is less, into the downstream reach, as measured immediately below the tailrace. Article 402 of the current license specifies seasonal minimum flow releases to the downstream reach when refilling the impoundment following emergency or maintenance

drawdowns, including 90 percent of impoundment inflow.

Article 404 of the current license requires Energy Stream, LLC to provide upstream and downstream passage for American eels. Upstream passage for American eels is provided from June 15 to September 1 by netting placed over the dam and ramps extending to the crest of the flashboards. Downstream American eel passage is provided from September 1 through November 15, on rainy nights and three nights after rain events, through a notch in the flashboards located on the west side of the spillway, and a low-level outlet gate.

The minimum and maximum hydraulic capacities of the powerhouse are 40 and 545 cfs, respectively. The average annual generation of the project was approximately 2,885 megawatt-hours from 2017 through 2021.

Energy Stream, LLC is not proposing any changes to project facilities or operation.

m. A copy of the application can be viewed on the Commission's website at <https://www.ferc.gov> using the "eLibrary link." Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must: (1) bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from

the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at <https://www.ferc.gov/ferc-online/overview> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *The applicant must file no later than 60 days following the date of issuance of this notice:* (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

p. *Procedural Schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Filing of Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions.	January 2024.
Filing of Reply Comments	February 2024.

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

r. 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: November 14, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-25675 Filed 11-20-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23-544-000]

Northern Border Pipeline Company; Notice of Schedule for the Preparation of an Environmental Assessment for the Bison Xpress Project

On September 15, 2023, Northern Border Pipeline Company (Northern Border) filed an application in Docket No. CP23-544-000 requesting authorization and a Certificate of Public Convenience and Necessity under sections 7(b) and 7(c) of the Natural Gas Act and part 157 of the Commission's regulations to construct and operate certain natural gas pipeline facilities located in McKenzie, Dunn, and Morton Counties, North Dakota. The proposed project is known as the Bison Xpress Project (Project) and would create 300,000 dekatherms per day (Dth/d) of incremental mainline capacity to Northern Border's interconnection with Bison Pipeline, LLC. Northern Border would abandon the capacity by lease to Wyoming Interstate Company, LLC.

On October 2, 2023, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.¹

Schedule for Environmental Review

Issuance of EA April 8, 2024
90-day Federal Authorization Decision
Deadline² July 7, 2024

¹ 40 CFR 1501.10 (2020).

² The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Northern Border's proposed Bison Xpress Project consists of the replacement and expansion of compression facilities at Northern Border's existing compressor stations including Arnegard (No. 4) in McKenzie County, North Dakota; Manning (No. 5) in Dunn County, North Dakota; and Glen Ullin (No. 6) in Morton County, North Dakota. Upon completion, the Bison Xpress Project would (a) replace and expand existing compressor facilities with new, more modern and efficient compression facilities; (b) create 300,000 Dth/d of incremental mainline natural gas capacity from receipt points between Northern Border's Culbertson Compressor Station and Glen Ullin Compressor Station to its interconnection with Bison Pipeline, LLC in Morton County, North Dakota (Kurtz Delivery Point); and (c) introduce standby horsepower on Northern Border's system. Northern Border plans to abandon 100 percent of the capacity by lease to Wyoming Interstate Company, LLC. Applications by Bison Pipeline, LLC (Docket No. CP23-543-000) and Wyoming Interstate Company, LLC and Fort Union Gas Gathering, LLC (Docket No. CP23-545-000) are associated projects being evaluated under the applicable Commission regulations.

Background

On October 30, 2023, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Bison Express Project* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. The Commission has currently received 23 comments from environmental organizations, two Dunn County representatives, two North Dakota State Senators, the North Dakota Petroleum Council, the North Dakota Chamber of Commerce, North Dakota Board of Commissioners for Mackenzie, Morton, and Dunn Counties, North Dakota Industrial Commission, the Western Dakota Energy Association, community

other agency's decisions applies unless a schedule is otherwise established by federal law.

organizations, local business owners, a healthcare center, the Northern Border Shipper Group (collectively, Tenaska Marketing Ventures and Twin Eagle Resource Management, LLC), the Indicated Shippers (collectively, bp Energy Company, ConocoPhillips Company, and Shell Energy North America, L.P.), the Canadian Association of Petroleum Producers (CAPP). The majority of comments (20) were in support of the Project. The primary issues filed by the Indicated Shippers, the Northern Border Shipper Group, and CAPP raised concerns with the treatment of the rates, costs, and proposed capacity leases associated with the Project and the related applications filed by Bison Pipeline, LLC (Docket No. CP23–543–000) and Wyoming Interstate Company, LLC and Fort Union Gas Gathering, LLC (Docket No. CP23–545–000). All substantive environmental comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

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.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (www.ferc.gov). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" excluding the last three digits (*i.e.*, CP23–544), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at FERCOnlineSupport@ferc.gov. The eLibrary link on the FERC website also provides access to the texts of formal

documents issued by the Commission, such as orders, notices, and rule makings.

Dated: November 15, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023–25707 Filed 11–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–15–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on November 6, 2023, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.208 of the Commission's regulations under the Natural Gas Act (NGA), and Columbia's blanket certificate issued in Docket No. CP83–76–000, for authorization to modify the existing Line D322 pipeline at various locations, including the installation of two bi-directional launching and receiving stations for in-line inspection (ILI) devices, and other appurtenant facilities. All of the above facilities are located in Morrow, Marion, Hardin, and Allen Counties, Ohio (Line D322 East ILI Project). The project will allow Columbia to enable the bi-directional in-line inspection, or pigging, of its 16-inch-diameter Line D322. The estimated cost for the project is \$16.4 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (www.ferc.gov) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at FercOnlineSupport@ferc.gov or call toll-free, (866) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, at (832) 320–5477 or david_alonzo@tcenergy.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on January 16, 2024. How to file protests, motions to intervene, and comments is explained below.

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.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,¹ any person² or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,³ and must be submitted by the protest deadline, which is January 16, 2024. A protest may also serve as a motion to intervene so long as the

¹ 18 CFR 157.205.

² Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

³ 18 CFR 157.205(e).

protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is January 16, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before January 16, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How to File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–15–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Protest", "Intervention", or "Comment on a Filing"; or⁶

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–15–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other method: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, or at david_alonzo@tcenergy.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at www.ferc.gov using the "eLibrary" link

⁶ Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

Dated: November 15, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–25706 Filed 11–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–15–000.

Applicants: Tucson Electric Power Company v. California Independent System Operator Corporation.

Description: Complaint of Tucson Electric Power Company v. California Independent System Operator Corporation.

Filed Date: 11/14/23.

Accession Number: 20231114–5174.

Comment Date: 5 p.m. ET 12/4/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1735–002.

Applicants: Alabama Power Company.

Description: Compliance filing: Order No. 864 TFCAT Further Compliance Filing to be effective 1/27/2020.

Filed Date: 11/15/23.

Accession Number: 20231115–5080.

Comment Date: 5 p.m. ET 12/6/23.

Docket Numbers: ER23–2492–002.

Applicants: Gunvor USA LLC.

Description: Tariff Amendment: Amendment to 2 to be effective 9/24/2023.

Filed Date: 11/14/23.

Accession Number: 20231114–5133.

Comment Date: 5 p.m. ET 12/5/23.

Docket Numbers: ER23–2653–001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Wirth Forestry Solar LGIA Deficiency Response to be effective 8/7/2023.

Filed Date: 11/15/23.

Accession Number: 20231115-5074.

Comment Date: 5 p.m. ET 12/6/23.

Docket Numbers: ER24-396-000.

Applicants: Hopi Utilities Corporation.

Description: Petition for Limited Waiver of Hopi Utilities Corporation.

Filed Date: 11/13/23.

Accession Number: 20231113-5368.

Comment Date: 5 p.m. ET 11/20/23.

Docket Numbers: ER24-397-000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Amendment to ISA and CSA, SA Nos. 6542 and 6543; Queue No. AC1-033 to be effective 1/15/2024.

Filed Date: 11/15/23.

Accession Number: 20231115-5057.

Comment Date: 5 p.m. ET 12/6/23.

Docket Numbers: ER24-398-000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 3983 Flat Ridge 5 Wind Energy GIA Cancellation to be effective 8/22/2023.

Filed Date: 11/15/23.

Accession Number: 20231115-5060.

Comment Date: 5 p.m. ET 12/6/23.

Docket Numbers: ER24-399-000.

Applicants: Chief Conemaugh Power, LLC.

Description: 205(d) Rate Filing: Ministerial Revisions to Joint Reactive Rate Schedules to be effective 12/31/9998.

Filed Date: 11/15/23.

Accession Number: 20231115-5077.

Comment Date: 5 p.m. ET 12/6/23.

Docket Numbers: ER24-400-000.

Applicants: Chief Keystone Power, LLC.

Description: 205(d) Rate Filing: Ministerial Revisions to Joint Reactive Rate Schedules to be effective 12/31/9998.

Filed Date: 11/15/23.

Accession Number: 20231115-5083.

Comment Date: 5 p.m. ET 12/6/23.

Docket Numbers: ER24-401-000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): Targeted Adj. to Certain FCM Parameters to Reflect Min. Offer Price Rule Elim. to be effective 1/15/2024.

Filed Date: 11/15/23.

Accession Number: 20231115-5095.

Comment Date: 5 p.m. ET 12/6/23.

Docket Numbers: ER24-402-000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: OATT Revisions Distinguishing Regional & Cross-Border NITS to be effective 1/13/2024.

Filed Date: 11/15/23.

Accession Number: 20231115-5106.

Comment Date: 5 p.m. ET 12/6/23.

Docket Numbers: ER24-402-001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Correction to OATT Revisions Distinguishing Regional & Cross-Border NITS to be effective 1/15/2024.

Filed Date: 11/15/23.

Accession Number: 20231115-5140.

Comment Date: 5 p.m. ET 12/6/23.

Docket Numbers: ER24-403-000.

Applicants: Talen Conemaugh LLC.

Description: Baseline eTariff Filing: Certificate of Concurrence to be effective 12/31/9998.

Filed Date: 11/15/23.

Accession Number: 20231115-5136.

Comment Date: 5 p.m. ET 12/6/23.

Docket Numbers: ER24-404-000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6609; Queue No. AD1-025 to be effective 1/15/2024.

Filed Date: 11/15/23.

Accession Number: 20231115-5137.

Comment Date: 5 p.m. ET 12/6/23.

Docket Numbers: ER24-405-000.

Applicants: Talen Keystone LLC.

Description: Baseline eTariff Filing: Certificate of Concurrence to be effective 12/31/9998.

Filed Date: 11/15/23.

Accession Number: 20231115-5141.

Comment Date: 5 p.m. ET 12/6/23.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.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: November 15, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-25737 Filed 11-20-23; 8:45 am]

BILLING CODE 6717-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Cancellation of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the previously announced Open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10:00 a.m. on Thursday, November 16, 2023, has been **CANCELLED**.

The Board has decided to act notationally on the agenda items requiring action and therefore will not be holding a Board meeting today.

No earlier notice of this cancellation was practicable.

Dated at Washington, DC, on November 16, 2023.

Federal Deposit Insurance Corporation.

Authority: 5 U.S.C. 552b.

Dated: November 16, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023-25732 Filed 11-20-23; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

TIME AND DATE: November 20, 2023 at 1:00 p.m.

PLACE: 77 K Street NE, Washington, DC 20002.

STATUS: Closed to the public.

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Closed Session

1. Information covered under 5 U.S.C. 552b(c)(6).

Authority: 5 U.S.C. 552b(e)(1).

Dated: November 15, 2023.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2023–25640 Filed 11–20–23; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 212 3012]

Global Tel*Link; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 21, 2023.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write “Global Tel*Link Corporation; File No. 212 3012” on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Ave. NW, Mail Stop H–144 (Annex I), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robin Wetherill (202–326–2220), Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and

FTC § Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 21, 2023. Write “Global Tel*Link Corporation; File No. 212 3012” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. If you prefer to file your comment on paper, write “Global Tel*Link Corporation; File No. 212 3012” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Ave. NW, Mail Stop H–144 (Annex I), Washington, DC 20580. If possible, submit your paper comment to the Commission by overnight service.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. Your comment should not include sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR

4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website at <http://www.ftc.gov> to read this document and the news release describing the proposed settlement. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before December 21, 2023. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (the “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Global Tel*Link Corporation, which also operates under the name Viapath (“Viapath”); Telmate, LLC (“Telmate”); and TouchPay Holdings, LLC (“TouchPay”) (collectively, “Respondents”). The Proposed Order has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received, and it will decide whether it should withdraw from the agreement and take appropriate action

or make final the agreement's Proposed Order.

Viapath is one of the largest providers of inmate telephone services in the United States. In combination with subsidiaries such as Telmate and TouchPay, Viapath also provides a host of additional communications, technology, and financial services to incarcerated consumers, their friends and family, and other outside contacts of incarcerated individuals, and to jails, prisons, and other carceral institutions ("Facility" or "Facilities").

In August 2020, a third-party contractor engaged by Telmate left a database containing consumers' personal information publicly exposed on the internet (the "Incident"). The exposed database contained the personal information of thousands of people who used Respondents' products and services, including GettingOut, VisitNow (also known as VisitMe), Command, Telmate Inmate Telephone service, and Guardian.

The exposed personal information included the full text of messages exchanged using Respondents' services, grievance forms submitted by incarcerated people to jails and prisons, and information about incarcerated and non-incarcerated users such as names, dates of birth, phone numbers, usernames or email addresses in combination with passwords, home addresses, driver's license numbers, passport numbers, payment card numbers, financial account information, Social Security numbers, and data related to telephone services (like the dates and times of calls, called numbers, calling numbers, station used, and location information, like certain individuals' latitude and longitude at particular points in time). One or more unauthorized individuals accessed the exposed database and downloaded personal information from it. At least some of the exposed information was made available for sale on the dark web, where other people could also access or buy it.

The Commission's proposed six-count complaint alleges Respondents violated Section 5(a) of the Federal Trade Commission Act by: (1) unfairly failing to employ reasonable data security measures (Count I); (2) unfairly failing to notify consumers affected by the Incident in a timely manner (Count II); (3) deceptively misrepresenting that Respondents implemented reasonable and appropriate measures to protect consumers' personal information against unauthorized access; (4) deceptively misrepresenting that Respondents had no reason to believe that consumers' sensitive personal information was

affected by the Incident; (5) deceptively misrepresenting that Respondents would timely notify affected consumers; and (6) deceptively 2 misrepresenting that Respondents had never experienced a data security breach or that they had not experienced a data security breach within a particular timeframe that included the dates of the Incident.

The Proposed Order contains provisions designed to prevent Respondents from engaging in the same or similar acts or practices in the future. The Proposed Order also contains provisions designed to provide products to consumers affected by the Incident. Provision I of the Proposed Order requires Respondents to establish and implement, and thereafter maintain, a comprehensive data security program that protects the security, confidentiality, and integrity of consumers' Personal Information, as that term is defined in the Proposed Order. Provision II of the Proposed Order requires Respondents to obtain initial and biennial data security assessments by an independent third-party professional ("Assessor") for 20 years, and Provision III requires Respondents to cooperate with the Assessor in connection with the assessments required by Provision II. Provision IV of the Proposed Order requires that a senior corporate manager or senior office of Respondents certify Respondents' compliance with the Proposed Order. Provision V of the Proposed Order requires Respondents to provide consumers affected by the Incident with two years of enrollment in a credit monitoring and identity protection product. This provision includes requirements that are designed to help incarcerated consumers affected by the Incident access the product. Provision VI of the Proposed Order requires Respondents to notify consumers and relevant Facilities of any future incident that results in Respondents notifying, pursuant to a statutory or regulatory requirement, any U.S. federal, state, or local government entity that Personal Information of or about an individual consumer was, or is reasonably believed to have been, accessed or acquired, or publicly exposed without authorization ("Covered Incident"). Provision VII of the Proposed Order requires Respondents to notify the Commission of any future Covered Incident.

Provision VIII of the Proposed Order prohibits Respondents from misrepresenting: (1) Respondents' privacy and security measures to prevent unauthorized access to Personal Information; (2) the occurrence, extent, nature, potential consequences, or any

other fact relating to a Covered Incident actually or potentially involving or affecting Personal Information within the ownership, custody, or control of one or more Respondents; (3) the extent to which Respondents have notified or will notify affected parties in connection with a Covered Incident; (4) the extent to which Respondents meet or exceed industry-standard security or privacy practices; and (5) the extent to which Respondents otherwise protect the privacy, security, availability, confidentiality, or integrity of Personal Information.

Provision IX of the Proposed Order require Respondents to provide notice of the Incident by: (1) posting notice on each of Respondents' websites and the home screen of each of Respondents' mobile applications that has been used to provide Telmate products and services; and (2) sending notice to each consumer affected by the Incident that did not previously receive notification of the Incident. Provision X of the Proposed Order requires Respondents to provide relevant Facilities with notice of the Incident.

Provisions XI–XIV of the Proposed Order are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring Respondents to provide information or documents necessary for the Commission to monitor compliance. Provision XV states the Proposed Order will remain in effect for 20 years.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

April J. Tabor,
Secretary.

[FR Doc. 2023–25690 Filed 11–20–23; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MV–2023–01; Docket No. 2023–0002; Sequence No. 36]

Public Availability of General Services Administration Fiscal Year 2021 Service Contract Inventory

AGENCY: Office of Governmentwide Policy; General Services Administration, (GSA).

ACTION: Notice.

SUMMARY: In accordance with The Fiscal Year (FY) 2010 Consolidated

Appropriations Act, GSA is publishing this notice to advise the public of the availability of the FY 2021 Service Contract Inventory.

DATES: *Applicable:* November 21, 2023.

FOR FURTHER INFORMATION CONTACT:

Questions regarding the Service Contract Inventory should be directed to Mr. Jeffrey Pitts in the Office of Acquisition Policy at 202–501–0712 or jeffrey.pitts@gsa.gov.

SUPPLEMENTARY INFORMATION: In accordance with section 743 of Division C of the FY 2010 Consolidated Appropriations Act (Pub. L. 111–117), GSA is publishing this notice to advise the public of the availability of the Fiscal Year 2021 Service Contract Inventory. This inventory is available at <https://www.acquisition.gov/service-contract-inventory>. The inventory provides information on governmentwide service contract actions over \$25,000 that were made in FY 2021. The service contract inventory information located on [acquisition.gov](https://www.acquisition.gov) can be filtered by agency and component to show how contracted resources are distributed throughout any agency. The inventory has been developed in accordance with the guidance issued on December 19, 2011, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at: <https://obamawhitehouse.archives.gov/omb/procurement-service-contract-inventories>. GSA has posted its FY 2020 inventory analyses and its planned analyses of FY 2021 actions at the following location: <http://www.gsa.gov/gsasci>.

Jeffrey A. Koses,

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

[FR Doc. 2023–25694 Filed 11–20–23; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[Notice–MG–2023–04; Docket No. 2023–0002; Sequence No. 40]

Office of Federal High-Performance Green Buildings; Green Building Advisory Committee; Notification of Upcoming Public Meeting

AGENCY: Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, this notice provides the

agenda for a Web-based meeting of the Green Building Advisory Committee (the Committee). This meeting will be focused on finalizing and voting on Task Group topics for FY2024. The meeting is open to the public to observe; online attendees are required to register in advance to attend as instructed below.

DATES: The Committee's online meeting will be held Thursday, December 7, 2023, from 3:00 p.m. to 4:30 p.m., Eastern Time (ET).

FOR FURTHER INFORMATION CONTACT: Mr. Michael Bloom, Designated Federal Officer, Office of Federal High-Performance Green Buildings, Office of Government-wide Policy, GSA, 1800 F Street NW, (Mail-code: MG), Washington, DC 20405, at gbac@gsa.gov or 312–805–6799. Additional information about the Committee, including meeting materials and agendas, will be made available on-line at <http://www.gsa.gov/gbac>.

SUPPLEMENTARY INFORMATION:

Procedures for Attendance and Public Comment

To register to attend this meeting as a public observer, please send the following information via email to gbac@gsa.gov: your first and last name, organization and email address and whether you would like to provide public comment. Requests to observe the December 7, 2023 meeting must be received by 5:00 p.m. ET, on Monday, December 4, 2023 to receive the meeting information.

Full meeting agenda and attendance information will be provided following registration. Limited time will be provided for public comment.

GSA will be unable to provide technical assistance to any listener experiencing technical difficulties. Testing access to the Web meeting site before the calls is recommended. To request an accommodation, such as closed captioning, or to ask about accessibility, please contact Mr. Bloom at gbac@gsa.gov at least five business days prior to the meeting to give GSA as much time as possible to process the request.

Background

The Administrator of GSA established the Committee on June 20, 2011 (*Federal Register*/Vol. 76, No. 118) pursuant to section 494 of the Energy Independence and Security Act of 2007 (EISA, 42 U.S.C. 17123). Under this authority, the Committee provides independent policy advice and recommendations to GSA to advance federal building innovations in

planning, design, and operations to reduce costs, enable agency missions, enhance human health and performance, and minimize environmental impacts.

December 7, 2023 Online Meeting Agenda:

- 3:00–3:15 Welcome & Updates
- 3:15–4:15 Discussion and Vote on GBAC Task Group Topic(s) for FY2024
- 4:15–4:25 Public Comment
- 4:25–4:30 Thank you & Adjourn

Kevin Kampschroer,

Director, Office of Federal High-Performance Green Buildings, General Services Administration.

[FR Doc. 2023–25717 Filed 11–20–23; 8:45 am]

BILLING CODE 6820–14–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0163; Docket No. 2023–0001; Sequence No. 5]

Information Collection; General Services Administration Acquisition Regulation; Contract Solicitation Information

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection regarding GSA solicitations issued for various supplies and services.

DATES: Submit comments on or before: January 22, 2024.

ADDRESSES: Submit comments identified by Information Collection 3090–0163, Contract Solicitation Information, via <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching the OMB control number 3090–0163. Select the link “Comment Now” that corresponds with “Information Collection 3090–0163, Contract Solicitation Information”. Follow the instructions provided on the screen. Please include your name, company name (if any), and “Information Collection 3090–0163, Contract Solicitation Information,” on your attached document.

Instructions: Please submit comments only and cite Information Collection 3090–0163, Contract Solicitation

Information, in all correspondence related to this collection. Comments received generally will be posted without change to *regulations.gov*, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *regulations.gov*, approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence Harrison, Procurement Analyst, at *GSARPolicy@gsa.gov* or 202-227-7051.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSA requires organizations desiring to do business with GSA for various supplies and services to provide procurement-related information through solicitations issued in accordance with the Federal Acquisition Regulation (FAR) Part 12, 14, 15 and 16 procedures. Using solicitation methods such as Requests for Proposals (RFP), Requests for Information (RFI), and Broad Agency Announcements (BAA), GSA requests information from prospective offerors such as pricing information, delivery schedule compliance, and evidence that the offeror has the resources (both human and financial) to accomplish requirements. Much of the solicitation information collected is covered by FAR clauses and the separate information collection approvals associated with them. Other GSA solicitation requirements call for more detailed or technical information to be provided, such as project management or sustainability plans, and drive the need for this information collection.

B. Annual Reporting Burden

Respondents: 338,465.
Responses per Respondent: 1.
Total Responses: 338,465.
Hours per Response: 2.
Total Burden Hours: 676,930.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the Regulatory Secretariat Division, at *GSARegSec@gsa.gov*. Please cite OMB Control No. 3090-0163, Contract Solicitation Information, in all correspondence.

Jeffrey A. Koses,

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

[FR Doc. 2023-25693 Filed 11-20-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

[OMB Control No. 9000-0153; Docket No. 2023-0053; Sequence No. 8]

Submission for OMB Review; Federal Acquisition Regulation Part 11 Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a previously approved information collection requirement regarding certain Federal Acquisition Regulation (FAR) part 11 requirements.

DATES: DoD, GSA, and NASA will consider all comments received by December 21, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202-969-7207, or *zenaida.delgado@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and any Associated Form(s)

OMB Control No. 9000-0153, Federal Acquisition Regulation Part 11 Requirements.

B. Need and Uses

DoD, GSA, and NASA are combining OMB Control Nos. by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify burdens associated with a given FAR part. The review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports the extension of OMB Control No. 9000-0153 and combines it with the previously approved information collections under OMB Control No. 9000-0043, with the new title "Federal Acquisition Regulation Part 11 Requirements". Upon approval of this consolidated information collection, OMB Control No. 9000-0043 will be discontinued. The burden requirements previously approved under the discontinued number will be covered under OMB Control No. 9000-0153.

This clearance covers the information that offerors or contractors must submit to comply with the following FAR requirements:

- FAR 52.211-7, Alternatives to Government-Unique Standards. This solicitation provision permits offerors to propose alternatives to Government-unique standards in response to Government solicitations. When an offeror proposes a voluntary consensus standard as an alternative to a Government-unique standard included in a solicitation, the offeror must furnish data and/or information regarding the alternative in sufficient detail for the Government to determine if it meets the Government's requirements. This provision is prescribed in FAR 11.107 for use when a solicitation uses Government-unique standards and the agency uses the transaction-based reporting method to report its use of voluntary consensus standards to the National Institutes of Standards and Technology (NIST). This provision is optional for use if an agency uses the categorical method to report to NIST. In accordance with OMB Circular A-119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity

Assessment Activities, and section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113, 15 U.S.C. 272 note), agencies must use voluntary consensus standards, when they exist, in lieu of Government-unique standards, except where inconsistent with law or otherwise impractical. The information collected from offerors will be used by Federal agencies to determine if voluntary consensus standards will satisfy the Government's needs for a particular solicitation.

- FAR 52.211–8, Time of Delivery; and 52.211–9, Desired and Required Time of Delivery. These time of delivery clauses may be used by contracting officers to set forth a required delivery schedule and to allow offerors to propose an alternative delivery schedule. Contracting officers use the collected information to ensure supplies or services are obtained in a timely manner.

C. Annual Burden

Respondents: 1,377.

Total Annual Responses: 1,377.

Total Burden Hours: 738.5.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 88 FR 62085, on September 8, 2023. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing GSARegSec@gsa.gov. Please cite OMB Control No. 9000–0153, Federal Acquisition Regulation Part 11 Requirements.

Janet Fry,

*Director, Federal Acquisition Policy Division,
Office of Governmentwide Acquisition Policy,
Office of Acquisition Policy, Office of
Governmentwide Policy.*

[FR Doc. 2023–25727 Filed 11–20–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Healthy Marriage and Responsible Fatherhood Performance Measures and Additional Data Collection (Office of Management and Budget #0970–0566)

AGENCY: Office of Planning, Research, and Evaluation, Administration for

Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF), Office of Family Assistance (OFA), is requesting an extension with changes to its approved collection and reporting of performance measures about program operations, services, and clients served through the Healthy Marriage (HM) and Responsible Fatherhood (RF) grant programs. In an effort to gain a greater understanding of how HMRF programs influence program participants and staff at an individual level, ACF proposes to add one open field to the quarterly narrative reports to capture information about the experiences of HMRF participants and/or staff. ACF is requesting to extend approval, with the implementation of this change, for 3 years.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing OPREinfocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ACF proposes to continue collecting a set of Office of Management and Budget (OMB)-approved performance measures from all HMRF award recipients.

The HMRF performance measures collect standardized information in the following areas:

- Applicant characteristics;
- Program operations;
- Service delivery; and
- Participant outcomes:
 - Entrance survey, with five versions: (1) HM Program Entrance Survey for Adult-Focused Programs; (2) HM Program Entrance Survey for Youth-Focused Programs; (3) RF Program Entrance Survey for Community-Based Fathers; (4) RF Program Entrance Survey for Community-Based Mothers; and (5) RF Program Entrance Survey for Reentering Fathers.
 - Exit survey, with five versions: (1) HM Program Exit Survey for Adult-Focused Programs; (2) HM Program Exit Survey for Youth-Focused Programs; (3) RF Program Exit Survey for Community-Based Fathers; (4) RF Program Exit Survey for Community-Based Mothers;

and (5) RF Program Exit Survey for Reentering Fathers.

The measures were developed in 2014 after extensive review of the research literature and recipients' past measures. They were revised in 2020 based on a targeted analysis of existing measures, feedback from key audiences, and discussions with ACF staff and the 2015 cohort of recipients. OMB approved these revised measures in 2021 and has approved a handful of non-substantive changes since then.

ACF also proposes to continue the OMB-approved quarterly reporting on the following measures, with minor changes as described:

- Semi-annual Performance Progress Report (PPR), with two versions: (1) Performance Progress Report for HM Programs, and (2) Performance Progress Report for RF Programs; and
- Quarterly Performance Report (QPR), with two versions: (1) Quarterly Performance Progress Report for HM Programs, and (2) Quarterly Performance Progress Report for RF Programs. ACF proposes to add a new text box to the QPRs to gather qualitative narratives of the experiences of HMRF participants and/or staff. This information will help build ACF's understanding of how HMRF programs influence program participants and staff at an individual level.

ACF provides recipients with a web-based performance measures data collection system called nFORM 2.0 (Information, Family Outcomes, Reporting, and Management) to improve the efficiency of data collection and reporting and the quality of data. This system allows for streamlined and standardized submission of recipient performance data through regular progress reports and supports recipient-led and federal research projects.

ACF also proposes to continue the OMB-approved requirement for recipients to document their continuous quality improvement (CQI) planning and implementation using a CQI plan template that is completed outside of the nFORM system.

Respondents: Respondents include HM and RF award recipient staff and program applicants and participants (participants are called "clients").

Annual Burden Estimates: The estimated number of respondents for each instrument has been adjusted to reflect experiences in the field to date. There is no change to the average estimated time per response of any instrument.

Instrument	Respondent	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
1: Applicant Characteristics	Program applicants	150,000	1	0.25	37,500	12,500
	Program staff	330	455	0.10	15,015	5,005
2: Program Operations	Program staff	110	12	0.32	422	141
3: Service Delivery Data	Program staff	1,650	86	0.50	70,950	23,650
4: Entrance and Exit Surveys	Program clients (entrance)	141,498	1	0.42	59,429	19,810
	Program clients (exit)	94,734	1	0.42	39,788	13,263
	Program staff (entrance and exit on paper)	220	351	0.10	7,722	2,574
5: Semi-annual Performance Progress Report (PPR)	Program staff	110	6	3	1,980	660
6: Quarterly Performance Report (QPR)	Program staff	110	6	1	660	220
7: CQI Plan	Program staff	110	3	4	1,320	440

Estimated Total Annual Burden Hours: 78,263.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Sec. 403. [42 U.S.C. 603].

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023-25720 Filed 11-20-23; 8:45 am]

BILLING CODE 4184-73-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Voluntary Acknowledgment of Paternity and Required Data Elements for Paternity Establishment Affidavits

AGENCY: Office of Child Support Services, Administration for Children

and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Child Support Services (OCSS), Administration for Children and Families (ACF), United States Department of Health and Human Services, is requesting a three-year extension of the Voluntary Acknowledgment of Paternity and Required Data Elements for Paternity Establishment Affidavits (OMB #0970-0171, expiration 1/31/2024). No changes are proposed.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. You can also obtain copies of the proposed collection of information by emailing infocollection@acf.hhs.gov. Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Section 466(a)(5)(C) of the Social Security Act requires States to enact laws ensuring a simple civil process for voluntarily acknowledging paternity via an affidavit. The development and use of an affidavit for the voluntary acknowledgment of paternity would include the minimum requirements of the affidavit specified by the Secretary under section 452(a)(7) of the Social Security Act and give full faith and credit to such an affidavit signed in any other State according to its procedures. The State must provide that, before a mother and putative father can sign a voluntary acknowledgment of paternity, the mother and putative father must be given notice, orally, or through the use of video equipment, and in writing, of the alternatives to, the legal consequences of, and the rights (including any rights, if one parent is a minor, due to minority status) and responsibilities of acknowledging paternity. The affidavits will be used by hospitals, birth record agencies, and other entities participating in the voluntary paternity establishment program to collect information from the parents of nonmarital children.

Respondents: The parents of nonmarital children, State and Tribal agencies operating child support programs under Title IV-D of the Social Security Act, hospitals, birth record agencies, and other entities participating in the voluntary paternity establishment program.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Training	130,240	1	1	130,240
Paternity Acknowledgment Process	1,618,412	1	0.17	275,130
Data Elements	54	1	1	54

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Ordering Brochures	2,604,802	1	.08	208,384

Estimated Total Annual Burden Hours: 613,808.

Authority: 42 U.S.C. 666(a)(5)(C) and 652(a)(7).

Mary B. Jones,
ACF/OPRE Certifying Officer.

[FR Doc. 2023–25731 Filed 11–20–23; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; U.S. Repatriation Program Forms (Office of Management and Budget No.: 0970–0474)

AGENCY: Office of Human Services, Emergency Preparedness and Response, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is proposing to collect information to support state planning, training, and exercise activities and technical assistance for the United States (U.S.) Repatriation Program through six new forms in addition to the currently approved forms.

DATES: Comments due within 30 days of publication. The Office of Management and Budget (OMB) must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open

for Public Comments” or by using the search function. You can also obtain copies of the proposed collection of information by emailing infocollection@acf.hhs.gov. Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The purpose of the U.S. Repatriation Program (Program) is to provide temporary assistance to eligible U.S. citizens and their dependents (repatriates) returned by the Department of State from a foreign country because of destitution, illness, war, threat of war, or a similar crisis, and who are without available resources, or (2) mental illness. Temporary assistance is provided upon their arrival in the U.S. and is available initially for up to 90 days from a repatriate’s date of arrival in the U.S. Temporary assistance is provided in the form of a service loan and is repayable to the U.S. Government.

Temporary assistance is defined in 42 U.S.C. 1313(c) as money payments, medical care, temporary lodging, transportation, and other goods and services necessary for the health or welfare of individuals, including guidance, counseling, and other welfare services provided to them within the U.S. upon their arrival in the U.S. Other goods and services may include clothes, food, assistance with obtaining identification (driver’s license, birth certificate), child care, and translation services.

The ACF Office of Human Services, Emergency Preparedness and Response (OHSEPR), at the U.S. Department of Health and Human Services (HHS), administers the U.S. Repatriation Program.

There are currently eight forms approved under this OMB number. This new request will extend approval of those forms without changes. For more information about these currently approved forms, see https://www.reginfo.gov/public/do/PRAMain?ref_nbr=202204-0970-004.

Most recently, OHSEPR developed new forms to support the planning, training, and exercise cooperative

agreements with states and the new training and technical assistance center. This notice and the associated request to OMB will add these forms under this OMB number.

The following is a description of the forms and the proposed revisions:

Project Narrative

The purpose of this form is for an overall description of planned activities for the entire project period (e.g., years 1, 2, and 3) regarding emergency repatriation planning, training, and exercises.

Annual Workplan

The purpose of this form is for an annual workplan for each federal fiscal year for emergency repatriation planning, training, and exercises.

Budget and Budget Narrative

This form is to provide a budget and budget narrative for planned activities for each annual workplan regarding planning, training, and exercises for repatriation.

Repatriation State Contact List

The purpose is to ensure current and accurate points-of-contact within states and territories for the U.S. Repatriation Program routine and emergency operations.

Repatriation Training and Technical Assistance Request

States, territories, counties, and local service providers may use this form to request training and technical assistance on the U.S. Repatriation Program via a web portal account.

Post-Training Survey

The purpose of this survey is to receive feedback on trainings to improve the support for and customer experience of states, territories, and local service providers supporting the U.S. Repatriation Program.

Respondents: States, Territories, local social service providers, administrative staff.

Annual Burden Estimates:

CURRENTLY APPROVED FORMS

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Emergency Repatriation Eligibility Application	1,000	1	.5	500
Emergency Repatriation Reimbursement Request	10	1	.3	3
Loan Waiver and Deferral Application	100	1	.5	50
Routine Repatriation Reimbursement Request	25	10	.3	75
Repatriation Repayment and Privacy Agreement	800	1	.17	136
Refusal of Temporary Assistance	300	1	.05	15
Temporary Assistance Extension Request	25	1	.3	8
Emergency Repatriation Request for Cost Approval and Federal Support	5	10	.3	15
Total Annual Burden Hours				802

PROPOSED NEW FORMS

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Project Narrative	55	1	.5	28
Annual Workplan	55	1	1	55
Budget and Budget Narrative	55	1	1	55
Repatriation State Contact List	220	2	.25	110
Repatriation Training and Technical Assistance Request	500	2	.25	250
Post-Training Survey	1000	1	.17	170
Total Annual Burden Hours				668

Estimated Total Annual Burden Hours: 1,470.

Authority: 42 U.S.C. 1313, 24 U.S.C. 321–329.

Mary B. Jones,
ACF/OPRE Certifying Officer.

[FR Doc. 2023–25682 Filed 11–20–23; 8:45 am]

BILLING CODE 4184–PL–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity: Social Services Block Grant Post-Expenditure Report, Pre-Expenditure Report, and Intended Use Plan (Office of Management and Budget# 0970–0234)

AGENCY: Office of Community Services, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families' (ACF) Office of Community Services (OCS) is requesting from the Office of Management and Budget (OMB) a three-year extension of the Social Services Block Grant (SSBG) Post-Expenditure Report, Pre-

Expenditure Report, and Intended Use Plan (OMB# 0970–0234). OCS is proposing to make minor editorial modifications to some column titles in the Pre- and Post-Expenditure Reports, for clarification.

DATES: *Comments are due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing infocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: On an annual basis, States and Territories are required to submit the following reports: (1) An Intended Use Plan that provides data and narrative descriptions related to the State's SSBG program. The Intended Use Plan includes details about the delivery of SSBG services and the State agency administering the SSBG Program. ACF is proposing to expand the currently approved information collection to include the collection of States' Intended Use Plans with a model format. Recipients are required to submit their Pre-Expenditure Report no

less than 30 days prior to the start of the period covered by the report. (2) A Pre-Expenditure Report demonstrates the State's anticipated allocation of SSBG funding among the 29 pre-defined SSBG service categories. Historically, States have submitted this report using the Post-Expenditure Report Form, and the associated burden is included in the currently approved information collection. Recipients are required to submit their Intended Use Plan no less than 30 days prior to the start of the period covered by the report, together with the Pre-Expenditure Report. (3) A Post-Expenditure Report details the State's actual use of SSBG funding among each of the 29 service categories. Recipients are required to submit their Post-Expenditure Report within 6 months of the end of the period covered by the report.

The law governing the programs at title XX of the Social Security Act [42 U.S.C. 1397c] mandates States and Territories submit to the Federal administering office an Intended Use Plan and Pre-Expenditure report. These materials are to detail the planned use of funds. At the end of the fiscal year, the law also requires States to provide the Federal agency with a reconciliation of the actual use of grant funds in the Post-Expenditure Report [42 U.S.C. 1397e].

The forms and model plans support the States and Territories in meeting the statutory requirement and provide a consistent set of tools for information collection on the grants' use for each State, as well as grant wide. The State and Territory reports are congregated and analyzed and, in turn, comprise the SSBG Annual Report. The data informs

the program's performance and efficiency measures for program impact and efficacy.

OCS is proposing to make minor editorial modifications to some column titles in the Pre- and Post-Expenditure Reports, for clarification.

Respondents: Agencies that administer SSBG at the State or

Territory level, including the 50 States; the District of Columbia; the Commonwealth of Puerto Rico; and the Territories of American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of Northern Mariana Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Pre-Expenditure Report Form	57	1	2	114
Intended Use Plan	57	1	40	2,280
Post-Expenditure Reporting Form	57	1	110	6,270
Estimated Total Annual Burden Hours .....	.....	.....	.....	8,664

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 1397–1397e.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–25712 Filed 11–20–23; 8:45 am]

BILLING CODE 4184–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nominations for Membership on the Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Assistant Secretary for Health, Office for Human Research Protections, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), a program office in the Office of the Assistant Secretary for Health, Department of Health and Human Services (HHS), is

seeking nominations of qualified candidates to be considered for appointment as members of the Secretary's Advisory Committee on Human Research Protections (SACHRP). SACHRP provides advice and recommendations to the Secretary, HHS (Secretary), through the Assistant Secretary for Health, on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. SACHRP was established by the Secretary on October 1, 2002. OHRP is seeking nominations of qualified candidates to fill three positions on the Committee membership that will be vacated during the 2024 calendar year.

DATES: Nominations for membership on the Committee must be received no later than (60 days).

ADDRESSES: Nominations may be emailed to SACHRP@hhs.gov. Nominations may also be mailed or delivered to Julia Gorey, Executive Director, SACHRP, Office for Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Nominations will not be accepted by facsimile.

FOR FURTHER INFORMATION CONTACT: Julia Gorey, Executive Director, SACHRP, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, telephone: 240–453–8141. A copy of the Committee charter and list of the current members can be obtained by contacting Ms. Gorey, accessing the SACHRP website at www.hhs.gov/ohrp/sachrp, or requesting via email at sachrp@hhs.gov.

SUPPLEMENTARY INFORMATION: The Committee provides advice on matters

pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. Specifically, the Committee provides advice relating to the responsible conduct of research involving human subjects with particular emphasis on special populations such as neonates and children, prisoners, the decisionally impaired, pregnant women, embryos and fetuses, economically and educationally disadvantaged populations, individuals and populations in international studies, investigator conflicts of interest and populations in which there are individually identifiable samples, data or information.

In addition, the Committee is responsible for reviewing selected ongoing work and planned activities of the OHRP and other offices/agencies within HHS responsible for human subjects protection.

Nominations: The OHRP is requesting nominations to fill two positions for voting members of SACHRP. Nominations of potential candidates for consideration are being sought from a wide array of fields, including, but not limited to public health and medicine, behavioral and social sciences, patient advocacy, health administration, and biomedical ethics. To qualify for consideration of appointment to the Committee, an individual must possess demonstrated experience and expertise in any of the several disciplines and fields pertinent to human subjects protection and/or clinical research.

The individuals selected for appointment to the Committee can be invited to serve a term of up to four years. Committee members receive a

stipend and reimbursement for per diem and any travel expenses incurred for attending Committee meetings and/or conducting other business in the interest of the Committee. Interested applicants may self-nominate.

The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address, daytime telephone number, and the home and/or work address, telephone number, and email address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. Federal employees should not be nominated for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that individuals from a broad representation of geographic areas, women and men, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Individuals who are selected to be considered for appointment will be required to provide detailed information regarding their financial holdings, consultancies, and research grants or contracts. Disclosure of this information is necessary in order to determine if the selected candidate is involved in any activity that may pose a potential conflict with the official duties to be performed as a member of SACHRP.

Authority: 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended. The Committee is governed by the provisions of Public Law 92-463, as amended (5 U.S.C. appendix 2), which sets forth standards for the

formation and use of advisory committees.

Julia Gorey,

Executive Director, Secretary's Advisory Committee on Human Research, Protections, Office for Human Research Protections.

[FR Doc. 2023-25742 Filed 11-20-23; 8:45 am]

BILLING CODE 4150-36-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2024, Through September 30, 2025

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The Federal Medical Assistance Percentages (FMAP), Enhanced Federal Medical Assistance Percentages (eFMAP), and disaster-recovery FMAP adjustments for fiscal year 2025 have been calculated pursuant to the Social Security Act (the Act). These percentages will be effective from October 1, 2024, through September 30, 2025. This notice announces the calculated FMAP rates, in accordance with the Act, that the U.S. Department of Health and Human Services (HHS) will use in determining the amount of Federal matching for state medical assistance (Medicaid), Temporary Assistance for Needy Families (TANF) Contingency Funds, Child Support collections, Child Care Mandatory and Matching Funds of the Child Care and Development Fund, Title IV-E Foster Care Maintenance payments, Adoption Assistance payments and Kinship Guardianship Assistance payments, and the eFMAP rates for the Children's Health Insurance Program (CHIP) expenditures. Table 1 gives figures for each of the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. This notice reminds states of adjustments available for states meeting requirements for disproportionate employer pension or insurance fund contributions and adjustments for disaster recovery. At this time, no state qualifies for such adjustments, and territories are not eligible.

DATES: The percentages listed in Table 1 will be effective for each of the four

quarter-year periods beginning October 1, 2024, and ending September 30, 2025.

FOR FURTHER INFORMATION CONTACT:

Amelia Whitman, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 447D—Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201, (202) 578-1478.

SUPPLEMENTARY INFORMATION: Programs under titles IV, XIX and XXI of the Act exist in each jurisdiction. Programs under titles I, X, and XIV operate only in Guam and the Virgin Islands, and a program under title XVI (Aid to the Aged, Blind, or Disabled) operates only in Puerto Rico. The percentages in this notice apply to state expenditures for most medical assistance and child health assistance, and assistance payments for certain social services. The Act provides separately for Federal matching of administrative costs.

Sections 1905(b) and 1101(a)(8)(B) of the Social Security Act (the Act) require the Secretary of HHS to publish the FMAP rates each year. The Secretary calculates the percentages, using formulas in sections 1905(b) and 1101(a)(8), and calculations by the Department of Commerce of average income per person in each state and for the United States (meaning, for this purpose, the fifty states and the District of Columbia). The percentages must fall within the upper and lower limits specified in section 1905(b) of the Act. The percentages for the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands are specified in statute, and thus are not based on the statutory formula that determines the percentages for the 50 states.

Federal Medical Assistance Percentage (FMAP)

Section 1905(b) of the Act specifies the formula for calculating FMAPs as follows:

“Federal medical assistance percentage” for any state shall be 100 per centum less the state percentage; and the state percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such state bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum”.

Section 1905(b) further specifies that the FMAP for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 55 percent.

However, section 5101(b) of the Consolidated Appropriations Act, 2023 amended section 1905(ff) of the Act to provide that the FMAP for the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 83 percent permanently, and that the FMAP for Puerto Rico shall be 76 percent through September 30, 2027. In addition, we note the rate that applies for Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands in certain other programs pursuant to section 1118 of the Act. Section 4725(b) of the Balanced Budget Act of 1997 amended section 1905(b) to provide that the FMAP for the District of Columbia, for purposes of titles XIX and XXI, shall be 70 percent. For the District of Columbia, we note under Table 1 that other rates may apply in certain other programs. The rates for the States, District of Columbia and the territories are displayed in Table 1, Column 1.

Section 1905(y) of the Act, as added by section 2001 of the Patient Protection and Affordable Care Act of 2010 (“Affordable Care Act”) (Pub. L. 111–148), provides for a significant increase in the FMAP for medical assistance expenditures for newly eligible individuals described in section 1902(a)(10)(A)(i)(VIII) of the Act, as added by the Affordable Care Act (the new adult group); “newly eligible” is defined in section 1905(y)(2)(A) of the Act. The FMAP for the new adult group is 100 percent for Calendar Years 2014, 2015, and 2016, gradually declining to 90 percent in 2020, where it remains indefinitely. Section 1905(c) of the Act was further amended by section 9814 of the American Rescue Plan of 2021 (Pub. L. 1117–2) to provide an eight-quarter increase of five percentage points in a qualifying state or territory’s FMAP for a state or territory that begins to cover the new adult group after March 11, 2021. In addition, section 1905(z) of the Act, as added by section 10201 of the Affordable Care Act, provides that states that offered substantial health coverage to certain low-income parents and nonpregnant, childless adults on the date of enactment of the Affordable Care Act, referred to as “expansion states,” shall receive an enhanced FMAP beginning in 2014 for medical assistance expenditures for nonpregnant childless adults who may be required to enroll in benchmark coverage under section 1937 of the Act. These provisions are discussed in more detail in the Medicaid Program:

Eligibility Changes Under the Affordable Care Act of 2010 proposed rule published on August 17, 2011 (76

FR 51148, 51172) and the final rule published on March 23, 2012 (77 FR 17144, 17194). This notice is not intended to set forth the matching rates for the new adult group as specified in section 1905(y) of the Act or the matching rates for nonpregnant, childless adults in expansion states as specified in section 1905(z) of the Act.

Other Adjustments to the FMAP

For purposes of Title XIX (Medicaid) of the Social Security Act, the Federal Medical Assistance Percentage (FMAP), defined in section 1905(b) of the Social Security Act, for each state beginning with fiscal year 2006, can be subject to an adjustment pursuant to section 614 of the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111–3. Section 614 of CHIPRA stipulates that a State’s FMAP under title XIX (Medicaid) must be adjusted in two situations.

In the first situation, if a state experiences no growth or positive growth in total personal income and an employer in that state has made a significantly disproportionate contribution to an employer pension or insurance fund, the state’s FMAP must be adjusted. The adjustment involves disregarding the significantly disproportionate employer pension or insurance fund contribution in computing the per capita income for the state (but not in computing the per capita income for the United States). Employer pension and insurance fund contributions are significantly disproportionate if the increase in contributions exceeds 25 percent of the total increase in personal income in that state. A **Federal Register** Notice with comment period was published on June 7, 2010 (75 FR 32182) announcing the methodology for calculating this adjustment; a final notice was published on October 15, 2010 (75 FR 63480).

The second situation arises if a state experiences negative growth in total personal income. Beginning with fiscal year 2006, section 614(b)(3) of CHIPRA specifies that, for the purposes of calculating the FMAP for a calendar year in which a state’s total personal income has declined, the portion of an employer pension or insurance fund contribution that exceeds 125 percent of the amount of such contribution in the previous calendar year shall be disregarded in computing the per capita income for the state (but not in computing the per capita income for the United States).

No Federal source of reliable and timely data on pension and insurance contributions by individual employers and states is currently available. We

request that states report employer pension or insurance fund contributions to help determine potential FMAP adjustments for states experiencing significantly disproportionate pension or insurance contributions and states experiencing a negative growth in total personal income. See also the information described in the January 21, 2014 **Federal Register** notice (79 FR 3385).

Section 1905(aa) of the Social Security Act, as amended by section 2006 of the Affordable Care Act, specifies that the annual FMAP rate shall be increased for a “disaster-recovery FMAP adjustment state.” The statute defines a “disaster-recovery FMAP adjustment state” as one of the 50 states or District of Columbia for which, at any time during the preceding 7 fiscal years, the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, under which every county or parish in the state is eligible for individual and public or public assistance from the Federal Government, and for which the FMAP as determined for the fiscal year is less than the FMAP for the preceding fiscal year by at least three percentage points. This notice does not contain disaster recovery adjustments since no state qualifies as a “disaster-recovery FMAP adjustment state.” See more information described in the December 22, 2010 **Federal Register** notice (75 FR 80501).

Enhanced Federal Medical Assistance Percentage (eFMAP) for CHIP

Section 2105(b) of the Act specifies the formula for calculating the eFMAP rates as follows:

[T]he “enhanced FMAP”, for a state for a fiscal year, is equal to the Federal medical assistance percentage (as defined in the first sentence of section 1905(b)) for the state increased by a number of percentage points equal to 30 percent of the number of percentage points by which (1) such Federal medical assistance percentage for the state, is less than (2) 100 percent; but in no case shall the enhanced FMAP for a state exceed 85 percent.

The eFMAP rates are used in the Children’s Health Insurance Program under title XXI and in the Medicaid program for expenditures for medical assistance provided to certain children as described in sections 1905(u)(2) and 1905(u)(3) of the Act. There is no specific requirement to publish the eFMAP rates. We include them in this notice for the convenience of the states (Table 1, Column 2).

(Catalog of Federal Domestic Assistance Program Nos. 93.558: TANF Contingency

Funds; 93.563: Child Support Services;
93.596: Child Care Mandatory and Matching
Funds of the Child Care and Development
Fund; 93.658: Foster Care Title IV–E; 93.659:
Adoption Assistance; 93.769: Ticket-to-Work
and Work Incentives Improvement Act

(TWWIIA) Demonstrations to Maintain
Independence and Employment; 93.778:

Medical Assistance Program; 93.767:
Children's Health Insurance Program)

Xavier Becerra,

*Secretary, Department of Health and Human
Services.*

TABLE 1—FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES,
EFFECTIVE OCTOBER 1, 2024–SEPTEMBER 30, 2025

[Fiscal Year 2025]

State	Federal medical assistance percentages	Enhanced federal medical assistance percentages
Alabama	72.84	80.99
Alaska	51.54	66.08
American Samoa *	83.00	85.00
Arizona	64.89	75.42
Arkansas	71.14	79.80
California	50.00	65.00
Colorado	50.00	65.00
Connecticut	50.00	65.00
Delaware	60.15	72.11
District of Columbia **	70.00	79.00
Florida	57.17	70.02
Georgia	66.04	76.23
Guam *	83.00	85.00
Hawaii	59.08	71.36
Idaho	67.59	77.31
Illinois	51.38	65.97
Indiana	64.90	75.43
Iowa	63.25	74.28
Kansas	61.87	73.31
Kentucky	71.48	80.04
Louisiana	68.06	77.64
Maine	62.06	73.44
Maryland	50.00	65.00
Massachusetts	50.00	65.00
Michigan	65.13	75.59
Minnesota	51.16	65.81
Mississippi	76.90	83.83
Missouri	65.31	75.72
Montana	62.37	73.66
Nebraska	57.52	70.26
Nevada	60.22	72.15
New Hampshire	50.00	65.00
New Jersey	50.00	65.00
New Mexico	71.68	80.18
New York	50.00	65.00
North Carolina	65.06	75.54
North Dakota	50.97	65.68
Northern Mariana Islands *	83.00	85.00
Ohio	64.60	75.22
Oklahoma	67.08	76.96
Oregon	59.00	71.30
Pennsylvania	55.09	68.56
Puerto Rico *	76.00	83.20
Rhode Island	56.31	69.42
South Carolina	69.67	78.77
South Dakota	53.07	67.15
Tennessee	64.81	75.37
Texas	60.00	72.00
Utah	64.36	75.05
Vermont	58.19	70.73
Virgin Islands *	83.00	85.00
Virginia	50.99	65.69
Washington	50.00	65.00
West Virginia	73.84	81.69
Wisconsin	60.43	72.30
Wyoming	50.00	65.00

* The Consolidated Appropriations Act, 2023 set the FMAP for American Samoa, Guam, Northern Marianas, and Virgin Islands permanently at 83 percent and set the FMAP for Puerto Rico at 76 percent through FY 2027. For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI will be 75 percent.

** The values for the District of Columbia in the table were set for the state plan under titles XIX and XXI and for capitation payments and disproportionate share hospital (DSH) allotments under those titles. For other purposes, the percentage for DC is 50.00, unless otherwise specified by law.

[FR Doc. 2023–25636 Filed 11–20–23; 8:45 am]
BILLING CODE 4150–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board and NCI Board of Scientific Advisors, November 29, 2023, 05:30 p.m. to November 30, 2023, 05:30 p.m., National Cancer Institute—Shady Grove, 9609 Medical Center Drive, Room TE406 & 408, Rockville, MD, 20850 which was published in the **Federal Register** on September 29, 2023, FR Doc 2023–21441, 88 FR 67328.

This meeting notice is being amended to change the meeting format from hybrid (in-person & virtual) to virtual only. In addition, the National Cancer Advisory Board (NCAB) Subcommittee Meeting on November 29, 2023, will now be held from 1:00 p.m. to 2:00 p.m. instead of 5:30 p.m. to 9:00 p.m. The closed session of the NCAB on November 30, 2023, will now be held from 12:00 p.m. to 1:05 p.m. instead of 4:30 p.m. to 5:30 p.m. The open session of the NCAB and NCI Board of Scientific Advisors (BSA) on November 30, 2023, will now be held from 1:15 p.m. to 5:00 p.m. instead of 8:00 a.m. to 4:15 p.m. The NCAB Subcommittee meeting and open session of the NCAB and BSA can be accessed from the NIH VideoCasting at the following link: <https://videocast.nih.gov/>. The meeting is partially closed to the public.

Dated: November 15, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–25677 Filed 11–20–23; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2023–0029]

Commercial Customs Operations Advisory Committee

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Committee management; Notice of Open Federal advisory committee meeting.

SUMMARY: The Commercial Customs Operations Advisory Committee (COAC) will hold its quarterly meeting on Wednesday, December 13, 2023, in Washington, DC. The meeting will be open for the public to attend in person or via webinar. The in-person capacity is limited to 75 persons for public attendees.

DATES: The COAC will meet on Wednesday, December 13, 2023, from 1:00 p.m. to 5:00 p.m. EST. Please note that the meeting may close early if the committee has completed its business. Registration to attend and comments must be submitted no later than December 8, 2023.

ADDRESSES: The meeting will be held at the CBP Office of Training and Development, 1717 H Street NW, Washington, DC 20229—Classroom 7300A. For virtual participants, the webinar link and conference number will be posted by 5:00 p.m. EST on December 12, 2023, at <https://www.cbp.gov/trade/stakeholder-engagement/coac>. For information or to request special assistance for the meeting, contact Mrs. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, at (202) 344–1440, as soon as possible.

Comments may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Search for Docket Number USCBP–2023–0029. To submit a comment, click the “Comment” button located on the top-left hand side of the docket page.

- **Email:** tradeevents@cbp.dhs.gov. Include Docket Number USCBP–2023–0029 in the subject line of the message.

Comments must be submitted in writing no later than December 8, 2023, and must be identified by Docket No. USCBP–2023–0029. All submissions received must also include the words “Department of Homeland Security.” All comments received will be posted without change to <https://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings> and www.regulations.gov. Therefore, please refrain from including any personal information you do not wish to be posted. You may wish to view the Privacy and Security Notice, which is available via a link on www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Mrs. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229, (202) 344–1440; or Ms. Felicia M. Pullam, Designated Federal Officer, at (202) 344–1440 or via email at tradeevents@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the authority of the Federal Advisory Committee Act, Title 5 U.S.C., ch. 10. The Commercial Customs Operations Advisory Committee (COAC) provides advice to the Secretary of the Department of Homeland Security, the Secretary of the Department of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

Pre-Registration: Meeting participants may attend either in person or via webinar. All participants who plan to participate in person must register using the method indicated below:

For members of the public who plan to participate in person, please register online at <https://cbptradeevents.certain.com/profile/15391> by 5:00 p.m. EST on December 11, 2023. For members of the public who are pre-registered to attend the meeting in person and later need to cancel, please do so by 5:00 p.m. EST on December 11, 2023, utilizing the following link: <https://cbptradeevents.certain.com/profile/15391>.

For members of the public who plan to participate via webinar, the webinar link and conference number will be posted by 5:00 p.m. EST on December 12, 2023, at <https://www.cbp.gov/trade/stakeholder-engagement/coac>.

The COAC is committed to ensuring that all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Mrs. Latoria Martin at (202) 344–1440 as soon as possible.

Please feel free to share this information with other interested members of your organization or association.

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the AGENDA section below.

There will be a public comment period after each subcommittee update during the meeting on December 13, 2023. Speakers are requested to limit their comments to two minutes or less to facilitate greater participation. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP web page: <http://www.cbp.gov/trade/stakeholder-engagement/coac>.

Agenda

The COAC will hear from the current subcommittees on the topics listed below:

1. The Intelligent Enforcement Subcommittee will provide updates on the work completed and topics discussed in its working groups as well as present proposed recommendations for COAC's consideration. The Antidumping/Countervailing Duty (AD/CVD) Working Group will provide updates regarding its work and discussions on importer compliance with AD/CVD requirements. The Bond Working Group will report on the ongoing discussions and status updates for eBond requirements and new guidance that CBP is developing for the trade community on setting bond amounts. The Intellectual Property Rights (IPR) Process Modernization Working Group will report on the development of a portal on the CBP IPR web page and other enhancements in communications between CBP, rights holders, and the trade community regarding enforcement actions, and anticipates providing proposed recommendations for the committee's consideration regarding these matters. The Forced Labor Working Group (FLWG) will report on the progress of the implementation of prior recommendations made by COAC and anticipates providing new proposed recommendations for the committee's consideration.

2. The Next Generation Facilitation Subcommittee will provide updates on its working groups. The Passenger Air Operations (PAO) Working Group continues focusing its discussions on CBP security seal processing (E-seals and badges), elimination of outdated or obsolete forms, and global entry/trusted traveler programs and will provide an update on those discussions. The Customs Interagency Industry Working Group (CII) continues to work on identifying data redundancies to improve efficiencies for the government and the trade. Although the Automated Commercial Environment (ACE) 2.0 Working Group has been on hiatus, they plan to meet during the quarter to have

an internal review and will provide an update on ACE 2.0 and the remaining business case scenario status.

3. The Rapid Response Subcommittee will provide updates from the Broker Modernization Working Group and the United States-Mexico-Canada Agreement (USMCA) Chapter 7 Working Group. The Broker Modernization Working Group meets regularly and continues to focus on Continuing Education for Licensed Customs Brokers and the Customs Broker Licensing Exams. The USMCA Working Group meets bi-weekly with the expectation that proposed recommendations will be developed and submitted for consideration at the COAC public meeting. The current focus of this working group is to review the Chapter 7 articles of the USMCA and identify gaps in implementation between the United States, Mexico, and Canada.

4. The Secure Trade Lanes Subcommittee will provide updates on its six active working groups: the Export Modernization Working Group, the In-Bond Working Group, the Trade Partnership and Engagement Working Group, the Pipeline Working Group, the Cross-Border Recognition Working Group, and the De Minimis Working Group. The Export Modernization Working Group has continued its work on the electronic export manifest pilot program and recently brought in colleagues from the Canadian Border Services Agency to discuss required data elements. The In-Bond Working Group has continued its focus on the implementation of prior recommendations made by COAC. The Trade Partnership and Engagement Working Group has begun its work on the elements of the Customs Trade Partnership Against Terrorism (CTPAT) security program. The Pipeline Working Group has been discussing the most appropriate "next step" commodities and potential users of Distributed Ledger Technology to engage once the pilot for tracking pipeline-borne goods deploys. The Cross-Border Recognition Working Group began to meet again to develop tasks specific to its statement of work. The De Minimis Working Group has continued its work on strengthening the supply chain and mitigating risks in the low-value package environment.

Meeting materials will be available on December 4, 2023, at: <http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings>.

Dated: November 15, 2023.

Felicia M. Pullam,

Executive Director, Office of Trade Relations.

[FR Doc. 2023-25702 Filed 11-20-23; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6407-N-02]

Public Interest, General Applicability Waiver of Build America, Buy America Provisions as Applied to Pacific Island Territory Recipients of HUD Federal Financial Assistance: Final Notification

AGENCY: Office of the Secretary, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: In accordance with the Build America, Buy America Act (BABA), this Final Notice advises that HUD is providing a public interest, general applicability waiver for a period of 15-months to the Buy America Domestic Content Procurement Preference ("Buy America Preference," or "BAP") as applied to Federal Financial Assistance ("FFA") used for infrastructure projects in the Commonwealth of Northern Mariana Islands ("CNMI"), Guam, and American Samoa (hereinafter collectively "Pacific Island Territories").

DATES: Applicable November 15, 2023. This waiver is effective for all FFA obligated by HUD on or after the effective date of this waiver and to the expenditure of funds on or after the effective date of this waiver for any FFA obligated by HUD prior to the effective date of this waiver, through the limited period of 15-months following the effective date of this waiver.

FOR FURTHER INFORMATION CONTACT:

Faith Rogers, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10126, Washington, DC 20410-5000, at (202) 402-7082 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. HUD encourages submission of questions about this document be sent to BuildAmericaBuyAmerica@hud.gov.

SUPPLEMENTARY INFORMATION:

I. Build America, Buy America

The Build America, Buy America Act ("BABA" or "the Act") was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act ("IIJA") (Pub. L. 117-58). The Act establishes a domestic content procurement preference, the BAP, for Federal infrastructure programs. Section

70914(a) of the Act establishes that no later than 180 days after the date of enactment, HUD must ensure that none of the funds made available for infrastructure projects may be obligated by the Department unless it has taken steps to ensure that the iron, steel, manufactured products, and construction materials used in a project are produced in the United States. In section 70912, the Act further defines a project to include “the construction, alteration, maintenance, or repair of infrastructure in the United States” and includes within the definition of infrastructure those items traditionally included along with buildings and real property. Thus, starting May 14, 2022, new awards of HUD FFA, and any of those funds newly obligated by HUD then obligated by the grantee for infrastructure projects, are covered under BABA provisions of the Act, 41 U.S.C. 8301 note, unless covered by a waiver.

II. HUD's Progress in Implementation of the Act Generally

Since the enactment of the Act, HUD has worked diligently to develop a plan to fully implement the BAP across its FFA programs. HUD understands that advancing Made in America objectives is a continuous effort and believes setting forth a transparent schedule of future implementation for FFA programs provides recipients, stakeholders, and industry partners with the time and notice necessary to efficiently and effectively implement the BAP in Pacific Island Territories, which are Commonwealth of Northern Mariana Islands (CNMI), Guam, and American Samoa. Additionally, HUD understands that Pacific Island Territories have significant complications accessing construction materials, manufactured products, and steel needed for infrastructure projects. HUD recently announced plans to move forward with the implementation of the new BAP requirements in connection with its award of FFA to non-Tribal recipients in a manner designed to maximize coordination and collaboration to support long-term investments in domestic production. HUD continues its efforts to implement the Act in those programs consistent with the guidance and requirements of the Made in America Office of the Office of Management and Budget, including guidance concerning compliance with the BAP.

In order to ensure orderly implementation of the BAP across HUD's FFA programs, HUD has provided public interest, general applicability waivers in order to

implement the BAP in phases in connection with the application of the BAP in such programs and announced a corresponding implementation plan. As part of those efforts, HUD has published two general applicability, public interest waivers covering Exigent Circumstances and De Minimis and Small Grants, which can be found at https://www.hud.gov/program_offices/general_counsel/build_america_buy_america/waiver.

Additionally, HUD proposes that it is in the public interest to waive the BABA requirements for FFA awarded for infrastructure projects in Pacific Island Territories while HUD works to gather more information on supply chains, costs, and impacts. This proposed waiver is critical to provide the time for HUD to collect and analyze evidence to determine if a more targeted waiver of these requirements is in the public interest. This waiver would provide the time for the agency to collect and analyze evidence to determine if a more targeted waiver of these requirements is in the public interest. The waiver would also allow time for the agency to offer technical assistance to potential assistance recipients in the remote communities in the Pacific Island Territories. The waiver would also allow time for HUD to offer technical assistance to reduce the administrative burden to recipients for projects in the remote Pacific Island Territories were complying with the domestic sourcing requirements in BABA presents challenges. HUD is concerned that failure to provide these remote infrastructure projects such flexibilities could perpetuate systemic barriers to opportunities and benefits and limit HUD's ability to deliver resources and benefits equitably to all in these Pacific Island Territories. Additionally, HUD may need to dedicate significant staff and contractor time to assist extremely remote Pacific Island Territories with implementing preference requirements for the first time and to support the increased workload to process project-specific waivers. As such, HUD is interested in determining if these concerns justify a targeted waiver and whether its initial assessment may or may not be borne out by evidence.

III. Waivers

Under section 70914(b), HUD and other Federal agencies have authority to waive the application of a domestic content procurement preference when (1) application of the preference would be contrary to the public interest, (2) the materials and products subject to the preference are not produced in the United States at a sufficient and

reasonably available quantity or satisfactory quality, or (3) inclusion of domestically produced materials and products would increase the cost of the overall project by more than 25 percent. Section 70914(c) provides that a waiver under section 70914(b) must be published by the agency with a detailed written explanation for the proposed determination and provide an appropriate public comment period of 15 or 30 days depending on the substance of the waiver.

IV. Pacific Island Territories Infrastructure and HUD Programs

Economies in the Pacific Islands are over 5,000 miles from the mainland United States and must import products via air or sea. These economies have few local heavy manufacturers and largely rely on established regional supply chains from east Asia, Australia, and New Zealand. Most goods, equipment materials and supplies are imported and rely on shipping with associated timelines and unpredictable shipping fuel costs fluctuations. Moreover, materials sourced from the United States lead to additional shipping fees and longer lead times, thus significantly extending construction activity schedules. Lastly, ongoing gaps in supply chain availability impact lead times for materials, increasing project timelines. For these reasons, the agency is concerned that complying with the domestic sourcing requirements in BABA may increase already elevated project time and costs—particularly in the short run—and seeks time to better understand the local manufacturing footprint and the balance of equities for residents of the Pacific Island Territories.

HUD is aware that substantial changes to shipping and supply chains to incorporate domestic sourcing requirements for infrastructure projects in Pacific Island Territories could take multiple years to establish. For example, these economies have few local heavy manufacturers and largely rely on established regional supply chains. With the distance of economies in the Pacific Island Territories, these communities must import products via air or sea. Most goods, equipment, materials, and supplies are imported and rely on shipping with associated timelines and unpredictable shipping fuel cost fluctuations. Moreover, materials sourced from the United States may lead to additional shipping fees and longer lead times, thus significantly extending construction activity schedules. For these reasons, HUD is seeking time to better understand the local manufacturing

footprint and the balance of equities for residents of the Pacific Island Territories.

For example, HUD Community Planning and Development Formula Program Allocations for Pacific Island Territories include Community Development Block Grant (“CDBG”), HOME, Emergency Solutions Grant (“ESG”), Housing Opportunities for Persons With AIDS Program (“HOPWA”), and Housing Trust Fund (“HTF”). As shown below, there are HUD CDBG formula grant recipients that are subject to the BAP pursuant to HUD’s Public Interest Phased Implementation Waiver¹ of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance, for the purchase of iron or steel products in infrastructure projects funded by CDBG formula grants obligated by HUD on or after November 15, 2022. For HOME and HTF, BABA applicability will be in effect for funds obligated by HUD on or after August 23, 2024. For all other HUD FFA including ESG and HOPWA, BABA applicability will be in effect for FFA used to purchase iron and steel used in infrastructure projects for funds obligated by HUD on February 22, 2024. Subsequently, BABA applicability will be in effect for HUD FFA obligated on or after August 23, 2024, for construction materials and manufactured products. Therefore, without a waiver, HUD FFA used in Pacific Island Territories for infrastructure projects will be subject to the BAP.²

Additionally, the Public and Indian Housing (“PIH”) Program Allocations for Pacific Island Territories include the Guam Housing & Urban Renewal Authority in Guam and the Northern Marianas Housing Corporation in the CNMI. Pursuant to the phased implementation waiver, BABA applicability will be in effect for funds obligated by HUD on or after August 23, 2024, for public housing FFA used to purchase iron and steel, construction materials, and manufactured products for maintenance projects.

The above-named programs are critical because they allow HUD to support affordable housing and infrastructure needs in these specific Pacific Island Territories—particularly for the benefit of low- and moderate-income families. As of November 15, 2022, the BAP applies to CDBG formula

grants used to purchase iron and steel for infrastructure projects. Accordingly, HUD must ensure that Pacific Island Territories Recipients are able to effectively implement the BAP in a manner that ensures that the purposes of BABA are carried out, while at the same time preventing additional undue barriers to the development of Pacific Island Territories infrastructure, which has suffered from decades of underinvestment.

HUD has determined that additional time is needed to fully assess the impacts that the BAP will have on Pacific Island Territories recipients and to plan for the efficient and orderly implementation of the BAP. With the benefit of HUD’s recently published phased implementation waiver and Tribal consultation waiver extension, HUD seeks additional time to seek feedback from Pacific Island Territories, and funding recipients on whether and when HUD should take a similar phased approach with respect to the implementation of the BAP under its Pacific Island Territories programs.

V. Public Interest in a General Applicability Waiver of Buy America Provisions for Pacific Island Territories Recipients

In this Final Notice, HUD is providing a new and limited, 15-month public interest, general applicability waiver of the BAP in connection with HUD’s FFA used for infrastructure in Pacific Island Territories. Infrastructure is an eligible activity under some of the above-named programs and will be subject to the BAP. Because the application of BAP mandated by the Act is new to all HUD FFA for Pacific Island Territories infrastructure projects, HUD needs additional time to engage Pacific Island Territories about the application of the BAP for Pacific Island Territories projects it is imperative to determine how the BAP should be effectively applied to HUD’s various FFA for Pacific Island Territories projects, how the BAP should be phased in to allow for successful implementation, and how compliance will be verified—all in a way to enhance infrastructure projects in these areas. As such, there is a significant need for HUD to further engage with Pacific Island Territories recipients. HUD now has the benefit of having fully considered an appropriate method of phased implementation across its other FFA programs and has begun the methodical implementation of the BAP in those other FFA programs. At the same time, HUD has determined that it is in the public’s interest to not apply the BAP to FFA awarded for infrastructure projects in Pacific Island

Territories prior to additional engagement.

VI. Planned Pacific Island Territory Engagement

Based on HUD’s observations it is necessary for HUD to solicit feedback from Pacific Island Territories on issues including how to effectively implement the BAP for extremely remote communities, such as American Samoa. HUD acknowledges that Pacific Island Territories have major concerns about availability of American-made products from the U.S. Mainland and continue to struggle with challenges because of their distance away from main supply sources. Pacific Island Territories are already facing major challenges with accessing construction materials, and major cost overruns due to a lack of available materials—particularly in remote Pacific Island Territories.

During the 15-month waiver period, HUD will thoroughly engage Pacific Island Territories housing practitioners, stakeholders, and FFA recipients. HUD will do so by soliciting feedback from Pacific Island Territories and stakeholders specifically addressing the impact of the BAP on HUD’s Pacific Island Territories programs. After engaging and receiving feedback, HUD will seek to implement the BAP in a manner that advances the Made in America objectives which can also support local supply chains. HUD will implement the BAP in a thoughtful manner that ensures that Pacific Island Territories recipients can effectively implement the BAP without substantially negative impacts on planned and ongoing critical infrastructure projects. HUD will also seek to provide additional technical assistance resources to ensure that Pacific Island Territories recipients can build capacity and be in a better position to comply with the BAP.

VII. Assessment of Cost Advantage of a Foreign-Sourced Product

Under OMB Memorandum M–22–11, “Memorandum for Heads of Executive Departments and Agencies,” published on April 18, 2022, agencies are expected to assess “whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products” as appropriate before granting a public interest waiver. HUD’s analysis has concluded that this assessment is not applicable to this waiver, as this waiver is not based on the cost of foreign-sourced products.

¹ See <https://www.hud.gov/sites/dfiles/GC/documents/6331-N-06%20Phased%20Implementation%20Waiver.pdf>.

² See https://www.hud.gov/program_offices/comm_planning/budget.

VIII. Limited Duration of the Waiver

The duration of the waiver is 15-months after the effective date of the final waiver. HUD remains committed to the successful implementation of the important BAP across its programs providing covered FFA for infrastructure projects, while recognizing the unique needs and geographically related challenges of Pacific Island Territories. HUD is committed to engaging with Pacific Island Territories, stakeholders, and FFA recipients as noted above to further this goal during this 15-month waiver period. HUD will review this waiver in 12 months to assess whether it remains necessary to the fulfillment of HUD's missions and goals and consistent with applicable legal authorities, such as the IJA, Executive Order 14005, and OMB M-22-11. HUD may, based on the results of that review, terminate the waiver, or take action to develop a new waiver in consultation with the MIAO.

IX. Solicitation of Comments

HUD solicited comments from the public on its proposed waiver described in a Notice publicly available on its website for a period of 30 days from August 2, 2023 to September 1, 2023, and published in the **Federal Register**. A total of two comments were received in response to the proposed waiver. HUD thoroughly reviewed and considered each of the comments in determining to move forward with the issuance of this waiver and implementation plan as published in this Final Notice. One commenter was supportive of the waiver. One commenter was opposed to the waiver with respect to steel, citing underutilized domestic capacity for the steel industry. The commenter suggested if a steel product were not available from domestic sources, a grant recipient could pursue a product-specific nonavailability waiver for that item. HUD appreciates the comments and did not make any substantive changes to the waiver based on the comments received. The proposed waiver had a duration of 18-months. HUD is issuing the final waiver with a duration of 15-months to better align with the coordinated strategy for the issuance of this waiver type across the Federal Government. HUD believes the 15-month waiver of the application of the BAP as set forth in this Final Notice is appropriate and in the public interest in light of the importance of HUD's planned engagement with Pacific Island Territories and recipients. HUD will continue to monitor the implementation of the BAP across its programs to ensure

the most robust application possible in light of the important public interests discussed above.

Dated: November 15, 2023.

Marcia L. Fudge,
Secretary.

[FR Doc. 2023-25650 Filed 11-20-23; 8:45 am]
BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R4-ES-2023-0197;
FXES11140400000-245-FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink and Blue-Tailed Mole Skink; Polk County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Mountain Lake Corporation (Olmsted Ridge Site Expansion) (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) and blue-tailed mole skink (*Eumeces egregius lividus*) incidental to the construction of a housing development in Polk County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before December 21, 2023.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS-R4-ES-2023-0197 at <https://www.regulations.gov>.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R4-ES-2023-0197;

- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS-R4-ES-2023-0197; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

FOR FURTHER INFORMATION CONTACT: Erin Gawera, by U.S. mail (see **ADDRESSES**), by telephone at 904-731-3121 or via email at erin_gawera@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Mountain Lake Corporation (Olmsted Ridge Site Expansion) (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take federally listed sand skinks (*Neoseps reynoldsi*) and blue-tailed mole skinks (*Eumeces egregius lividus*) (skinks) incidental to the construction and operation of a housing development in Polk County, Florida. We request public comment on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as low effect, and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The applicant requests a 5-year ITP to take skinks via the conversion of approximately 11 acres (ac) of occupied nesting, foraging, and sheltering skink habitat incidental to the construction and operation of a housing development

on 63.7 ac on Parcel ID: 272922866300005010 in Section 22, Township 29 S, Range 27 E, Polk County, Florida. The applicant proposes to mitigate for take of the skinks by purchasing credits equivalent to 22 ac of skink-occupied habitat within the Lake Wales Ridge Conservation Bank or another Service-approved conservation bank. The Service would require the applicant to purchase the credits prior to engaging in any construction phase of the project.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's proposed project, including the construction of the buildings and associated infrastructure (e.g., electric, water, and sewer lines), would individually and cumulatively have a minor effect on the skinks and the environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a low-effect ITP that individually or cumulatively would have a minor effect on the skinks and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A low-effect incidental take permit is one that would result in (1) minor or nonsignificant effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonably foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER 2875481 to Mountain Lake Corporation (Olmsted Ridge Site Expansion).

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal

identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Robert L. Carey,

*Manager, Division of Environmental Review,
Florida Ecological Services Field Office.*

[FR Doc. 2023–25747 Filed 11–20–23; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint *Certain Electronic Computing Devices and Components Thereof*, DN 3708; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (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 United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.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 has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Lenovo (United States) Inc. on November 15, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic computing devices and components thereof. The complaint names as respondents: ASUSTeK Computer Inc. of Taiwan; and ASUS Computer International of Fremont, CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this

notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number ("Docket No. 3708") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at EDIS3Help@usitc.gov.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation 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,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: November 15, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023-25699 Filed 11-20-23; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1374-1376 (Review)]

Citric Acid and Certain Citrate Salts From Belgium, Colombia, and Thailand; Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 ("the Act") to determine whether revocation of the antidumping duty orders on citric acid and certain citrate salts from Belgium, Colombia, and Thailand would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: November 15, 2023.

FOR FURTHER INFORMATION CONTACT: Celia Feldpausch 202-205-2387, Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the

Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On September 5, 2023, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews should proceed (88 FR 66052, September 26, 2023); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's website.

Participation in the reviews 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 these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on April 25, 2024, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold an in-person hearing in connection with the reviews beginning at 9:30 a.m. on Thursday, May 16, 2024. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Wednesday, May 8, 2024. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the reviews, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID-19 test result may be submitted by 3 p.m. the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at <https://www.usitc.gov/calendarpad/calendar.html>.

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on Friday, May 10, 2024. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4 p.m. on Wednesday, May 15, 2024. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later

than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 6, 2024. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 28, 2024. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before 5:15 p.m. on May 28, 2024. On June 20, 2024, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 24, 2024, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 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.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 15, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–25679 Filed 11–20–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–600]

USMCA Automotive Rules of Origin: Economic Impact and Operation, 2025 Report

ACTION: Notice of investigation.

SUMMARY: In accordance with section 202A(g)(2) of the United States-Mexico-Canada Agreement Implementation Act (“USMCA Implementation Act”), the U.S. International Trade Commission (Commission) has instituted Investigation No. 332–600, *USMCA Automotive Rules of Origin: Economic Impact and Operation, 2025 Report*, for the purpose of preparing the 2025 report.

DATES: July 1, 2025: Transmittal of Commission report to the President and Congress.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC 20436. All written submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT:

Project Leader Mitch Semanik (mitchell.semanik@usitc.gov or 202–205–2034), or Deputy Project Leaders Nathan Lotze (202–205–3231 or nathan.lotze@usitc.gov) and Aaron Woodward (202–205–2663 or aaron.woodward@usitc.gov) for information specific to this investigation. For information on the legal aspects of this investigation, contact Brian Allen (202–205–3034 or brian.allen@usitc.gov) or William Gearhart (202–205–3091 or william.gearhart@usitc.gov) of the Commission's Office of the General Counsel. The media should contact

Jennifer Andberg, Office of External Relations (202–205–3404 or jennifer.andberg@usitc.gov). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website (<https://www.usitc.gov>). 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.

SUPPLEMENTARY INFORMATION:

Background: The 2025 report will be the second of five reports that section 202A(g)(2) of the USMCA Implementation Act (19 U.S.C. 4532(g)(2)) requires that the Commission provide on the USMCA automotive rules of origin (ROOs) and their impact on the U.S. economy, effect on U.S. competitiveness, and relevancy considering recent technology changes. In particular, the USMCA Implementation Act requires that the Commission report on the following:

(1) The economic impact of the USMCA automotive ROOs on U.S. gross domestic product (GDP); U.S. exports and imports; U.S. aggregate employment and employment opportunities; production, investment, use of productive facilities, and profit levels in the U.S. automotive industries and other pertinent industries; wages and employment of workers in the U.S. automotive sector; and the interests of U.S. consumers.

(2) The operation of the ROOs and their effects on the competitiveness of the United States with respect to production and trade in automotive goods, taking into account developments in technology, production processes, or other related matters.

(3) Whether the ROOs are relevant in light of technological changes in the United States.

(4) Such other matters as the Commission considers relevant to the economic impact of the ROOs, including prices, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production in the United States.

As part of this investigation, the Commission intends to conduct a survey, and will post the associated questionnaire on its website at a later date. The Commission also intends to hold a public hearing in connection with this investigation and will announce the hearing details at a later date.

The USMCA Implementation Act requires that the Commission transmit

its report on July 1, 2025, two years following submission of its previous report, *USMCA Automotive Rules of Origin: Economic Impact and Operation, 2023 Report*. The Commission is required to submit reports on the USMCA automotive ROOs every two years until 2031, for a total of five reports.

By order of the Commission.

Issued: November 15, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–25680 Filed 11–20–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 02–23]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

TIME AND DATE: Friday, December 1, 2023, at 10:00 a.m. EST.

PLACE: This meeting will be held by teleconference. There will be no physical meeting place.

STATUS: Open. Members of the public who wish to observe the meeting via teleconference should contact Patricia M. Hall, Foreign Claims Settlement Commission, Tele: (202) 616–6975, two business days in advance of the meeting. Individuals will be given call-in information upon notice of attendance to the Commission.

MATTERS TO BE CONSIDERED: 10:00 a.m.—Issuance of Proposed Decisions in claims against Albania.

CONTACT PERSON FOR MORE INFORMATION: Requests for information, advance notices of intention to observe an open meeting, and requests for teleconference dial-in information may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 441 G St. NW, Room 6234, Washington, DC 20579. Telephone: (202) 616–6975.

Brian M. Simkin,
Chief Counsel.

[FR Doc. 2023–25810 Filed 11–17–23; 4:15 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0009]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Law Enforcement Officers Killed and Assaulted Data Collection, LEOKA Collection Tool 701 for Feloniously Killed; and LEOKA Collection Tool 701a for Accidentally Killed

AGENCY: Federal Bureau of Investigation, Department of Justice.
ACTION: 60-Day notice.

SUMMARY: The Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division, 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 22, 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 Mr. Edward Abraham, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services Division, Module D–1, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, 304–625–4830, elabraham@fbi.gov or LEOKA.STATISTICS@fbi.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: Under title 28, United States Code, section 534, Acquisition, preservation, and exchange of identification records; appointment of officials, this collection requests the number of officers killed or assaulted from law enforcement agencies in order for the Federal Bureau of Investigation Uniform Crime Reporting Program to serve as the national clearinghouse for the collection and dissemination of law enforcement officer death/assault data and to publish these statistics in *Law Enforcement Officers Killed and Assaulted*.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Law Enforcement Officers Killed and Assaulted Data Collection, LEOKA Collection Tool 701 for Feloniously Killed; and LEOKA Collection Tool 701a for Accidentally Killed.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1-701 and 1-701a. The applicable component within the Department of Justice is the Criminal Justice Information Services Division, in the Federal Bureau of Investigation.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public:

Federal, state, county, city, local, and tribal law enforcement agencies. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Uniform Crime Reporting Participation Burden Estimation: For 2022, there were approximately 118 law enforcement agency respondents with an estimated response time of one hour per report.

6. *An estimate of the total annual burden (in hours) associated with the collection:* There are approximately 118 hours, annual burden, associated with this information collection.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* \$0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
1-701 and 1-701a	118	1/annually	118	1	118
<i>Unduplicated Totals</i>	<i>118</i>	.....	<i>118</i>	.....	<i>118</i>

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: November 15, 2023.

Darwin Arceo,
Department Clearance Officer for PRA, U.S.
Department of Justice.

[FR Doc. 2023-25643 Filed 11-20-23; 8:45 am]

BILLING CODE 4410-02-P

DEPARTMENT OF JUSTICE

[OMB Number 1121-0NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection; National Prisoner Statistics Program: Maternal Health Supplement

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Justice Statistics (BJS), 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 22, 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 Laura Maruschak, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531, email: laura.maruschak@usdoj.gov; telephone: 202-598-0802.

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: In fiscal year 2021, the United States House Committee on Appropriations directed that BJS include statistics in its data collections that relate to the health needs of incarcerated pregnant women in the criminal justice system, including, but not limited to, the number of pregnant women in custody, outcomes of pregnancies, the provision of pregnancy care and services, health status of pregnant women, and racial and ethnic disparities in maternal health, at the Federal, State, Tribal, and local levels. To address the directive at the state and federal level, BJS developed the NPS-MatHealth survey, a one-time supplement to the National Prisoners

Statistics program. The survey will request information on maternal health and pregnancy outcomes between January 1, 2023, and December 31, 2023, including provide the annual count of female admissions to prison tested for pregnancy, the number of those tests that were positive, and the number of pregnancy outcomes by outcome type. Additionally, the data collected will capture maternal health services and accommodations among state DOCs and the BOP and provide a 1-day count (December 31, 2023) of pregnant women by race/Hispanic origin, and the number of women residing in a nursery or

residential program in which the infant resides with the mother.

Overview of this information collection:

1. *Type of Information Collection:* New collection.
2. *The Title of the Form/Collection:* National Prisoner Statistics program: Maternal Health Supplement (NPS-MatHealth).
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number is NPS-MatHealth. The Bureau of Justice Statistics is sponsoring the collection.
4. *Affected public who will be asked or required to respond, as well as the*

obligation to respond: Affected Public is State and Federal Government. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The total number of respondents for NPS-MatHealth is 51. The time per response is 2.5 hours to complete the NPS-MatHealth survey.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual burden hours for this collection is 126 hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* \$4,056.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response	Total annual burden (hours)
NPS-MatHealth	51	1	51	148	126

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: November 15, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023-25644 Filed 11-20-23; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; High-Wage Components of the Labor Value Content Requirements Under the USMCA

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Wage and Hour Division (WHD)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 21, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michelle Neary by telephone at 202-693-6312, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The information collection supports the Department’s obligations to carry out the labor value content determination set forth in section 202A of the Act. For additional substantive information about this ICR, see the related notice

published in the **Federal Register** on May 22, 2023 (88 FR 32805).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-WHD.

Title of Collection: High-Wage Components of the Labor Value Content Requirements under the USMCA.

OMB Control Number: 1235-0032.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 9,091.

Total Estimated Number of Responses: 6,001,680.

Total Estimated Annual Time Burden: 212,267 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michelle Neary,
Senior PRA Analyst.

[FR Doc. 2023-25686 Filed 11-20-23; 8:45 am]

BILLING CODE 4510-27-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Childcare Costs Database

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Chief Evaluation Office (CEO)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 21, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202-693-0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Federal Government provides States with funding to offer financial assistance to low-income families to pay for childcare. This funding is provided through the Child Care and Development Fund (CCDF) childcare

subsidy program. Subsidy payment rates are determined by States, but payment rates are required to be informed by childcare market prices. States are encouraged, but not required, to set payment rates at the 75th percentile of the market price. To obtain market prices, States are required to conduct a Market Rate Survey (MRS) no more than two years prior to the submission of States’ Child Care and Development Fund (CCDF) Plan. The CCDF Plan serves as the mandatory State application to receive Child Care and Development Block Grant (CCDBG) funds. This reinstatement of the National Database of Childcare Prices fills an important gap in data and was first approved for collection by the Office of Management and Budget in August 2019 and made available to the public in September 2022. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 6, 2023 (88 FR 43144).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL—CEO.

Title of Collection: National Childcare Costs Database.

OMB Control Number: 1290-0025.

Affected Public: State, local and Tribal governments.

Total Estimated Number of Respondents: 52.

Total Estimated Number of Responses: 52.

Total Estimated Annual Time Burden: 104 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2023-25687 Filed 11-20-23; 8:45 am]

BILLING CODE 4510-HX-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Logging Operations Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 21, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency’s estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT:

Nicole Bouchet by telephone at 202-693-0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The collection of information contained in the Logging Operations Standard are necessary to reduce workers’ risk of death or serious injury by requiring employers to ensure operating and maintenance instructions are available on machines or in the area where the machine is operated. For vehicles, employers must ensure that operating and maintenance instructions are available for each vehicle. The Standard also requires the employer to provide

training to workers and to certify that they have provided this training. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 28, 2023 (88 FR 58619).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Logging Operations Standard.

OMB Control Number: 1218–0198.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 7,559.

Total Estimated Number of Responses: 46,859.

Total Estimated Annual Time Burden: 1,387 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,
Certifying Official.

[FR Doc. 2023–25685 Filed 11–20–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0041]

FM Approvals LLC: Applications for Expansion of Recognition and Proposed Modification to the NRTL Program's List of Appropriate Test Standards

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the applications of FM

Approvals LLC for expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the applications. Additionally, OSHA proposes to add fourteen test standards to the NRTL Program's list of appropriate test standards.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before December 6, 2023.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2007–0043). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before December 6, 2023 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor by phone: (202) 693–1999 or email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor by phone: (202) 693–1911 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of the Applications for Expansion

OSHA is providing notice that FM Approvals LLC (FM) is applying for an expansion of current recognition as a NRTL. FM requests the addition of fourteen test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including FM, which details the NRTL's scope of recognition. These pages are available from the OSHA website at <https://www.osha.gov/>

nationally-recognized-testing-laboratory-program.

FM currently has two facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: FM Approvals LLC, 1151 Boston-Providence Turnpike, Norwood, Massachusetts 02062. A complete list of FM's scope of recognition is available at <https://www.osha.gov/nationally-recognized-testing-laboratory-program>.

II. General Background on the Applications

FM submitted two applications to OSHA to expand recognition as a NRTL. The first application was submitted on September 20, 2019 (OSHA–2007–0041–0021), to include ten test standards. The second application requesting the addition of six standards was submitted on May 3, 2021, (OSHA–2007–0041–0022). The first application was amended on September 21, 2022 (OSHA–2007–0041–0023), to remove two standards from the original submission. The expansion covered in this notice includes the remaining fourteen standards across both applications. OSHA staff performed a detailed analysis of the application packets and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to these applications.

Table 1 lists the appropriate test standards found in FM's applications for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN FM'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
*FM 1311	Centrifugal Fire Pumps Split-Case Type (Axial or Radial).
*FM 1312	Centrifugal Fire Pumps (Vertical Shaft, Turbine Type).
*FM 1313	Positive Displacement Fire Pumps (Rotary Gear Type).
*FM 1319	Centrifugal Fire Pumps (Horizontal, End Suction Type).
*FM1370	Centrifugal Fire Pumps (Vertical Shaft, Turbine Type, Barrel).
*FM 1371	Centrifugal Fire Pumps (In-Line Type).

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN FM'S NRTL SCOPE OF RECOGNITION—Continued

Test standard	Test standard title
*FM 3132	Pressure Actuated Waterflow Switches.
*FM 3150	Audible Notification Appliances for Automatic Fire Alarm Signaling.
*FM 3155	Public Mode Visible Signaling Appliances for Automatic Fire Alarm Signaling.
*FM 3230	Smoke Actuated Detectors for Automatic Fire Alarm Signaling.
*FM 3232	Video Image Fire Detectors for Automatic Fire Alarm Signaling.
*FM 5320	Dry Chemical Extinguishing Systems.
*FM 5420	Carbon Dioxide Extinguishing Systems.
*FM 5600	Clean Agent Extinguishing Systems.

* Represents the standards that OSHA proposes to add to the NRTL Program's List of Appropriate Test Standards.

III. Proposal To Add New Test Standards to the NRTL Program's List of Appropriate Test Standards

Periodically, OSHA will propose to add new test standards to the NRTL list of appropriate test standards following an evaluation of the test standard document. To qualify as an appropriate test standard, the agency evaluates the document to (1) verify it represents a product category for which OSHA requires certification by a NRTL, (2) verify the document represents a product and not a component, and (3) verify the document defines safety test specifications (not installation or operational performance specifications). OSHA becomes aware of new test standards through various avenues. For example, OSHA may become aware of new test standards by: (1) monitoring notifications issued by certain Standards Development Organizations; (2) reviewing applications by NRTLs or applicants seeking recognition to include new test standard in their scopes of recognition; and (3) obtaining notification from manufacturers, manufacturing organizations, government agencies, or other parties. OSHA may determine to include a new test standard in the list, for example, if the test standard is for a particular type of product that another test standard

also covers, or it covers a type of product that no standard previously covered.

In this notice, OSHA proposes to add fourteen new test standards to the NRTL Program's list of appropriate test standards. Table 2, below, lists the test standards that are new to the NRTL Program. OSHA preliminarily determined that these test standards are appropriate and proposes to include them in the NRTL Program's list of appropriate test standards. OSHA seeks public comment on this preliminary determination.

TABLE 2—STANDARDS OSHA IS PROPOSING TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
FM 1311	Centrifugal Fire Pumps Split-Case Type (Axial or Radial).
FM 1312	Centrifugal Fire Pumps (Vertical Shaft, Turbine Type).
FM 1313	Positive Displacement Fire Pumps (Rotary Gear Type).
FM 1319	Centrifugal Fire Pumps (Horizontal, End Suction Type).
FM1370	Centrifugal Fire Pumps (Vertical Shaft, Turbine Type, Barrel).
FM 1371	Centrifugal Fire Pumps (In-Line Type).
FM 3132	Pressure Actuated Waterflow Switches.
FM 3150	Audible Notification Appliances for Automatic Fire Alarm Signaling.
FM 3155	Public Mode Visible Signaling Appliances for Automatic Fire Alarm Signaling.
FM 3230	Smoke Actuated Detectors for Automatic Fire Alarm Signaling.
FM 3232	Video Image Fire Detectors for Automatic Fire Alarm Signaling.
FM 5320	Dry Chemical Extinguishing Systems.
FM 5420	Carbon Dioxide Extinguishing Systems.
FM 5600	Clean Agent Extinguishing Systems.

IV. Preliminary Findings on the Applications

FM submitted acceptable applications for expansion of the scope of recognition. OSHA's review of the application files, and pertinent documentation, indicate that FM can meet the requirements prescribed by 29 CFR 1910.7 for expanding the recognition to include the addition of these fourteen test standards for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of FM's application.

V. Public Participation

OSHA welcomes public comment as to whether FM meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at <https://www.regulations.gov> under Docket No. OSHA-2007-0043 (for further information, see the "Docket" heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant FM's applications for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the applications. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

VI. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210,

authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to section 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8-2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023-25683 Filed 11-20-23; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2010-0013]

SolarPTL, LLC: Application for Expansion of Recognition

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of SolarPTL, LLC, for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before December 6, 2023.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA-2010-0013). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket (including this **Federal Register**

notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before December 6, 2023 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-3653, Washington, DC 20210, or by fax to (202) 693-1644.

FOR FURTHER INFORMATION CONTACT:

Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693-1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693-1911 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that SolarPTL, LLC (PTL), is applying for an expansion of current recognition as a NRTL. PTL requests the addition of two test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is

not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including PTL, which details that NRTL's scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpca/nrtl/index.html>.

PTL currently has one facility (site) recognized by OSHA for product testing and certification, with the headquarters located at: SolarPTL, LLC, 1107 West Fairmont Drive, Tempe, Arizona 85282. A complete listing of PTL's scope of recognition is available at <https://www.osha.gov/nationally-recognized-testing-laboratory-program/solarptl>.

II. General Background on the Application

PTL submitted an application, dated December 21, 2018 (OSHA-2010-0013-0007) to request one additional standard to the NRTL scope of recognition. The standard requested UL 61730 was referenced in the application as a single standard, however this standard has two parts. This application was amended on October 30, 2023 (OSHA-2010-0013-0008), clarifying that the expansion request was for both parts of the standard. OSHA staff performed a detailed analysis of the application packets and reviewed other pertinent information. OSHA performed an on-site assessment related to this application on August 16–17, 2022, where OSHA found nonconformances with the requirements of 29 CFR 1910. PTL has addressed the nonconformances adequately. OSHA has no objection to the addition of this standard to the NRTL scope of recognition.

Table 1 shows the test standards found in PTL's amended application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARD FOR INCLUSION IN PTL'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 61730.	Photovoltaic (PV) Module Safety Qualification—Part 1: Requirements for Construction; and Photovoltaic (PV) Module Safety Qualification—Part 2: Requirements for Testing.

III. Preliminary Finding on the Application

PTL submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application file and pertinent documentation, together with the results of the on-site assessment and follow-up information, preliminarily indicate that PTL can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of the test standard shown in Table 1, above, for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of PTL's application.

OSHA seeks public comment on this preliminary determination.

V. Public Participation

OSHA welcomes public comment as to whether PTL meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at <https://www.regulations.gov> under Docket No. OSHA-2010-0013 (for further information, see the “Docket” heading in the section of this notice titled ADDRESSES).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant

Secretary of Labor for Occupational Safety and Health on whether to grant PTL's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

VI. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–25691 Filed 11–20–23; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995, and as part of its continuing effort to reduce paperwork and respondent burden, the Evaluation and Assessment Capability (EAC), National Science Foundation (NSF) Office of Integrative Activities (OIA) is inviting the general public or other Federal agencies to comment on this proposed information collection.

DATES: Written comments on this notice must be received by January 22, 2024 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite E7400, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–

800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Comments: Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (2) the accuracy of the Foundation'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 collecting the information on the respondents, including through the use of automated collection techniques or other forms of information technology.

Title of Collection: Generic Clearance for the Evaluation of the National Science Foundation's (NSF) Broader Impacts Review Criterion.

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: New information collection.

Description: NSF is conducting an evaluation to assess (1) how NSF's Broader Impacts review criterion is applied across the Foundation and (2) its effectiveness in meeting the goals established in section 526 of the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Reauthorization Act of 2010 (42 U.S.C. 1862p-14) (America COMPETES Reauthorization Act of 2010). This evaluation is congressionally directed in section 10341 of the Creating Helpful Incentives to Produce Semiconductors [CHIPS] for America Fund Act 2022. As part of the evaluation, NSF is conducting a literature review, document analysis, extant data analysis, interviews with NSF staff, and focus groups with NSF principal investigators (PIs) and reviewers. NSF will map findings from the evaluation activities to current NSF policies and practices to identify strategies for improving how NSF applies the review criterion.

The subject of this request is related to the planned focus groups with PIs and reviewers. The focus groups will answer the following research questions (RQs):

- RQ1. In what ways do the interpretations of the Broader Impacts review criterion among PIs and reviewers vary, and what factors might contribute to these variations?
- RQ2. How do external reviewers assess the Broader Impact review criterion?

- RQ3. In what ways do PIs and reviewers perceive that variations in interpretation and assessment can advance or hinder the merit review of proposals?

Findings from the focus groups described in this request will be used to inform interpretation of other evaluation activities within the larger project (including informing interpretation of interviews with NSF staff, document review analyses, and interpretation of extant data analysis of review analyses). For example, we anticipate that participants in these focus groups may raise issues around their understanding and interpretation of Broader Impacts, which can be compared to perceptions that NSF staff report during interviews.

Background:

NSF sets forth an ambitious vision for the United States: a nation that leads the world in science and engineering research and innovation, to the benefit of all, without barriers to participation. Toward this end, NSF promotes the progress of science by investing in research and capacity-building activities that expand knowledge in science, engineering, and education. In fiscal year (FY) 2022, NSF evaluated almost 40,000 proposals for research and education activities, making nearly 11,000 new awards totaling more than \$8.5 billion.

At the cornerstone of NSF's mission and its investments is its merit review process. NSF program directors with technical and programmatic expertise lead this process, with support from external experts who help evaluate submitted proposals for two main criteria: (1) Intellectual Merit—the potential to advance knowledge; and (2) Broader Impacts—the potential to contribute to society and achieve specific, desired societal outcomes. With these two criteria, NSF has established a commitment to projects that provide tangible benefits to society beyond advancing knowledge.

It is critically important that NSF implement its merit review process in a way that is fair, thorough, competitive, and transparent, and that those internal and external to NSF recognize the process as such. However, as NSF noted, PIs and reviewers might lack clarity about the Broader Impacts criterion, despite NSF's efforts to provide additional guidance. NSF has also noted a lack of consistency in how NSF implements the criterion across directorates, divisions, and programs. Specific challenges related to the understanding and application of Broader Impacts include a lack of consensus on how to define Broader Impacts, and a disconnect between the

Broader Impacts requirements stated in the NSF Proposal & Award Policies & Procedures Guide and how panelists review these activities (National Alliance for Broader Impacts 2018). The purpose of this work, then, is to “assess how the Broader Impact review criterion is applied across the Foundation and make recommendations for improving the effectiveness for meeting the goals established in section 526 of the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Reauthorization Act of 2010 (42 U.S.C. 1862p-14)” (America COMPETES Reauthorization Act of 2010). This evaluation is congressionally directed in section 10341 of the Creating Helpful Incentives to Produce Semiconductors [CHIPS] for America Fund Act 2022.

Methodology: Focus groups will be conducted with two types of respondents: PIs and reviewers.

The evaluation will include three PI focus groups of up to seven people each. Participants in these groups will be PIs who submitted a proposal within the last five years. The study team will select participants via a stratified random sample by NSF directorate, institutional characteristics (such as Carnegie classification, MSI status, and locale), and participant characteristics (such as race/ethnicity, gender, years since terminal degree, and new investigator status). PIs have firsthand experience addressing the Broader Impacts review criterion in their proposals. Among this group, key insights include the following:

1. Questions they have about how to address the Broader Impacts review criterion in their research and proposals.

2. Strategies they have employed as a PI in addressing the Broader Impacts review criterion in their research and proposals.

3. Resources or supports received from their respective institutions for developing well-thought-out proposals that address the Broader Impacts review criterion.

Reviewer focus groups will consist of three focus groups of up to seven people each. Participants in these groups will be people who served on a review panel within the last five years. The study team will select participants via a stratified random sample by directorate and participant characteristics (such as how long they have been reviewing NSF proposals). Reviewers have firsthand knowledge about applying the Broader Impacts review criterion. Among this group, key insights include the following:

1. Interpreting and applying the criterion as a reviewer (and compared with as a PI).

2. Reviewer training and guidance.
Affected Public: NSF reviewers and PIs.

AVERAGE EXPECTED ANNUAL NUMBER OF ACTIVITIES

Collection method	Estimated lower bound (number of responses)	Estimated upper bound (number of responses)	Estimated average response time (min)	Approximate lower bound response burden (hours)	Approximate upper bound response burden (hours)
Focus groups	4*6=24	7*6=42	90	(24*90)/60=36	(42*90)/60=72

Respondents: Lower-bound estimate of 24 individuals and upper-bound estimate of 48 individuals.

Average Minutes per Response: 90.

Burden Hours: Lower- and upper-bound estimates of approximately 36 and 72 hours.

Dated: November 16, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023-25718 Filed 11-20-23; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2023-0118]

Information Collection: Domestic Licensing of Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, “Domestic Licensing of Special Nuclear Material.”

DATES: Submit comments by January 22, 2024. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject); however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0118. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann;

telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T-6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2023-0118 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0118.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. The supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML23249A195 and ML23249A196.
- *NRC's PDR:* The PDR, where you may examine and order copies of

publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2023-0118, in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the

information collection summarized below.

1. *The title of the information collection:* Domestic Licensing of Special Nuclear Material.

2. *OMB approval number:* 3150–0009.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses and amendments may be submitted at any time. Generally, renewal applications are submitted every 10 years, although the Commission has allowed longer periods for major fuel cycle facilities; updates of the Integrated Safety Analysis Summary are submitted annually.

6. *Who will be required or asked to respond:* Applicants for and holders of specific and general licenses to receive title to, own, acquire, deliver, receive, possess, use, or initially transfer special nuclear material.

7. *The estimated number of annual responses:* 1,036 (494 reporting responses + 240 recordkeepers + 302 third-part disclosure responses).

8. *The estimated number of annual respondents:* 240.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 47,199 (41,530 reporting + 5,635 recordkeeping + 34 third-party disclosure).

10. *Abstract:* Part 70 of title 10 of the *Code of Federal Regulations*, “Domestic Licensing of Special Nuclear Material,” establishes requirements for licensees to own, acquire, receive, possess, use, and transfer special nuclear material. The information in the applications, reports, and records are used by the NRC to make licensing and or regulatory determinations concerning the use of special nuclear material.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.

2. Is the estimate of the burden of the information collection accurate? Please explain your answer.

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: November 16, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–25753 Filed 11–20–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0102]

Information Collection: Comprehensive Decommissioning Program, Annual Site List and Point of Contact

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, “Comprehensive Decommissioning Program, Annual Site List and Point of Contact.”

DATES: Submit comments by January 22, 2024. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject); however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2023–0102. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the “For Further Information Contact” section of this document.

- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief

Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0102 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2023–0102.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to PDR.Resource@nrc.gov. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML23299A248. The supporting statement is available in ADAMS under Accession No. ML23142A177.

- *NRC’s PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

- *NRC’s Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC’s Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2023–0102, in your comment submission.

The NRC cautions you not to include identifying or contact information in

comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Comprehensive Decommissioning Program, Annual Site List and Point of Contact.

2. *OMB approval number:* 3150-0206.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* Annually.

6. *Who will be required or asked to respond:* All Agreement States who have signed Section 274(b) Agreements with the NRC.

7. *The estimated number of annual responses:* 39 (20 responses from Agreement States with sites of interest + 19 responses from Agreement States with no sites of interest).

8. *The estimated number of annual respondents:* 39 (20 responses from Agreement States with sites of interest + 19 responses from Agreement States with no sites of interest).

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 49.5 (40 hours from Agreement States with sites of interest + 9.5 hours from Agreement States with no sites of interest).

10. *Abstract:* Agreement States will be asked to provide a list of sites undergoing decommissioning and point of contact information for uranium recovery and complex materials sites undergoing decommissioning that are regulated by the Agreement States. The information request will allow the NRC

to compile, in a centralized location, a list of facilities and points of contact who can provide information regarding Agreement State sites undergoing decommissioning in the United States. This does not apply to information, such as trade secrets and commercial or financial information provided by the Agreement States, that is considered privileged or confidential.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.

2. Is the estimate of the burden of the information collection accurate? Please explain your answer.

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: November 16, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023-25754 Filed 11-20-23; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2022-0211]

Information Collection: NRC Form 4, Cumulative Occupational Dose History

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, NRC Form 4, "Cumulative Occupational Dose History."

DATES: Submit comments by December 21, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2022-0211 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2022-0211.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. The supporting statement and NRC Form 4 are available in ADAMS under Accession Nos. ML23319A008 and ML23319A010.

- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, NRC Form 4, “Cumulative Occupational Dose History.” The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on August 30, 2023, 88 FR 59951.

1. *The title of the information collection:* NRC Form 4, Cumulative Occupational Dose History.
2. *OMB approval number:* 3150–0005.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 4.
5. *How often the collection is required or requested:* On Occasion.
6. *Who will be required or asked to respond:* NRC licensees who are required to comply with part 20 of title 10 of the *Code of Federal Regulations* (10 CFR), “Standards for Protection Against Radiation.”

7. *The estimated number of annual responses:* 243,429 (1,880 reporting + 237,145 third-party disclosure + 4,404 recordkeepers).

8. *The estimated number of annual respondents:* 4,404.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 66,558 (157 reporting + 7,115 third-party disclosure + 59,286 recordkeeping).

10. *Abstract:* The NRC Form 4 is used to record the summary of an occupational worker’s cumulative occupational radiation dose, including prior occupational exposure and the current year’s occupational radiation exposure. The NRC Form 4 is used by licensees, and inspected by the NRC, to ensure that occupational radiation doses do not exceed the regulatory limits specified in 10 CFR 20.1501.

Dated: November 16, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–25755 Filed 11–20–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0063]

Information Collection: NRC Form 749, Manual License Verification Report/ License Verification System

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, NRC Form 749, “Manual License Verification Report”/ License Verification System.

DATES: Submit comments by December 21, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by

selecting “Currently under Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0063 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2023–0063.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML23319A446. The supporting statement is available in ADAMS under Accession No. ML23270C019.

- *NRC’s PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

- *NRC’s Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC’s Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, NRC Form 749, “Manual License Verification Report”/License Verification System. The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on July 28, 2023, 88 FR 48920.

1. *The title of the information collection:* NRC Form 749, Manual License Verification Report/License Verification System.

2. *OMB approval number:* 3150–0223.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Form 749.

5. *How often the collection is required or requested:* On occasion. Licensees subject to part 37 of title 10 of the *Code of Federal Regulations*, “Physical Protection of Byproduct Material,” license verification requirements must verify the legitimacy of the license with the issuing agency prior to transferring radioactive materials in quantities of concern.

6. *Who will be required or asked to respond:* Licensees are required to

complete a license verification under the circumstances noted in 5 above. A License Verification System (LVS) is available to provide an electronic method for fulfilling this requirement. In cases where a licensee is unable to use the LVS to perform a verification, they will provide NRC Form 749 for manual license verification.

7. *The estimated number of annual responses:* 5,278 (589 manual license verification + 4,689 LVS).

8. *The estimated number of annual respondents:* 5,278 (589 manual license verification + 4,689 LVS).

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 297 (59 manual license verification + 238 LVS).

10. *Abstract:* When a licensee is unable to use the LVS to perform their license verification prior to transferring radioactive materials in quantities of concern, a manual process is available, in which licensees submit the NRC Form 749, “Manual License Verification Report.” The form provides the information necessary for the license issuing agencies to perform the verification on behalf of the licensee transferring the radioactive materials.

Dated: November 16, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–25752 Filed 11–20–23; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98953; File No. SR–NYSE–2023–41]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

November 15, 2023.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that on November 1, 2023, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-

regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to (1) modify fee rates and requirements for transactions that remove liquidity from the Exchange; (2) offer a monthly rebate for Designated Market Maker (“DMM”) units with 150 or fewer assigned securities along with incentives for affiliated Supplemental Liquidity Providers (“SLPs”); and (3) eliminate an underutilized fee for transactions that remove liquidity from the Exchange in Tape B and C securities. The Exchange proposes to implement the fee changes effective November 1, 2023. The Exchange proposes to implement the fee changes effective September 25, 2023. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) modify fee rates and requirements for transactions that remove liquidity from the Exchange; (2) offer a monthly rebate for DMM units with 150 or fewer assigned securities along with incentives for affiliated SLPs; and (3) eliminate an underutilized fee for transactions that remove liquidity from the Exchange in Tape B and C securities.

The proposed changes respond to the current competitive environment by incentivizing submission of additional liquidity in Tape A, B and Tape C

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

securities to a public exchange and offering an additional incentive to smaller DMM units and affiliated SLPs to quote on the Exchange. The proposed incentive also seeks to attract potential new DMM units and affiliated SLPs in order to expand and diversify the pool of Exchange market makers.

The Exchange proposes to implement the fee changes effective November 1, 2023.⁴

Background

Current Market and Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁵

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”⁶ Indeed, cash equity trading is currently dispersed across 16 exchanges,⁷ numerous alternative trading systems,⁸ and broker-dealer internalizers and wholesalers, all

competing for order flow. Based on publicly-available information, no single exchange currently has more than 17% market share.⁹ Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange’s share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.¹⁰

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm’s reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

In response to the competitive environment described above, the Exchange has established incentives for its member organizations who submit orders that remove liquidity on the Exchange. The Exchange believes that the proposed changes, taken together, will incentivize submission of additional liquidity in Tape A, B and Tape C securities to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange has also established incentives for DMM units to quote at specified levels. The proposed fee change is designed to encourage market maker quoting by offering an additional incentive to smaller DMM units and affiliated SLPs to quote on the Exchange. The proposed change could also have the added benefit of potentially attracting new DMM units and affiliated SLPs to the Exchange.

Proposed Rule Change

The Exchange proposes to revise the rates and requirements for fees for transactions that remove liquidity from the Exchange and pay DMM units with 150 or fewer assigned securities a new, monthly rebate based on the number of assigned securities and time at the National Best Bid (“NBB”) and National Best Offer (“NBO,” together the

“NBBO”) in the applicable security in the applicable month, along with a minimum SLP credit for adding displayed liquidity. The Exchange also proposes to eliminate an underutilized fee for transactions that remove liquidity from the Exchange in Tape B and C securities.

Charges for Removing Liquidity

Currently, the Exchange sets forth the fees for removing liquidity from the Exchange in Tape A securities in a different section of the Price List from fees for removing liquidity in Tape B and C securities, which are grouped with credits for adding liquidity in Tape B and C securities under their own heading in the Price List.

The Exchange proposes to modify the rates and requirements for certain fees for removing liquidity in Tapes B and C securities.

First, for non-Floor broker transactions that remove liquidity from the Exchange (*i.e.*, when taking liquidity from the NYSE), the Exchange currently offers a fee of \$0.00290 in Tape A securities and a fee of \$0.00295 for Tape B and C securities where the member organization has an Adding ADV,¹¹ excluding liquidity added by a DMM, that is at least 2,000,000 ADV on the NYSE in Tape A securities.

The Exchange proposes to change the fee for Tape A securities and revise the requirements to qualify for the fees, as follows. As proposed, for non-Floor broker transactions that remove liquidity from the Exchange, the Exchange would offer a fee of \$0.00300 in Tape A securities and the current fee of \$0.00295 for Tape B and C securities where the member organization has 0.05% Adding ADV of Tape A CADV.

Second, the Exchange currently offers a fee of \$0.00285 in Tape A securities and a fee of \$0.00290 in Tape B and C securities for non-Floor broker transactions if the member organization has Adding ADV, excluding liquidity added by a DMM, that is at least 7,000,000 in Tape A and 500,000 ADV in Tape B and Tape C combined during the billing month.

The Exchange proposes to change the fee for Tape A securities and revise the requirements to qualify for the fees, as follows. As proposed, for non-Floor broker transactions that remove liquidity from the Exchange, the Exchange would offer a fee of \$0.00295 in Tape A securities and the current fee of \$0.00290 for Tape B and C securities where the member organization has 0.10% Adding ADV of Tape A CADV

⁴ The Exchange originally filed to amend the Price List on September 1, 2023 (SR-NYSE-2023-31). SR-NYSE-2023-31 was withdrawn on September 13, 2023 and replaced by SR-NYSE-2023-32. SR-NYSE-2023-32 was withdrawn on September 22, 2023 and replaced by SR-NYSE-2023-33. SR-NYSE-2023-33 was withdrawn on September 28, 2023 and replaced by SR-NYSE-2023-35. SR-NYSE-2023-35 was withdrawn on November 1, 2023 and replaced by this filing.

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) (“Regulation NMS”).

⁶ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

⁷ See Choe U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

⁸ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

⁹ See Choe Global Markets U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share/.

¹⁰ See *id.*

¹¹ The terms “ADV” and “CADV” are defined in footnote * of the Price List.

and 0.007% Adding ADV in Tape B and Tape C CADV combined during the billing month.

Third, the Exchange currently offers a fee of \$0.0028 in Tape A securities and a fee of \$0.00285 Tape B and C securities for non-Floor broker transactions if the member organization has Adding ADV, excluding liquidity added by a DMM, that is at least 14,000,000 ADV in Tape A securities and 750,000 ADV in Tape B and Tape C securities combined during the billing month.

The Exchange proposes to change the fee for Tape A securities and revise the requirements to qualify for the fees, as follows. As proposed, for non-Floor broker transactions that remove liquidity from the Exchange, the Exchange would offer a fee of \$0.00290 in Tape A securities and the current fee of \$0.00285 for Tape B and C securities where the member organization has 0.30% Adding ADV in Tape A CADV and 0.01% Adding ADV in Tape B and Tape C CADV combined during the billing month.

Finally, the Exchange proposes a new tier for non-Floor broker transactions that remove liquidity from the Exchange. As proposed, member organizations would be eligible for a fee of \$0.00285 in Tape A, Tape B and Tape C securities for non-Floor broker transactions if the member organization (1) has 1.05% Adding ADV in Tape A CADV and 0.01% Adding ADV in Tape B and Tape C CADV combined during the billing month, or (2) is affiliated¹² with a DMM unit that is registered as a DMM unit in at least 25 securities and has 0.05% Adding ADV in Tape A CADV.

The purpose of this proposed change is to encourage member organizations to send liquidity to the Exchange. Specifically, the first proposed qualification method seeks to encourage member organizations to send adding liquidity in all Tapes as way to achieve eligibility for a lower remove fee, which could in turn incentivize those member organizations to send removing liquidity to the Exchange in response to the lower remove fee. The second proposed qualification method seeks to encourage member organizations affiliated with a DMM unit that is registered in at least 25 securities to send adding liquidity in Tape A securities as way to achieve eligibility for a lower remove fee, which could in turn incentivize those member

organizations to send removing liquidity to the Exchange to capture that lower remove fee. The Exchange believes that it is reasonable to offer a lower remove fee based on a combination of adding liquidity and affiliation with a DMM unit of a certain size. The Exchange notes that other marketplaces offer incremental credits to members affiliated with a lead market maker ("LMM") registered in a minimum number of securities that adds a specified percentage of displayed liquidity.¹³ The Exchange further believes that eligibility for the proposed fee based on a combination of affiliation with a DMM unit with a certain number of registrations and an adding volume requirement is not unfairly discriminatory because member organizations that are not affiliated with a DMM unit can still qualify for the lower remove fee by sending adding liquidity to the Exchange and meeting the ADV requirements for all Tapes set out in the first qualification method.

Because the tier would be new, the Exchange does not know how many member organizations could qualify based on the proposed Adding ADV criteria set out in the first prong. The Exchange does not know, however, whether any of these member organizations would send sufficient adding ADV volume to the Exchange in Tape A, B and C securities to be eligible for the proposed fee based on the first qualification method. Similarly, there are 3 member organizations affiliated with a DMM unit that is registered in at least 25 securities that could be eligible for the lower remove if they send the proposed amount of adding ADV in Tape A securities. The Exchange does not know, however, whether any of these member organizations would send sufficient Adding ADV volume in Tape A securities to the Exchange in order to be eligible for the proposed fee based on the second qualification method.

The Exchange proposes an approach for the removing tiers that will compare the liquidity added by member organizations from one based on ADV to a percentage threshold based on Tape A CADV and combined Tape B and C

CADV. As proposed, the percentage threshold will adjust each calendar month based on the US average daily consolidated share volume in Tape A securities and Tape B and Tape C securities CADV for that month. By allowing tiers to move in sync with consolidated volume, the proposed change will provide a more consistent floor against which to measure member organizations' adding volume on the Exchange. In addition, the proposed change will provide a more straightforward way to communicate floating volume tiers while maintaining a minimum threshold, an approach similar to that adopted by other exchanges.¹⁴ Although the percentage thresholds will result in lower minimum share volume requirements for the removing tiers when consolidated volumes are lower, they will also result in higher minimum share volume requirements when consolidated volumes are higher.

The Exchange notes the proposed percentages of CADV are comparable to the current ADV levels. For example, Tape A CADV in May 2023 was 4 billion shares. The current Tape A Add ADV requirements of 14 million shares ADV, 7 million shares ADV, and 2 million shares ADV would equate to 12 million shares ADV (using 0.30% of Tape A CADV), 4.0 million shares ADV (using 0.10% of Tape A CADV), and 2 million shares ADV (using 0.05% of Tape A CADV), respectively. The Exchange further notes that changing the 7 million share requirement to 0.10% of Tape A CADV represents a significant reduction in the requirement, which the Exchange believes should encourage more member organizations to participate in that tiered pricing.

The Exchange believes that the proposed changes, taken together, will incentivize submission of liquidity in Tape A, B and Tape C securities to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange does not know how much order flow member organizations choose to route to

¹³ For instance, Cboe BZX offers a higher tiered rebate based on a lower adding requirement if the member is enrolled in a minimum number of LLM securities. See Cboe BZX Equities Fee Schedule, available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/. The Exchange's affiliate NYSE Arca, Inc., offers incremental credits for adding liquidity in Tape B securities to permit ETP holders affiliated with an LMM based on the number of Less Active ETP Securities that meet at least two of four quoting requirements in which the LMM is registered as the LMM. See NYSE Arca Equities Fees and Charges, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

¹⁴ For example, NYSE Arca, Inc. ("NYSE Arca") charges fees for removing liquidity of \$0.0030, or \$0.0029 in Tape B securities for ETP Holders meeting the requirements of Adding Tiers 1–4, or \$0.0029 in Tape C securities for ETP Holders meeting the requirements of Tape C Tier 1. See NYSE Arca Equities Fees and Charges, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

¹² For purposes of the Price List, "affiliate" means any member organization under 75% common ownership or control of that member organization. See NYSE Price List, General, II(c), available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

other exchanges or to off-exchange venues. Because the proposed reconfiguration involves the introduction of new fees, incentives, and/or new requirements, the Exchange does not know how many member organizations could qualify for the new remove fees based on their current trading profile on the Exchange and if they choose to direct order flow to the NYSE. In short, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange. The proposed changes are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

Small DMM Incentive

The Exchange proposes to pay DMM units with 150 or fewer assigned securities a new, monthly rebate based on the number of assigned securities and time at the NBBO in the applicable security in the applicable month. The proposed rebate would be payable for each security assigned to such a DMM in the previous month (regardless of whether the stock price exceeds \$1.00) for which that DMM provides quotes at the NBBO at least 15% of the time in the applicable month, which the Exchange proposes to define in the Price List as the "Incentive Quoting Requirement").¹⁵ The proposed monthly rebate would be in addition to the current rate on transactions and would be prorated to the number of trading days in a month that an eligible security is assigned to a DMM.

As proposed, a DMM unit that has at least 1 and not more than 24 assigned securities that meets the Incentive Quoting Requirement would be eligible for a monthly rebate of \$250 per qualifying symbol.

A DMM unit that has a least 25 and no more than 74 assigned securities that meets the Incentive Quoting Requirement would be eligible for a monthly rebate of \$500 per qualifying symbol. SLPs affiliated with a DMM unit that has between 25 and 74 assigned securities that meet the

Incentive Quoting Requirement are eligible for a minimum display credit for SLP Adding of \$0.0023 in SLP symbols that meet the 10% average quoting requirement in an assigned security pursuant to Rule 107B.¹⁶

Finally, a DMM unit that has at least 75 but no more than 150 assigned securities that meets the Incentive Quoting Requirement would be eligible for a monthly rebate of \$1,000 per qualifying symbol. SLPs affiliated with a DMM unit that has between 75 and 150 assigned securities that meet the Incentive Quoting Requirement are eligible for a minimum display credit for SLP Adding of \$0.0026 in SLP symbols that meet the 10% average quoting requirement in an assigned security pursuant to Rule 107B.

For example, assume a DMM has 35 assigned securities. Further assume the DMM quotes at the NBBO at least 15% of the time in 30 of those assigned securities and quotes under the NBBO 15% of the time in the remaining 5 assigned securities. For a billable month in those 30 assigned securities that meet the Incentive Quoting Requirement, the DMM would receive a per qualified symbol credit of \$500, with a total combined credit of \$15,000 (30 securities × \$500). In addition, a SLP affiliated with that DMM would receive a minimum credit of \$0.0023 for displayed adding, and would receive a higher credit if that SLP qualified for higher credits under the SLP Tiers.

The proposed rule change is designed to provide smaller market makers (*i.e.*, DMM units with 150 or fewer assigned securities) with an added incentive to quote in their assigned securities at the NBBO at least 15% of the time in a given month and increase SLP displayed adding volume. As described above, member organizations have a choice of where to send order flow. The Exchange believes that incentivizing DMM units on the Exchange to quote at the NBBO more frequently could attract additional orders to the Exchange and contribute to price discovery which

benefits all market participants. In addition, additional liquidity-providing quotes benefit all market participants because they provide greater execution opportunities on the Exchange and improve the public quotation. Moreover, the Exchange believes the proposed change could have the added benefit of attracting additional DMM units to the Exchange. Currently, the Exchange has three DMM units, only one of which has fewer than 150 assigned securities and therefore could qualify for the rebate.¹⁷ The Exchange cannot predict with certainty whether and how many member organizations would avail themselves of the opportunity to become an Exchange DMM unit. However, the Exchange believes that the proposed rebate could incentivize additional firms to become DMM units on the Exchange by increasing incentives for new and smaller entrants. Finally, the Exchange believes that the proposed minimum display credits for SLPs affiliated with a DMM unit is reasonable because it would incentivize greater adding liquidity by SLPs affiliated with a DMM unit, thereby contributing to depth and market quality on the Exchange.

Deletion of Underutilized Remove Tier Fee

In August 2019, the Exchange adopted a new, lower fee of \$0.0026 per share for removing liquidity from the Exchange in both Tapes B and C securities as an alternative way for member organizations to qualify for the Remove Tier for Tape B and C Securities. The purpose of the change was to incentivize member organizations to remove additional liquidity from the Exchange, thereby increasing the number of orders adding liquidity that are executed on the Exchange and improving overall liquidity on a public exchange, resulting in lower costs for member organizations that qualify for the rate.

The Exchange proposes to eliminate and remove the fee of \$0.0026 per share for removing liquidity from the Exchange in both Tapes B and C and the associated requirements. The fee has been underutilized by member organizations insofar as only three have achieved the fee since it was adopted. The Exchange does not anticipate that any additional member organization in the near future would qualify for the tiered fee that is the subject of this proposed rule change.

¹⁵ For purposes of the Price List, DMM NBBO Quoting means DMM quoting at the NBBO. See NYSE Price List, General, third bullet, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf. Time at the NBBO or "inside" is calculated as the average of the percentage of time the DMM unit has a bid or offer at the inside. Reserve or other non-displayed orders entered by the DMM are not included in the inside quote calculations.

¹⁶ Under Rule 107B, a SLP can be either a proprietary trading unit of a member organization ("SLP-Prop") or a registered market maker at the Exchange ("SLMM"). For purposes of the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B, quotes of an SLP-Prop and an SLMM of the same member organization are not aggregated. However, for purposes of adding liquidity for assigned SLP securities in the aggregate, shares of both an SLP-Prop and an SLMM of the same member organization are included. SLPs affiliated with a DMM unit that has between 1 and 24 assigned securities would not be eligible for a minimum display credit for SLP Adding. It should be noted that eligible SLPs would receive the better of the proposed minimum display credit or the applicable current SLP tiered credit.

¹⁷ In contrast, there are 14 competing Lead Marker Makers on NYSE Arca. See <https://www.nyse.com/markets/nyse-arca/membership>.

The proposed change is not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change is Reasonable

As discussed above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁰ While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”²¹

Charges for Removing Liquidity

The Exchange believes that the proposal to revise the rates and requirements for fees for transactions that remove liquidity from the Exchange are reasonable. The purpose of these changes is to encourage additional liquidity on the Exchange because market participants benefit from the greater amounts of displayed liquidity

present on a public exchange. The Exchange believes that the proposed modifications to the qualification requirements, including replacing a fixed volume number with a percentage of Adding ADV, and the new fees will incentivize additional liquidity in Tape A, Tape B and Tape C securities to a public exchange to qualify for lower fees for removing liquidity on those tapes, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The proposal is thus reasonable because all member organizations would benefit from such increased levels of liquidity. As noted, the Exchange believes that replacing a fixed volume number with a percentage of Adding ADV is reasonable because the proposed percentages of Adding ADV are comparable to the current levels with one exception that represents a significant reduction in the requirement, which the Exchange believes is reasonable because it should encourage more member organizations to participate in that tiered pricing.

With respect to the addition of percentage ADV thresholds to the existing share thresholds for the remove pricing tiers, the Exchange believes that the change is reasonable because the levels of liquidity provision required to receive the applicable credits will move month to month with respect to the levels of market volumes. The Exchange believes the levels of activity required to achieve higher tiers will be generally consistent with existing requirements for these tiers.

For the same reasons, the Exchange believes that it is reasonable to offer a lower fee of \$0.00285 fee in Tape A, B and C securities for non-Floor broker transactions if the member organization has 1.05% Adding ADV in Tape A CADV and 0.01% Adding ADV in Tape B and Tape C CADV combined during the billing month, or is affiliated with a DMM unit registered in at least 25 securities and sends a minimum of 0.05% Adding ADV in Tape A CADV. As noted above, the proposed fee is designed to encourage member organizations to send liquidity to the Exchange, which would be accomplished by member organizations sending adding liquidity to the Exchange to meet the proposed tier requirements. Under either proposed qualification method, by qualifying for the lower remove fee, the Exchange believes the member organization would have an incentive to send removing liquidity to the Exchange. The Exchange thus believes both methods are a reasonable way to increase liquidity on a public exchange.

As noted, because the proposed fee is new, the Exchange does know how many member organizations would qualify for the proposed fee based on their current Exchange trading profile. The Exchange believes that offering the proposed tiered remove fee to member organizations that are affiliated with a DMM unit registered in at least 25 securities could incentivize other member organizations to become DMM units or increase their number of DMM registrations in order for their DMM unit affiliates to become eligible for the fee. The proposal is reasonable because all member organizations would benefit from such increased levels of liquidity. As noted, the Exchange believes the proposed alternative qualification method is reasonable and fair because member organizations that do not qualify for the proposed lower fee based on the revised alternative qualification criteria can still qualify by meeting the proposed adding ADV requirements for all Tapes. As also noted, other marketplaces offer incremental credits to members affiliated with an LMM that add a specified percentage of displayed liquidity or meet a minimum number of registrations in ETPs as LMM.²²

Small DMM Incentive

The Exchange believes that the proposal to offer an additional rebate to a DMM with 150 or fewer assigned securities if it increases its quoting at the NBBO, and associated incentives for affiliated SLPs, is a reasonable means to improve market quality, attract additional order flow to a public market, and enhance execution opportunities for member organizations on the Exchange, to the benefit of all market participants. The Exchange notes that the proposal would also foster liquidity provision and stability in the marketplace and reduce smaller DMM's reliance on transaction fees. The proposal would also reward DMM units, who have greater risks and heightened quoting and other obligations than other market participants. The proposed change is also a reasonable attempt to potentially attract additional DMM units to the Exchange by providing financial incentives for smaller firms to become DMM units. Moreover, offering minimum display credits for SLPs affiliated with a DMM unit is a reasonable method to incentivize greater adding liquidity by SLPs that are affiliated with a DMM unit, thereby contributing to depth and market quality on the Exchange. The Exchange further believes that it is reasonable to offer the proposed minimum display

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4) & (5).

²⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

²¹ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

²² See note 13, *supra*.

credits to SLPs affiliated with an DMM unit because the proposed credits are in line with the current adding credits for all SLPs.²³

Deletion of Underutilized Remove Tier Fee

The Exchange believes that the proposed elimination of the underutilized remove tier fee is reasonable because member organizations have underutilized this fee. As noted, only three member organizations have achieved the fee since it was adopted. The Exchange does not anticipate that any additional member organization in the near future would qualify for the tiered fee that is the subject of this proposed rule change. The Exchange believes it is reasonable to eliminate fee when such incentives become underutilized. The Exchange also believes eliminating underutilized incentives would add clarity and transparency to the Price List.

The Proposal Is an Equitable Allocation of Fees

Charges for Removing Liquidity

The Exchange believes that, for the reasons discussed above, the proposed changes taken together, will incentivize member organizations to send additional adding liquidity to achieve lower fees when removing liquidity in Tape A, Tape B and Tape C securities from the Exchange, thereby increasing the number of orders that are executed on the Exchange, promoting price discovery and transparency and enhancing order execution opportunities and improving overall liquidity on a public exchange. The Exchange believes that providing a new lower fee when removing liquidity from the Exchange based on Adding ADV in all Tapes or Adding ADV in Tape A securities where the member organization is affiliated with a DMM unit registered in at least 25 securities is equitable because it the proposed lower fee would apply equally to all similarly situated member organizations. Further, the proposed alternative qualification criteria is equitable because a member organization that would not qualify for the lower fee based on adding volume and affiliation with a DMM unit with a minimum number of assigned securities has the ability to qualify for the lower fee based on adding volume in Tapes A, B and C under the first qualification criteria.

The proposed change also is equitable because it would be in line with the applicable rates on other marketplaces.²⁴ As previously noted, the Exchange operates in a competitive environment, particularly as it relates to attracting orders, which add or remove liquidity to the Exchange. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. Because the proposed reconfiguration of the fees involves the introduction of new requirements and/or new fees, the Exchange does not know how many member organizations could qualify for the new remove fees based on their current trading profile on the Exchange and if they choose to direct order flow to the NYSE. As noted, although there are currently 3 member organizations affiliated with a DMM unit that is registered in at least 25 securities that could qualify for the proposed new \$0.00285 fee in all Tapes if they send the proposed amount of adding ADV in Tape A securities, the Exchange does not know whether any of these member organizations or how many additional member organizations could qualify for the proposed rate based on the member organization's trading profile on the Exchange. Hence, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange.

Small DMM Incentive

The Exchange believes the proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace and reducing smaller DMM's reliance on transaction fees. Moreover, the proposal is an equitable allocation of fees because it would reward DMM units for their increased risks and heightened quoting and other obligations. As such, it is equitable to offer smaller DMM units an additional flat, per security credit for orders that add liquidity. Moreover, the proposal is an equitable allocation of fees because it would reward DMM units for their increased risks and heightened quoting

requirements and other obligations. As such, it is equitable to offer smaller DMM units an additional flat, per qualified security credit for orders that add liquidity. The proposed rebate is also equitable because it would apply equally to any DMM unit of a certain size. The Exchange notes that at this time there is currently only one DMM unit that could qualify for the proposed rebate based on its number of assigned securities. The Exchange believes that the proposal would provide an equal incentive to any member organization to maintain a DMM unit, and that the proposal constitutes an equitable allocation of fees because all similarly situated member organizations would be eligible for the same rebate. Similarly, the Exchange believes that it is equitable to offer minimum display credits to SLPs affiliated with a DMM because the proposed credits would apply to all similarly situated member organizations that are affiliated with a DMM unit on a full and equal basis. Further, the Exchange believes the proposed minimum display credits are equitable because, as noted, the proposed rates are in line with the current adding tiered rates for all SLPs and thus an SLP that is not affiliated with a DMM unit could qualify for comparable rates by satisfying the current SLP adding requirements.

Deletion of Underutilized Remove Tier Fee

The Exchange believes the proposal equitably allocates fees among its market participants because the underutilized fee the Exchange proposes to eliminate would be eliminated in its entirety, and would no longer be available to any member organization in any form. Similarly, the Exchange believes the proposal equitably allocates fees among its market participants because elimination of the underutilized fee would apply to all similarly-situated member organizations that remove liquidity from the Exchange on an equal basis. All such member organizations would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and nondiscriminatory terms.

The Proposal Is Not Unfairly Discriminatory

Charges for Removing Liquidity

The Exchange believes that that reconfiguring the fee for member organizations that remove liquidity from the Exchange will incentivize submission of additional liquidity in Tape A, Tape B and Tape C securities

²³ See NYSE Price List, SLP Provide Tiers, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf. See note 16, *infra*.

²⁴ For example, NYSE Arca, Inc. ("NYSE Arca") charges fees for removing liquidity of \$0.0030, or \$0.0029 in Tape B securities for ETP Holders meeting the requirements of Adding Tiers 1–4, or \$0.0029 in Tape C securities for ETP Holders meeting the requirements of Tape C Tier 1. See NYSE Arca Equities Fees and Charges, available at https://www.nyse.com/publicdocs/nyse/markets/nysearca/NYSE_Arca_Marketplace_Fees.pdf.

to a public exchange to qualify for the lower fees for removing liquidity, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The proposal does not permit unfair discrimination because the new rates for removing liquidity in Tape A, Tape B and Tape C securities would be applied to all similarly situated member organizations and other market participants, who would all be eligible for the same credits on an equal basis. Moreover, the new lower fee when removing liquidity also neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed alternative criteria would be applied to all similarly situated member organizations, who would all be eligible for the same credit on an equal basis. Member organizations could qualify the new lower rate either by meeting the proposed Adding ADV requirements in all Tapes or meeting the proposed Adding ADV requirement in Tape A securities and affiliation with a DMM unit registered in at least 25 securities based on affiliation with a DMM unit. In both cases, the proposal does not permit unfair discrimination because the proposed criteria apply equally to all similarly situated member organizations, and all member organizations eligible for the new fee under either criteria would be eligible for the same credit on an equal and non-discriminatory basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

The Exchange believes it is not unfairly discriminatory to provide higher fees for removing liquidity in Tape A securities insofar as the proposed fees would be provided on an equal basis to all member organizations that remove liquidity by meeting the tiered requirements. Further, the Exchange believes the proposed fee would provide an incentive for member organizations to remove additional liquidity from the Exchange in Tape B and C securities. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. As noted, the proposed change also is not unfairly discriminatory because it would be in line with the applicable rates on other marketplaces.²⁵ It should be noted that

the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. Lastly, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

Small DMM Incentive

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value. For example, member organizations could display quotes on competing exchanges rather than quoting sufficiently on the Exchange to meet the 15% NBBO quoting requirement. The Exchange believes that offering a rebate for DMM units with 150 or fewer assigned securities in the previous month would provide a further incentive for smaller DMM units to quote and trade their assigned securities on the Exchange, and will generally allow the Exchange and DMM units to better compete for order flow, thus enhancing competition. The Exchange also believes that the requirement of 150 or fewer assigned securities to qualify for the credit is not unfairly discriminatory because it would apply equally to all existing and prospective member organizations with 150 or fewer assigned securities that choose to maintain a DMM unit on the Exchange. The Exchange does not believe that it is unfairly discriminatory to offer incentives based on a maximum threshold. The Exchange notes that it currently offers incentives that apply equally to all member organizations that cannot or choose not to exceed a certain volume threshold.²⁶ The Exchange believes that the proposal would provide an equal incentive to any member organization to maintain a DMM unit, and that the proposal would not be unfairly discriminatory because the threshold-based incentive would be offered on equal terms to all similarly situated member organizations. Finally, the proposed minimum display credits for SLPs affiliated with a DMM unit neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair

discrimination because the proposed minimum display credits would be applied to all similarly situated SLPs that are affiliated with a DMM unit, who would all be eligible for the same credit on an equal and non-discriminatory basis. Moreover, the proposal does not permit unfair discrimination because SLPs that are not affiliated with a DMM unit can qualify for comparable rates by satisfying the current SLP adding requirements. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

Deletion of Underutilized Remove Tier Fee

The Exchange believes that the proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal is not unfairly discriminatory because the proposed elimination of the underutilized fee would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating a fee that is underutilized and ineffective would no longer be available to any member organization on an equal basis. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of an underutilized fee would make the Price List more accessible and transparent.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,²⁷ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of

²⁶ For instance, the first 750,000 ADV of the aggregate of executions at the close by a member organization are not charged. See NYSE Price List, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

²⁵ See note 13, *supra*.

²⁷ 15 U.S.C. 78f(b)(8).

individual stocks for all types of orders, large and small.”²⁸

Intramarket Competition. The proposed change is designed to attract additional order flow and new potential DMM units to the Exchange. The Exchange believes that the proposed changes, including the DMM rebate that would continue to incentivize smaller DMM units to quote at the NBBO more frequently, would continue to incentivize market participants to direct order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more execution opportunities on the Exchange and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The proposed fees and rebate would be available to all similarly-situated market participants, and, as such, the proposed changes would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)²⁹ of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2023-41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSE-2023-41. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2023-41 and should be submitted on or before December 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-25666 Filed 11-20-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-574, OMB Control No. 3235-0648]

Proposed Collection; Comment Request; Extension: Rule 498

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (“Paperwork Reduction Act”), the Securities and Exchange Commission (the “Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 498 (17 CFR 230.498) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (“Securities Act”) permits open-end management investment companies (“funds”) to satisfy their prospectus delivery obligations under the Securities Act by sending or giving key information directly to investors in the form of a summary prospectus (“Summary Prospectus”) and providing the statutory prospectus on a website. Upon an investor's request, funds are also required to send the statutory prospectus to the investor. In addition, under rule 498, a fund that relies on the rule to meet its statutory prospectus delivery obligations must make available, free of charge, the fund's current Summary Prospectus, statutory prospectus, statement of additional information, and most recent annual and semi-annual reports to shareholders at the website address specified in the required Summary Prospectus legend (17 CFR 270.498(e)(1)). A Summary Prospectus that complies with rule 498 is deemed to be a prospectus that is authorized under Section 10(b) of the Securities Act and Section 24(g) of the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*).

The purpose of rule 498 is to enable a fund to provide investors with a

²⁸ Regulation NMS, 70 FR at 37498-99.

²⁹ 15 U.S.C. 78s(b)(3)(A).

³⁰ 17 CFR 200.30-3(a)(12).

Summary Prospectus containing key information necessary to evaluate an investment in the fund. Unlike many other federal information collections, which are primarily for the use and benefit of the collecting agency, this information collection is primarily for the use and benefit of investors. The information filed with the Commission also permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

Based on an analysis of fund filings, the Commission estimates that approximately 11,241 funds are using a Summary Prospectus. The Commission estimates that the annual hourly burden per fund associated with the compilation of the information required on the cover page or the beginning of the Summary Prospectus is 0.5 hours, and estimates that the annual hourly burden per fund to comply with the website posting requirement is approximately 1 hour, requiring a total of 1.5 hours per fund per year.¹ Thus the total annual hour burden associated with these requirements of the rule is approximately 16,862.² The Commission estimates that the annual cost burden is approximately \$21,400 per fund, for a total annual cost burden of approximately \$240,557,400.³

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Under rule 498, use of the Summary Prospectus is voluntary, but the rule's requirements regarding provision of the statutory prospectus upon investor request are mandatory for funds that elect to send or give a Summary Prospectus in reliance upon rule 498. The information provided under rule 498 will not be kept confidential. 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.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection

of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by January 22, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: November 16, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-25723 Filed 11-20-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98952; File No. SR-ISE-2023-27]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Pricing for Index Options on the Nasdaq 100 Micro Index

November 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 7, 2023, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Options

7 to adopt pricing for index options on the Nasdaq 100 Micro Index.³

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently filed an immediately effective rule change to list index options on the Nasdaq 100 Micro Index ("XND") on ISE.⁴ XND will be same in all respects as the current Nasdaq 100 Index options contract ("NDX") listed on the Exchange, except it will be based on 1/100th of the value of Nasdaq 100 Index, and will be P.M.-settled with an exercise settlement value based on the closing index value of Nasdaq 100 Index on the day of expiration.⁵

The Exchange now proposes to amend its Pricing Schedule to adopt pricing for XND. By way of background, certain proprietary products such as NDX, NDXP and the Nasdaq 100 Reduced Value Index ("NQX") are commonly excluded from a variety of fee programs.⁶ The Exchange notes that the reason for such exclusion is because the Exchange has expended considerable resources developing and maintaining its proprietary products. Similar to NDX, NDXP, and NQX, XND is a

³ The Exchange withdrew SR-ISE-2023-25 on November 7, 2023 and replaced it with the instant filing.

⁴ See ISE-2023-24 (not yet noticed). Currently, XND Options trade on Phlx.

⁵ *Id.* The Exchange notes that similar features are available with other index options contracts listed on the Exchange, including P.M. settled options on the full value of the Nasdaq-100 Index ("NDXP").

⁶ Nasdaq Phlx LLC ("Phlx") lists XND today and excludes XND from a variety of its pricing programs. See Phlx's Pricing Schedule at Options 7.

¹ 0.5 hours per fund + 1 hour per fund = 1.5 hours per fund.

² 1.5 hours per fund × 11,241 funds = 16,862 hours.

³ \$21,400 per fund × 11,241 funds = \$240,557,400.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proprietary product. As such, the Exchange proposes to establish transaction fees for XND that are similarly structured to the transaction fees for NDX, NDXP, and NQX with some differences as noted below. The Exchange also proposes to exclude XND from several pricing programs in the same manner as which NDX, NDXP, and NQX are excluded today.

Fee Programs

Today, Options 7, Section 3, Regular Order Fees and Rebates, reflects the regular order fees and rebates applicable to ISE. Today, the Exchange specifies in note 7 of Options 7, Section 3 that for all executions in regular NDX and NQX orders, the applicable index options fees in Section 5 will apply. The Exchange proposes to add pricing for XND options in note 7 of Options 7, Section 5 so it will also apply to XND.

Similarly, today, Options 7, Section 4, Complex Order Fees and Rebates, reflects complex order fees and rebates applicable to ISE. Today, the Exchange specifies in note 5 of Options 7, Section 4 that for all executions in complex NQX orders, the NQX index options fees in Section 5 will apply. The Exchange proposes to add XND in note 5 of Options 7, Section 4 so it will also apply to XND. Additionally, note 4 of Options 7, Section 4 provides that no Priority Customer complex order rebates will be paid for orders in NDX, NQX or MNX. The Exchange proposes to add XND in note 4 of Options 7, Section 4 so it will also apply to XND.

As set forth in Options 7, Section 6.H, the Exchange currently caps Crossing Order⁷ fees at \$200,000 per month, per Member on all Firm Proprietary transactions that are part of the originating or contra side of a Crossing Order. Once a Member exceeds the fee cap level the Member will be subject to a reduced transaction fee of \$0.02 per capped contract, unless the Member also qualifies for free executions. Today, fees charged by the Exchange for Responses to Crossing Orders, surcharge fees charged by the Exchange for licensed products, and fees for index options as set forth in Options 7, Section 5 are not included in the

calculation of the monthly Crossing Fee Cap. At this time, the Exchange proposes to similarly exclude fees charged for Responses to Crossing Orders, surcharge fees for licensed products, and fees for index options as set forth in Options 7, Section 5 from the calculation of the monthly Crossing Fee Cap.

Today, Options 7, Section 5, Index Options Fees and Rebates, reflects the pricing for various proprietary products including NDXP, NDX and NQX. At this time, the Exchange proposes to establish a similar pricing structure for XND that was adopted for XND on Phlx,⁸ where all Non-Priority Customers⁹ will be assessed a uniform fee of \$0.10 per contract, and Priority Customers¹⁰ will not be assessed a fee. The Exchange also proposes to assess Non-Priority Customers a surcharge of \$0.10 per contract in XND in Options 7, Section 5D, similar to Phlx Options 7, Section 5A.¹¹ The Exchange is proposing to assess lower Non-Priority Customer fees and a lower surcharge for XND as compared to NDX and NDXP because XND is based on 1/100 of the value of the Nasdaq 100 Index whereas both NDX and NDXP are based on the full value of the Nasdaq 100 Index. The Exchange's proposal seeks to assess identical fees for XND as are currently assessed on Phlx for XND options.¹²

Today, NDX, NDXP, NQX and the Mini-Nasdaq-100 Index ("MNX") are excluded from the Marketing Fee in Options 7, Section 6E. The Exchange proposes to update Options 7, Section 6E to similarly exclude XND from the Marketing Fee. The Exchange notes that the Marketing Fee is currently set to \$0.00 per contract.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁴ in particular, in that it provides for the equitable allocation of

reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is reasonable to assess the proposed Non-Priority Customer \$0.10 per contract fee and the \$0.10 per contract surcharge as discussed above for XND because the proposed pricing reflects the exclusive and proprietary nature of this product. Similar to NDX, NDXP, and NQX, the Exchange seeks to recoup the operational costs for listing proprietary products.¹⁵ Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.¹⁶ Further, the Exchange notes that with its products, market participants are offered an opportunity to transact in NDX, NDXP, NQX, or XND, or separately execute options overlying PowerShares QQQ Trust ("QQQ").¹⁷ Offering such proprietary products provides market participants with a variety of choices in selecting the product they desire to utilize in order to transact in the Nasdaq 100 Index. When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products.

Further, the Exchange believes that the proposed rates for XND are reasonable because they mirror the fees assessed by Phlx for XND¹⁸ and the fees are well within the range of fees assessed for the Exchange's other proprietary products, namely NDX and NDXP.¹⁹ The Exchange believes it is reasonable to charge lower rates for XND compared to NDX and NDXP because XND is based on 1/100 of the

¹⁵ By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a multiply listed option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

¹⁶ See pricing for the Mini-RUT Index options ("MRUT") on Cboe Exchange, Inc.'s Fees Schedule.

¹⁷ QQQ is an exchange-traded fund based on the same Nasdaq 100 Index as NDX, NDXP, and XND.

¹⁸ See Phlx Options 7, Section 5A.

¹⁹ Specifically, the Exchange is proposing to assess Non-Priority Customers a \$0.10 per contract fee in XND while Priority Customers will receive free executions. Today, the Exchange assesses Non-Priority Customers a \$0.75 per contract fee for both NDX and NDXP, and does not assess Priority Customers a fee. Additionally, the Exchange is proposing to assess Non-Priority Customers a surcharge of \$0.10 per contract for XND whereas today, Non-Priority Customers are assessed a surcharge of \$0.25 per contract for NDX and NDXP.

⁷ Crossing Orders are contracts that are submitted as part of a Facilitation, Solicitation, PIM, Block or QCC order. All eligible volume from affiliated Members will be aggregated for purposes of the Crossing Fee Cap, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. Fees charged by the Exchange for Responses to Crossing Orders are not included in the calculation of the monthly fee cap. For purposes of the Crossing Fee Cap the Exchange attributes eligible volume to the ISE Member on whose behalf the Crossing Order was executed.

⁸ See Phlx Options 7, Section 5A.

⁹ "Non-Priority Customers" include Market Makers, Non-Nasdaq ISE Market Makers (FarMMs), Firm Proprietary/Broker-Dealers, and Professional Customers. See Options 7, Section 1(c).

¹⁰ A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Options 1, Section 1(a)(37). Unless otherwise noted, when used in this Pricing Schedule the term "Priority Customer" includes "Retail" as defined below. See Options 7, Section 1(c).

¹¹ The Exchange proposes to re-letter current "C" as "D" in Options 7, Section 5.

¹² See Phlx Options 7, Section 5A.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

value of the Nasdaq 100 Index while both NDX and NDXP are based on the full value of the Nasdaq 100 Index. The Exchange's proposal seeks to assess identical fees for XND as are currently assessed on Phlx for XND options.²⁰

The Exchange's proposal to assess the proposed Non-Priority Customer \$0.10 per contract fee and the \$0.10 per contract surcharge is equitable and not unfairly discriminatory because the Exchange will assess these fees uniformly to all Non-Priority Customers. The Exchange similarly believes that the proposed \$0.10 per contract XND surcharge is equitable and not unfairly discriminatory because it will apply uniformly to all Non-Priority Customers. The Exchange believes it is equitable and not unfairly discriminatory to assess no XND fees to Priority Customers because Priority Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Primary Market Makers and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Fee Programs

The proposed amendments to note 7 in Options 7, Section 3 and notes 4 and 5 in Options 7, Section 4, in connection with the application of the adopted pricing in Options 7, Section 5, are reasonable as the Exchange will apply the proposed Options 7, Section 5 pricing for options transacted in XND as opposed to the pricing in Options 7, Sections 3 and 4. The Exchange believes that the proposed amendments to note 7 in Options 7, Section 3 and notes 4 and 5 in Options 7, Section 4, in connection with the application of the adopted pricing in Options 7, Section 5, are equitable and not unfairly discriminatory because the Exchange will uniformly apply the pricing in Options 7, Section 5 for options transacted in XND.

The Exchange believes that its proposal to eliminate the Priority Customer complex order rebates for XND is reasonable because even after the elimination of the rebate, Priority Customer complex orders in XND will not be assessed any complex order transaction fees. As noted above, the Priority Customer complex order rebates are likewise currently eliminated for NDX, NDXP and NQX. The Exchange's

proposal to eliminate the Priority Customer complex order rebates for XND is equitable and not unfairly discriminatory because all transactions in XND will uniformly not be eligible for the rebates.

The Exchange believes that its proposal to exclude fees charged for Responses to Crossing Orders, surcharge fees for licensed products, and fees for index options as set forth in Options 7, Section 5 from the calculation of the monthly Crossing Fee Cap is reasonable because XND will be an exclusively listed product. Similar to NDX, NDXP and NQX, which are also excluded from the Crossing Fee Cap, the Exchange seeks to recoup the operational costs for listing proprietary products. The Exchange further believes that its proposal to exclude fees charged for Responses to Crossing Orders, surcharge fees for licensed products, and fees for index options as set forth in Options 7, Section 5 from the calculation of the monthly Crossing Fee Cap is equitable and not unfairly discriminatory because all fees charged for Responses to Crossing Orders, surcharge fees for licensed products, and fees for index options will uniformly be excluded from the Crossing Fee Cap.

The Exchange believes it is reasonable to not apply the Marketing Fee to XND as other proprietary products, namely NDX, NQX, and MNX, are currently excluded from the Marketing Fee and are all based on the Nasdaq 100 Index. Also, the Exchange believes it is reasonable to exclude XND from the Marketing Fee because the purpose of the Marketing Fee is to generate more Priority Customer order flow to the Exchange. Because XND will be an exclusively listed product on Phlx, the Exchange does not believe that applying a Marketing Fee is necessary for this product. Also, of note the Marketing Fee is currently set to \$0.00 per contract. The Exchange believes it is equitable and not unfairly discriminatory to not apply the Marketing Fee to XND because all transactions in XND will uniformly not be subject to the Marketing Fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or

rebate opportunities available at other venues to be more favorable. The Exchange notes that with its products, market participants are offered an opportunity to transact in NDX, NDXP, NQX, or XND, or separately execute options overlying QQQ. Offering these products provides market participants with a variety of choices in selecting the product they desire to utilize to transact in the Nasdaq 100 Index.

Further, the Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed XND pricing will apply uniformly to all similarly situated market participants. Specifically, all Non-Priority Customers will be assessed a uniform fee of \$0.10 per contract and an options surcharge of \$0.10 per contract while Priority Customers receive free executions. As discussed above, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts other market participants, thus facilitating tighter spreads and increased order flow.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act²¹ and Rule 19b-4(f)(2)²² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²² 17 CFR 240.19b-4(f)(2).

²⁰ See Phlx Options 7, Section 5A.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2023-27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-ISE-2023-27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2023-27 and should be submitted on or before December 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-25665 Filed 11-20-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98956; File No. SR-PEARL-2023-63]

Self-Regulatory Organizations; MIAx PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAx Pearl Options Fee Schedule

November 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on November 8, 2023, MIAx PEARL, LLC ("MIAx Pearl" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAx Pearl Options Exchange Fee Schedule (the "Fee Schedule").

The text of the proposed rule change is available on the Exchange's website at <https://www.miaxglobal.com/markets/us-options/pearl-options/rule-filings>, at MIAx Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Section 1(a) of the

Fee Schedule, Exchange Rebates/Fees—Add/Remove Tiered Rebates/Fees, for the MIAx Pearl Market Maker³ origin to: (1) amend and clarify the cross-asset volume based requirement contained in Tier 2 and related footnote “#” following the Market Maker origin table; and (2) adopt an alternative volume criteria for the Tier 2 rebates and fees for Market Makers with an additional explanatory note. The Exchange originally filed this proposal on October 31, 2023 (SR-PEARL-2023-61). On November 8, 2023, the Exchange withdrew SR-PEARL-2023-61 and refiled this proposal.

Background

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon the total monthly volume executed by the Member⁴ on MIAx Pearl in the relevant, respective origin type (not including Excluded Contracts)⁵ (as the numerator) expressed as a percentage of (divided by) TCV⁶ (as the denominator). In

³ The term “Market Maker” means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. See the Definitions section of the Fee Schedule and Exchange Rule 100.

⁴ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See the Definitions section of the Fee Schedule and Exchange Rule 100.

⁵ The term “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions section of the Fee Schedule.

⁶ The term “TCV” means total consolidated volume calculated as the total national volume in those classes listed on MIAx Pearl for the month for which the fees apply, excluding consolidated volume executed during the period time in which the Exchange experiences an “Exchange System Disruption” (solely in the option classes of the affected Matching Engine (as defined below)). The term “Exchange System Disruption,” which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. The term “Matching Engine,” which is also defined in the Definitions section of the Fee Schedule, is a part of the MIAx Pearl electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. The Exchange believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates

Continued

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²³ 17 CFR 200.30-3(a)(12).

addition, the per contract transaction rebates and fees are applied retroactively to all eligible volume for that origin type once the respective threshold tier (“Tier”) has been reached by the Member. The Exchange aggregates the volume of Members and their Affiliates.⁷ Members that place resting liquidity, *i.e.*, orders resting on the book of the MIAAX Pearl System,⁸ are paid the specified “maker” rebate (each a “Maker”), and Members that execute against resting liquidity are assessed the specified “taker” fee (each a “Taker”). For opening transactions and ABBO⁹ uncrossing transactions, per contract transaction rebates and fees are waived for all market participants. Finally, Members are assessed lower transaction fees and receive lower rebates for order

to approximately 1.4% of available trading time per month. The Exchange notes that the term “Exchange System Disruption” and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating volume for the threshold tiers in the Fee Schedule. See the Definitions section of the Fee Schedule.

⁷ The term “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAAX Pearl Market Maker) that has been appointed by a MIAAX Pearl Market Maker, pursuant to the following process. A MIAAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to membership@miaaxoptions.com no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange’s acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. See the Definitions section of the Fee Schedule.

⁸ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁹ The term “ABBO” means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. See the Definitions section of the Fee Schedule and Exchange Rule 100.

executions in standard option classes in the Penny Interval Program¹⁰ (“Penny Classes”) than for order executions in standard option classes which are not in the Penny Interval Program (“Non-Penny Classes”), where Members are assessed higher transaction fees and receive higher rebates.

Volume Calculations for Market Maker Origin Tier 2

Currently, the Exchange provides three methods in which a Market Maker may qualify for the fees and rebates associated with Tier 2 of the Market Maker origin. A Market Maker needs only to satisfy one of the methods in order to receive the fees and rebates associated with Tier 2.

Pursuant to the first method, Market Makers will qualify for the Maker rebates and Taker fees in Tier 2 of the Market Maker origin table if the Market Maker executes total monthly volume, not including Excluded Contracts, in all classes above 0.20% to 0.50% of TCV.

The second method is based upon the total monthly volume executed by a Market Maker collectively in SPY/QQQ/IWM options on the Exchange, expressed as a percentage of total consolidated national volume in SPY/QQQ/IWM options.¹¹ Pursuant to this alternative volume criteria, a Market Maker will qualify for the Maker rebates and Taker fees in Tier 2 if the Market Maker’s total executed monthly volume, not including Excluded Contracts, in SPY/QQQ/IWM options on MIAAX Pearl is above 0.55% of total consolidated national monthly volume in SPY/QQQ/IWM options. For this calculation, volume that is from adding liquidity (Maker) and taking liquidity (Taker) in SPY/QQQ/IWM options is counted towards the alternative volume criteria, and the 0.55% threshold does not have to be reached individually in each of the three symbols.

The Exchange notes that MIAAX Pearl Equities¹² implemented a fee change effective September 1, 2023, which, among other things, eliminated the “Add Volume Tiers” table and associated rebates on MIAAX Pearl Equities.¹³ Pursuant to this proposal, the

Exchange seeks to amend the third method for the volume calculation for Tier 2 of the Market Maker origin in light of the elimination of the Add Volume Tiers on MIAAX Pearl Equities, as described in more detail below. For the sake of clarity, the Exchange will describe in the paragraph immediately below the third volume calculation method as currently stated in the Fee Schedule; the proposed changes to the third volume calculation method will be described further below to account for the September 1, 2023 fee changes on MIAAX Pearl Equities that eliminated the Add Volume Tiers table and associated rebates.

As currently provided in the Fee Schedule (prior to this proposal and the original proposal), the third method is calculated using cross-asset volume requirements that require Market Makers to satisfy the requirements of Tier 2 of the Add Volume Tiers table in the MIAAX Pearl Equities fee schedule,¹⁴ and also the requirements of Tier 2 of the Midpoint Peg Order Adding Liquidity at the Midpoint Volume Tiers table (referred to herein as the “Midpoint Volume Tiers”) in the MIAAX Pearl Equities fee schedule.¹⁵ A Midpoint Peg Order¹⁶ on MIAAX Pearl Equities is a non-displayed limit order that is assigned a working price pegged to the midpoint of the PBBO.¹⁷

Amendment to Cross-Asset Volume Based Requirement

The Exchange proposes to amend the Add/Remove Tiered Rebates/Fees table set forth in Section 1)a) of the Fee Schedule for the Market Maker origin to amend the cross-asset volume based requirement contained in Tier 2 and related footnote “#” following the Marker Maker origin table. As described above, prior to implementation of the NBBO Setter Plus Program (“NBBO Program”) on MIAAX Pearl Equities, Market Makers were able to qualify for

2023) (SR-PEARL–2023–45) (eliminating the “Add Volume Tiers” table and associated rebates due to the adoption of the NBBO Setter Plus Program, which incorporated similar aspects and rebate amounts as the Add Volume Tiers).

¹⁴ See *id.* (describing the Add Volume Tiers, requirements and associated rebate amounts and how the Add Volume Tiers were incorporated into the NBBO Setter Plus Program).

¹⁵ See MIAAX Pearl Equities Fee Schedule, Section 1)e), Midpoint Peg Order Adding Liquidity at Midpoint Volume Tiers.

¹⁶ See Exchange Rule 2614(a)(3).

¹⁷ With respect to the trading of equity securities, the term “Protected NBB” or “PBB” shall mean the national best bid that is a Protected Quotation, the term “Protected NBO” or “PBO” shall mean the national best offer that is a Protected Quotation, and the term “Protected NBBO” or “PBBO” shall mean the national best bid and offer that is a Protected Quotation. See Exchange Rule 1901.

¹⁰ See Securities Exchange Act Release No. 88992 (June 2, 2020), 85 FR 35142 (June 8, 2020) (SR-PEARL–2020–06).

¹¹ See Fee Schedule, Section 1)a), explanatory paragraph below the tables and footnotes. See also Securities Exchange Act Release Nos. 84592 (November 14, 2018), 83 FR 58646 (November 20, 2018) (SR-PEARL–2018–23); 90906 (January 21, 2021), 86 FR 5296 (January 19, 2021) (SR-PEARL–2020–38).

¹² The term “MIAAX Pearl Equities” shall mean MIAAX Pearl Equities, a facility of MIAAX PEARL, LLC. See Exchange Rule 1901.

¹³ See Securities Exchange Act Release No. 98472 (September 21, 2023), 88 FR 66533 (September 27,

the Maker rebates and Taker fees in Tier 2 of the Market Maker origin if the Market Maker satisfied the requirements of Tier 2 of the Add Volume Tiers table and Tier 2 of the Midpoint Volume Tiers table in the MIAX Pearl Equities fee schedule.¹⁸

Beginning September 1, 2023, MIAX Pearl Equities incorporated aspects and rebate amounts of the Add Volume Tiers with the implementation of the NBBO Program and eliminated the Add Volume Tiers table from the MIAX Pearl Equities fee schedule.¹⁹ In light of the elimination of the Add Volume Tiers table in the MIAX Pearl Equities fee schedule, the Exchange proposes to amend the cross-asset volume based requirement contained in Tier 2 of the Market Maker origin table and related footnote “#” following the Market Maker origin table.

In particular, the Exchange proposes to replace the words “Add Volume Tiers” in Tier 2 of the Market Maker origin table with the words “NBBO Setter Plus Program.”²⁰ Under the Add Volume Tiers table, MIAX Pearl Equities provided enhanced rebates to Equity Members²¹ for executions of orders in securities priced at or above \$1.00 per share that added displayed liquidity (“Added Displayed Volume”) to MIAX Pearl Equities that met specified volume thresholds. As it pertains to this proposal regarding Tier 2 of the Market Maker origin, an Equity Member was able to qualify for MIAX Pearl Equities’ Add Volume Tiers, Tier 2, by achieving an ADAV²² of at least 0.10% of total consolidated volume.²³

With the implementation of the NBBO Program, MIAX Pearl Equities adopted a

tiered-rebate structure where Equity Members are able to achieve enhanced rebates for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity pursuant to one of three different methods for calculating volume thresholds. The three volume-based methods to determine the Equity Member’s tier for purposes of the NBBO Program are calculated in parallel in each month, and each Equity Member receives the highest tier achieved from any of the three methods each month.

As it pertains to this proposal, volume calculation Method 1 of the NBBO Program incorporates the volume calculation method of the Add Volume Tiers table, which utilizes an Equity Member’s ADAV as a percentage of TCV to determine the applicable tier. In particular, an Equity Member qualifies for Tier 2 of the NBBO Program by achieving an ADAV of at least 0.08% and less than 0.25% of TCV. Under volume calculation Method 2 of the NBBO Program, MIAX Pearl Equities calculates the tier achieved based on an Equity Member’s “NBBO Set Volume”²⁴ as a percentage of TCV. In particular, an Equity Member qualifies for the Tier 2 of the NBBO Program by achieving an NBBO Set Volume of at least 0.02% and less than 0.03% of TCV. Under volume calculation Method 3 of the NBBO Program, MIAX Pearl Equities calculates the tier achieved based on an Equity Member’s ADV as a percentage of TCV. In particular, an Equity Member qualifies for Tier 2 of the NBBO Program by achieving an ADV of at least 0.20% and less than 0.60% of TCV.

With the proposed change to replace the words “Add Volume Tiers” in Tier 2 of the Market Maker origin table with the words “NBBO Setter Plus Program,” Market Makers will be able to qualify for the Maker rebates and Taker fees in Tier 2 of the Market Maker origin table if the Market Maker satisfies the requirements of Tier 2 of both the NBBO Program and Tier 2 of the Midpoint Volume Tiers table in the MIAX Pearl Equities fee schedule.²⁵

²⁴ The term “NBBO Set Volume” means the ADAV in all securities of an Equity Member that sets the NBB or NBO on MIAX Pearl Equities. See the Definitions section of the MIAX Pearl Equities Fee Schedule.

²⁵ See also Securities Exchange Act Release No. 98472 (September 21, 2023), 88 FR 66533 (September 27, 2023) (SR-PEARL-2023-45) (describing the three alternative volume calculation methods for an Equity Member to achieve Tier 2 of the NBBO Program). Equity Members may qualify for Tier 2 of the Midpoint Volume Tiers table by achieving an ADAV for the current month consisting of midpoint peg orders in securities priced at or above \$1.00 per share that execute at the midpoint of the PBBO and add liquidity to MIAX Pearl Equities in an amount equal to or

The purpose of this change is to provide consistency and clarity in the Fee Schedule as the Add Volume Tiers table has been eliminated in the MIAX Pearl Equities fee schedule. The Exchange believes that this change provides more opportunities for market participants to satisfy this cross-asset volume requirement because there are three volume calculation methods (described above) available for an Equity Member to achieve Tier 2 of the NBBO Program, as opposed to the Add Volume Tiers table, which only provided one volume calculation method.

Adopt Alternative Volume Criteria in Tier 2 of the Market Maker Origin

The Exchange also proposes to amend the Add/Remove Tiered Rebates/Fees table set forth in Section 1)a) of the Fee Schedule for the Market Maker origin to adopt a fourth method by which a Market Maker may qualify for the fees and rebates in Tier 2 of the Market Maker origin table. In particular, the Exchange proposes that a Market Maker will qualify for the Maker rebates and Taker fees in Tier 2 if the Market Maker’s total executed monthly volume, not including Excluded Contracts, in SPY/QQQ/IWM options on MIAX Pearl is above 0.30% of SPY/QQQ/IWM TCV when adding liquidity. The Exchange proposes to amend the explanatory paragraph below the origin tables in Section 1)a) of the Fee Schedule to add a sentence for the new alternative volume criteria. Specifically, in Tier 2 for MIAX Pearl Market Makers, the proposed alternative volume criteria (above 0.30% in SPY/QQQ/IWM when adding liquidity) will be calculated based on the total monthly volume that added liquidity executed by the Market Maker collectivity in SPY, QQQ, and IWM options on MIAX Pearl in the relevant origin type, not including Excluded Contracts (as the numerator), expressed as a percentage of (divided by) SPY/QQQ/IWM TCV (as the denominator).

The purpose of this proposed change is for business and competitive reasons. The Exchange notes that at least one other competing exchange has a similar alternative volume calculation method to achieve a higher rebate that is based on a member’s combined posted interest in SPY, QQQ, IWM options expressed as a percentage of industry-wide average daily volume in SPY/QQQ/IWM options.²⁶

greater than 1,000,000 shares. See MIAX Pearl Equities Fee Schedule, Section 1)e).

²⁶ See NYSE Arca Options Fee Schedule, Market Maker Penny and SPY Posting Credit Tiers, Super Tier II, available at <https://www.nyse.com/>

¹⁸ See *supra* note 13.

¹⁹ See *id.* (noting that under volume calculation Method 1 of the NBBO Program, tiered rebates are based on an Equity Member’s average daily added volume (“ADAV”) as a percentage of TCV, which is the same method that MIAX Pearl Equities used to calculate the volume requirements for the Add Volume Tiers table).

²⁰ The Exchange propose to make the same change to footnote “#” following the Market Maker origin table in Section 1)a) of the Fee Schedule.

²¹ The term “Equity Member” means a Member authorized by the Exchange to transact business on MIAX Pearl Equities. See Exchange Rule 901.

²² With respect to MIAX Pearl Equities, the term “ADAV” means average daily added volume calculated as the number of shares added per day and “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. See the Definitions section of the MIAX Pearl Equities Fee Schedule.

²³ With respect to MIAX Pearl Equities, total consolidated volume, or “TCV,” means total consolidated volume calculated as the volume in shares reported by all exchanges and reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. See the Definitions section of the MIAX Pearl Equities Fee Schedule.

With the proposed change, the four different volume criteria available for Tier 2 of the Market Maker origin are based upon either: (1) the total monthly volume executed by the Market Maker in all options classes on MIAX Pearl, not including Excluded Contracts, (as the numerator), expressed as a percentage of (divided by) TCV (as the denominator); or (2) the total monthly volume executed by the MIAX Pearl Market Maker collectively in SPY/QQQ/IWM options on MIAX Pearl, not including Excluded Contracts, (as the numerator), expressed as a percentage of (divided by) SPY/QQQ/IWM TCV (as the denominator); or (3) the Market Maker is in Tier 2 of the NBBO Program on MIAX Pearl Equities and is also in Tier 2 of the Midpoint Volume Tiers program on MIAX Pearl Equities; or (4) the added liquidity by the MIAX Pearl Market Maker collectively in SPY/QQQ/IWM options on MIAX Pearl, not including Excluded Contracts, (as the numerator), expressed as a percentage of (divided by) SPY/QQQ/IWM TCV (as the denominator). Once any one of the aforementioned four volume criteria thresholds in Tier 2 of the Market Maker origin is reached by the Market Maker, the Tier 2 per contract rebates and fees apply to all volume in all options classes executed by that MIAX Pearl Market Maker.

Implementation

The proposed changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act²⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act,²⁸ in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange Members and issuers and other persons using its facilities, and 6(b)(5) of the Act,²⁹ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with

persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”³⁰

There are currently 17 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, as of October 30, 2023, no single exchange has more than approximately 12–13% of the multiply-listed equity options market share for the month of October 2023.³¹ Therefore, no exchange possesses significant pricing power. More specifically, as of October 30, 2023, the Exchange had a market share of approximately 6.13% of executed volume of multiply-listed equity options for the month of October 2023.³²

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products and services, terminate an existing membership or determine to not become a new member, and/or shift order flow, in response to transaction fee changes. For example, on February 28, 2019, the Exchange filed with the Commission a proposal to increase Taker fees in certain Tiers for options transactions in certain Penny Classes for Priority Customers and decrease Maker rebates in certain Tiers for options transactions in Penny Classes for Priority Customers (which fee was to be effective March 1, 2019).³³ The Exchange experienced a decrease in total market share for the month of March 2019, after the proposal went

into effect. Accordingly, the Exchange believes that its March 1, 2019, fee change, to increase certain transaction fees and decrease certain transaction rebates, may have contributed to the decrease in MIAX Pearl’s market share and, as such, the Exchange believes competitive forces constrain the Exchange’s, and other options exchanges, ability to set transaction fees and market participants can shift order flow based on fee changes instituted by the exchanges.

The Exchange believes that its proposal represents an equitable allocation of fees and is not unfairly discriminatory because it applies uniformly to all Market Makers, in that all Market Makers have the opportunity to compete for and achieve the proposed new alternative volume criteria of Tier 2, and the Tier 2 fees and rebates will apply uniformly to all Market Makers that achieve Tier 2. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Market Maker achieving the proposed alternative volume criteria, the proposed alternative volume criteria is available for any Market Maker. To the extent a Member participates on the Exchange but not on MIAX Pearl Equities, the Exchange believes that the proposal is still reasonable, equitably allocated and not unfairly discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of its equities platform. Particularly, the Exchange believes that additional such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on MIAX Pearl Equities or not. Additionally, a Market Maker that is not a Member of MIAX Pearl Equities may still satisfy the current primary volume criteria or the two other alternative volume criteria (including the newly proposed alternative volume criteria) that are not based on meeting certain volume thresholds on MIAX Pearl Equities, to be eligible for Tier 2 fees and rebates for the Market Maker origin.

Additionally, the Exchange believes its proposal represents a reasonable attempt to continue to incentivize market participants to increase the number and variety of orders sent to the Exchange for execution. Specifically, the Exchange believes its proposal to amend the cross-asset volume requirements to require Market Makers to achieve Tier 2 of the NBBO Program and Midpoint Volume Tiers table on MIAX Pearl Equities will continue to

publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf (providing additional \$0.03 credit per contract to electronic executions of market maker posted interest in Penny Issues provided an OTP Holder or OTP Firm achieves (i) at least 0.55% of total combined IWM, QQQ, and SPY industry ADV from Market Maker posted interest in IWM, QQQ, and SPY, and (ii) ETP Holder and Market Maker posted volume in Tape B Adding ADV that is equal to at least 1.50% of US Tape B CADV executed on NYSE Arca Equity Market for the billing month).

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(4).

²⁹ 15 U.S.C. 78f(b)(1) and (b)(5).

³⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

³¹ See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/> (last visited October 30, 2023).

³² See *id.*

³³ See Securities Exchange Act Release No. 85304 (March 13, 2019), 84 FR 10144 (March 19, 2019) (SR-PEARL–2019–07).

incentivize participation in greater volume from cross-asset activity, which would improve the overall quality of the Exchange's marketplace to the benefit of all market participants, both on the options and equities platforms of MIAx Pearl. The Exchange notes that such cross-asset volume requirements is not new or novel and at least one other competing exchanges offers a similar method to achieve higher rebates on its options market.³⁴

The Exchange believes its proposal to replace the Add Volume Tiers, Tier 2 requirement with the new requirement to achieve Tier 2 in the NBBO Program as an alternative method to achieve Tier 2 in the Market Maker origin table is reasonable because it provides more opportunities for market participants to satisfy this cross-asset volume requirement since there are three volume calculation methods (described above) available for an Equity Member to achieve Tier 2 of the NBBO Program, as opposed to the Add Volume Tiers table, which only provided one volume calculation method. Further, volume calculation Method 1 under the NBBO Program is nearly identical to the Add Volume Tier requirement prior to it being eliminated. An Equity Member was able to qualify for Add Volume Tier 2 by achieving an ADAV of at least 0.10% of TCV. An Equity Member qualifies for Tier 2 of the NBBO Program by achieving an ADAV of at least 0.08% and less than 0.25% of TCV. Accordingly, the Exchange believes this proposed change is reasonable because it provides additional opportunities to Equity Members to achieve Tier 2 of the NBBO Program through three volume calculation methods, including one volume calculation method that is the similar in calculation and required threshold as Add Volume Tier 2 prior to its elimination.

The Exchange also believes that its new proposed qualifications for the Tier 2 alternative volume criteria for MIAx Pearl Market Makers is equitable and not unfairly discriminatory because the Exchange will uniformly assess the rebates and fees for any Market Makers qualifying for Tier 2. Finally, encouraging Market Makers to add greater liquidity benefits all market

participants, both on the options and equities platforms of MIAx Pearl, in the quality of order interaction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that its proposal will impose any burden on intra-market competition as the Exchange believes that its proposal will not place any market participant at a competitive disadvantage as Market Makers may satisfy any of the volume criteria requirements to be eligible for the Tier 2 fees and rebates for the Market Maker origin. Further, for Market Makers that are Members of only the options trading facility of MIAx Pearl, and not the equities trading facility, those Market Makers may achieve the rebates and fees associated with Tier 2 of the Market Maker origin table by executing volume that does not require them to be MIAx Pearl Equity Members via the alternative methods described above. The Exchange believes that the proposed changes should continue to encourage the provision of liquidity in options that enhances the quality of the Exchange's market and increases the number of trading opportunities on the Exchange for all participants who will be able to compete for such opportunities. Additionally, as discussed, the proposed changes are ultimately aimed at attracting greater order flow to the Exchange, which benefits all market participants by providing more trading opportunities.

Inter-Market Competition

The Exchange does not believe that its proposal will impose any burden on inter-market competition and the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable.

There are currently 17 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 12–13% of the market share of executed volume of multiply-listed equity and ETF options trades as of October 30, 2023, for the

month of October 2023.³⁵ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of October 30, 2023, the Exchange had a market share of approximately 6.13% of executed volume of multiply-listed equity and ETF options for the month of October 2023.³⁶ In such an environment, the Exchange must continually adjust its fees and tiers to remain competitive with other options exchanges. Because competitors are free to modify their own fees and tiers in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. The Exchange believes that the proposed rule changes reflect this competitive environment because they modify the Exchange's fees and Tiers in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,³⁷ and Rule 19b–4(f)(2)³⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

³⁵ See *supra* note 31.

³⁶ See *id.*

³⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁸ 17 CFR 240.19b–4(f)(2).

³⁴ See NYSE Arca Options Fee Schedule, Market Maker Penny and SPY Posting Credit Tiers, Super Tier II, available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf (providing a credit of \$0.42 when a Firm has at least 0.15% of TCADV from Market Maker posted interest in all issues, plus ETP Holder and Market Maker posted volume in Tape B Securities ("Tape B Adding ADV") that is equal to at least 1.40% of US Tape B consolidated average daily volume ("CADV") for the billing month executed on NYSE Arca Equity Market).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-PEARL-2023-63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-PEARL-2023-63. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-PEARL-2023-63 and should be submitted on or before December 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-25669 Filed 11-20-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98957; File No. SR-CBOE-2023-054]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change To Amend Rule 4.13 To Expand the Nonstandard Expirations Program To Include P.M.-Settled Options on Broad-Based Indexes That Expire on Tuesday or Thursday

November 15, 2023.

I. Introduction

On September 28, 2023, Cboe Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 4.13(e), which governs its Nonstandard Expirations Program ("Program"), to permit p.m.-settled options on any broad-based index eligible for standard options trading that expire on Tuesday or Thursday. The proposed rule change published for comment in the **Federal Register** on October 4, 2023.³ The Commission did not receive any comment letters and is approving the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Rule 4.13(e), which governs its Program, to permit p.m.-settled options on any broad-based index eligible for standard options trading that expire on Tuesday or Thursday. Currently under the Program, the Exchange is permitted to list p.m.-settled options on any broad-based index eligible for standard trading that expire on: (1) any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an end-of-month expiration and, with respect to options on the S&P 500 Index ("SPX options") and the Mini-S&P 500 Index ("XSP options") any Tuesday or Thursday ("Weekly Expirations") and (2) the last trading day of the month ("End of Month Expirations" or "EOMs").⁴ The proposal expands the availability of Tuesday and Thursday Weekly Expirations to all broad-based indexes eligible for standard options trading.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98621 (September 28, 2023), 88 FR 68896 ("Notice").

⁴ See Rule 4.13(e).

⁵ See Notice, *supra* note 3 at 68897.

The Program for Weekly Expirations will apply to any broad-based index option with Tuesday and Thursday expirations in the same manner as it currently applies to all other p.m.-settled broad-based index options with Monday, Wednesday, and Friday expirations and to SPX and XSP options with Tuesday and Thursday expirations.⁶ Specifically, as set forth in Rule 4.13(e), Weekly Expirations, including the proposed Tuesday and Thursday expirations, are subject to all provisions of Rule 4.13 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that Weekly Expirations are p.m.-settled, and new series in Weekly Expirations may be added up to and including on the expiration date for an expiring Weekly Expiration.⁷

The maximum number of expirations that may be listed for each Weekly Expiration (*i.e.*, a Monday expiration, Tuesday expiration, Wednesday expiration, Thursday expiration, or Friday expiration, as applicable) in a given class is the same as the maximum number of expirations permitted in Rule 4.13(a)(2) for standard options on the same broad-based index.⁸ Weekly Expirations need not be for consecutive Monday, Tuesday, Wednesday, Thursday, or Friday expirations as applicable; however, the expiration date of a nonconsecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively.⁹ Weekly Expirations that are first listed in a given class may expire up to four weeks from the actual listing date.¹⁰ In addition, like all Weekly Expirations, pursuant to Rule 4.13(e)(3), transactions in expiring broad-based index options with Tuesday and Thursday expirations may be effected on the Exchange between the hours of 9:30 a.m. and 4:00 p.m. eastern time on their last trading day.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In

⁶ See *id.*

⁷ See *id.*

⁸ See *id.*

⁹ See *id.*

¹⁰ For a more detailed description of the proposed Tuesday or Thursday expirations, see Notice, *supra* note 3.

¹¹ In approving this proposed rule change, the Commission has considered the proposed rule's

³⁹ 17 CFR 200.30-3(a)(12).

particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹² which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In support of its proposal, the Exchange notes that the Commission recently approved the listing of Tuesday and Thursday expirations for SPX and XSP options in addition to Monday, Wednesday, and Friday expirations for options on any broad-based index eligible for standard options trading.¹³ The Exchange states that the introduction of Tuesday and Thursday expirations for all broad-based index options (rather than offering those expirations for just two indexes) will provide investors with expanded hedging tools and greater trading opportunities and flexibility, and will allow market participants to trade in a manner more aligned with specific timing needs and more effectively tailor their investment and hedging strategies and manage their portfolios.¹⁴ The Exchange further believes that the listing of additional p.m.-settled options on other broad-based indexes will not have any significant economic impact on the underlying component securities surrounding the close as a result of expiring p.m.-settled options or impact market quality.¹⁵ Finally, the Exchange represents it has sufficient capacity to handle additional traffic associated with trading of broad-based index options with Tuesday and Thursday expirations, and will monitor the trading volume associated with any possible additional options series listed as a result of this proposal and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.¹⁶

The Commission has had concerns about the adverse effects and impact of p.m.-settlement upon market volatility and the operation of fair and orderly markets on the underlying cash market

at or near the close of trading on expiration days.¹⁷ However, the Commission recently approved proposals from several exchanges, including the Exchange, to permanently establish programs permitting the listing and trading of certain p.m.-settled broad-based index options.¹⁸ In approving these proposals, the Commission reviewed data provided by the exchanges in their filings, the exchanges' pilot data and reports, as well as an analysis conducted at the direction of Staff from the Commission's Division of Economic and Risk Analysis and concluded that analysis of the pilot data did not identify any significant economic impact on the underlying component securities surrounding the close as a result of expiring p.m.-settled options nor did it indicate a deterioration in market quality for an existing product when a new p.m.-settled expiration was introduced.¹⁹ Further, the Commission stated that significant changes in closing procedures in the decades since index options moved to a.m. settlement may also serve to mitigate the potential impact of p.m.-settled index options on the underlying cash markets.²⁰

As noted above, the Exchange currently may list Tuesday and Thursday expirations for SPX and XSP options in addition to Monday, Wednesday, and Friday expirations for options on any broad-based index eligible for standard options trading.²¹ The Exchange's proposal, which would permit Tuesday and Thursday expirations for options on any broad-based index, is reasonably designed as a limited expansion of existing p.m.-settled broad-based index option programs and may provide the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions. The Exchange has represented that it has

adequate systems capacity and that it will monitor trading of broad-based index options with Tuesday and Thursday expirations.²² The Commission expects the Exchange to continue to monitor any potential risks from large p.m.-settled positions and take appropriate action on a timely basis if warranted.

Accordingly, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act²³ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-CBOE-2023-054) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-25670 Filed 11-20-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98928; File No. 4-631]

Joint Industry Plan; Notice of Filing of the Twenty-Third Amendment to the National Market System Plan To Address Extraordinary Market Volatility by Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX Pearl, LLC, NASDAQ BX, Inc., 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.

November 14, 2023.

I. Introduction

On October 24, 2023, NYSE Group, Inc., on behalf of the following parties to the National Market System Plan to Address Extraordinary Market Volatility ("the Plan"):¹ Cboe BZX Exchange, Inc.,

²² See *supra* note 16 and accompanying text.

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).

¹ On May 31, 2012, the Commission approved the Plan, as modified by Amendment No. 1. See Securities Exchange Act Release No. 67091, 77 FR 33498 (June 6, 2012) (File No. 4-631) ("Approval Order"). On February 20, 2013, the Commission

impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

¹³ See Securities Exchange Act Release No. 98456 (September 20, 2023), 88 FR 66091 (September 26, 2023) (SR-CBOE-2023-020) (permanent approval of nonstandard expirations pilot program) ("Nonstandard Approval Order").

¹⁴ See Notice, *supra* note 3 at 68898.

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ See Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969, at 55972 (September 9, 2011) (SR-C2-2011-008) (Order approving proposed rule change to establish a pilot program to list and trade SPXPM options on the C2 Options Exchange, Incorporated).

¹⁸ See, e.g., Securities Exchange Act Release Nos. 98454 (September 20, 2023), 88 FR 66103 at 66103-04 (September 26, 2023) (SR-CBOE-2023-005) (Order approving p.m.-settled Third Friday SPX options); 98450 (September 20, 2023), 88 FR 66 111 (September 26, 2023) (SR-ISE-2023-08) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Make Permanent Certain P.M.-Settled Pilots); 98451 (September 20, 2023), 88 FR 66088 (September 26, 2023) (SR-Phlx-2023-07) (Order approving a nonstandard expirations pilot program and p.m.-settled XND options); and Nonstandard Approval Order.

¹⁹ See e.g., Nonstandard Approval Order, 88 FR at 66094.

²⁰ See *id.*

²¹ See *supra* note 13.

Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., the Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX

noticed for immediate effectiveness the Second Amendment to the Plan. *See* Securities Exchange Act Release No. 68953, 78 FR 13113 (February 26, 2013). On April 3, 2013, the Commission approved the Third Amendment to the Plan. *See* Securities Exchange Act Release No. 69287, 78 FR 21483 (April 10, 2013). On August 27, 2013, the Commission noticed for immediate effectiveness the Fourth Amendment to the Plan. *See* Securities Exchange Act Release No. 70273, 78 FR 54321 (September 3, 2013). On September 26, 2013, the Commission approved the Fifth Amendment to the Plan. *See* Securities Exchange Act Release No. 70530, 78 FR 60937 (October 2, 2013). On January 7, 2014, the Commission noticed for immediate effectiveness the Sixth Amendment to the Plan. *See* Securities Exchange Act Release No. 71247, 79 FR 2204 (January 13, 2014). On April 3, 2014, the Commission approved the Seventh Amendment to the Plan. *See* Securities Exchange Act Release No. 71851, 79 FR 19687 (April 9, 2014). On February 19, 2015, the Commission approved the Eight Amendment to the Plan. *See* Securities Exchange Act Release No. 74323, 80 FR 10169 (February 25, 2015). On October 22, 2015, the Commission approved the Ninth Amendment to the Plan. *See* Securities Exchange Act Release No. 76244, 80 FR 66099 (October 28, 2015). On April 21, 2016, the Commission approved the Tenth Amendment to the Plan. *See* Securities Exchange Act Release No. 77679, 81 FR 24908 (April 27, 2016). On August 26, 2016, the Commission noticed for immediate effectiveness the Eleventh Amendment to the Plan. *See* Securities Exchange Act Release No. 78703, 81 FR 60397 (September 1, 2016). On January 19, 2017, the Commission approved the Twelfth Amendment to the Plan. *See* Securities Exchange Act Release No. 79845, 82 FR 8551 (January 26, 2017). On April 13, 2017, the Commission approved the Thirteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 80455, 82 FR 18519 (April 19, 2017). On April 28, 2017, the Commission noticed for immediate effectiveness the Fourteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 80549, 82 FR 20928 (May 4, 2017). On September 26, 2017, the Commission noticed for immediate effectiveness the Fifteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 81720, 82 FR 45922 (October 2, 2017). On March 15, 2018, the Commission noticed for immediate effectiveness the Sixteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 82887, 83 FR 12414 (March 21, 2018) (File No. 4–631). On April 12, 2018, the Commission approved the Seventeenth Amendment to the Plan. *See* Securities Exchange Act Release No. 83044, 83 FR 17205 (April 18, 2018). On April 11, 2019, the Commission approved the Eighteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 85623, 84 FR 16086 (April 17, 2019). On February 5, 2020, the Commission noticed for immediate effectiveness the Nineteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 88122, 85 FR 7805 (February 11, 2020) (File No. 4–631). On April 21, 2020, the Commission approved the Twentieth Amendment to the Plan. *See* Securities Exchange Act Release No. 88704, 85 FR 23383 (April 27, 2020). On July 29, 2020, the Commission noticed for immediate effectiveness the Twenty-First Amendment to the Plan. *See* Securities Exchange Act Release No. 89420, 85 FR 46762 (August 3, 2020) (File No. 4–631). On October 1, 2020, the Commission noticed for immediate effectiveness the Twenty-Second Amendment to the Plan. *See* Securities Exchange Act Release No. 90068, 85 FR 63322 (October 7, 2020) (File No. 4–631).

Pearl, LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC (“Nasdaq”), New York Stock Exchange LLC (“NYSE”), NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National Inc. (collectively, the “Participants”) filed with the Securities and Exchange Commission (“Commission”) pursuant to section 11A(a)(3) of the Securities Exchange Act of 1934 (“Exchange Act”)² and Rule 608 thereunder,³ a proposal to amend the Plan (“Twenty-Third Amendment”).⁴ The proposal reflects changes unanimously approved by the Participants. The Twenty-Third Amendment proposes to amend Appendix A to the Plan to provide that all exchange-traded products (“ETPs”) will be assigned to Tier 1 of the Plan, except for single stock ETPs, which will be assigned to the same tier as their underlying stock, and in each case adjusted for any leverage factor. A copy of the Plan, as proposed to be amended, is Exhibit A. The Commission is publishing this notice to solicit comments from interested persons on the Twenty-Third Amendment.⁵

II. Description of the Plan

Set forth in this Section II is the statement of the purpose and summary of the Twenty-Third Amendment, along with the information required by Rule 608(a)(4) and (5) under the Exchange Act,⁶ substantially prepared and submitted by the Participants to the Commission.⁷

A. Statement of Purpose and Summary of the Plan Amendment

The Participants filed the Plan with the Commission on April 5, 2011 to create a market-wide limit up-limit down mechanism intended to address extraordinary market volatility in NMS Stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Exchange Act.⁸ The Plan sets forth procedures that provide for market-wide limit up-limit down requirements to prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands.

These limit up-limit down requirements are coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves. In particular, the Participants adopted this Plan to address extraordinary volatility in the securities markets, *i.e.*, significant fluctuations in individual securities’ prices over a short period of time, such as those experienced during the “Flash Crash” on the afternoon of May 6, 2010.

As set forth in more detail in the Plan, the single plan processor (“Processors”), which is responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act, calculates and disseminates a lower Price Band and upper Price Band for each NMS Stock. As set forth in Section V of the Plan, the Price Bands are based on a Reference Price for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period. The Price Bands for an NMS Stock are calculated by applying the Percentage Parameters, as set out in Appendix A to the Plan, for such NMS Stock to the Reference Price, with the lower Price Band being a Percentage Parameter below the Reference Price, and the upper Price Band being a Percentage Parameter above the Reference Price.

Appendix A to the Plan sets out the definitions of Tier 1 and Tier 2 NMS Stocks and the Percentage Parameters for each. Appendix A currently provides that Tier 1 includes all NMS Stocks included in the S&P 500 Index and the Russell 1000 Index, as well as “eligible” ETPs. Appendix A specifies:

To determine eligibility for an ETP to be included as a Tier 1 NMS Stock, all ETPs across multiple asset classes and issuers, including domestic equity, international equity, fixed income, currency, and commodities and futures will be identified. Leveraged ETPs will be excluded, and the list will be sorted by notional consolidated average daily volume (“CADV”). The period used to measure CADV will be from the first day of the previous fiscal half year up until one week before the beginning of the next fiscal half year. Daily volumes will be multiplied by closing prices and then averaged over the period. ETPs, including inverse ETPs, that trade over \$2,000,000 CADV will be eligible to be included as a Tier 1 NMS Stock.

The eligible ETPs are then listed in Schedule 1 to Appendix A, and the list is reviewed and updated semi-annually. All ETPs that do not meet the “eligibility” definition are currently assigned to Tier 2.

For Tier 1 NMS Stocks, Appendix A defines the Percentage Parameters as:

² 15 U.S.C. 78k–1(a)(3).

³ 17 CFR 242.608.

⁴ *See* Letter from Elizabeth King, General Counsel and Corporate Secretary, NYSE, to Brent Fields, Secretary, Commission, dated November 2, 2018 (“Transmittal Letter”).

⁵ 17 CFR 242.608.

⁶ *See* 17 CFR 242.608(a)(4) and (a)(5).

⁷ *See* Transmittal Letter, *supra* note 4. The statement of the purpose and summary of the amendment and the information required by Rule 608(a)(4) and (5) is reproduced verbatim from the Transmittal Letter unless otherwise noted; cross-references have been revised to conform with the footnote sequencing of this notice.

⁸ 17 CFR 242.600(b)(47).

- 5% for Tier 1 NMS Stocks with a Reference Price more than \$3.00;
- 20% for Tier 1 NMS Stocks with a Reference Price equal to \$0.75 and up to and including \$3.00; and
- The lesser of \$0.15 or 75% for Tier 1 NMS Stocks with a Reference Prices less than \$0.75.

For Tier 2 NMS Stocks, Appendix A defines the Percentage Parameters as:

- 10% for Tier 2 NMS Stocks with a Reference Price of more than \$3.00;
- 20% for Tier 2 NMS Stocks with a Reference Price equal to \$0.75 and up to and including \$3.00; and
- The lesser of \$0.15 or 75% for Tier 2 NMS Stocks with a Reference Price less than \$0.75.

The Percentage Parameter for a Tier 2 NMS Stock that is a leveraged ETP is the applicable Percentage Parameter set forth above, multiplied by the leverage ratio of such product.

At the request of market participants, the Participants have studied the calibration of the parameters set forth in the Plan with respect to ETPs in Tier 2, and, specifically, whether the ETPs currently in Tier 2 should be consolidated into Tier 1. The Participants undertook this study at the request of ETP issuers who are concerned about protecting investors from the harm caused by sharp moves in ETP prices when execution prices diverge from their indicative index value. The purpose of the Participants' study was to assess whether improving investor protection by narrowing the Percentage Parameters from 10% to 5% on Tier 2 ETPs with Reference Prices of more than \$3.00 would result in an unreasonable disruption in trading, which might hamper the price discovery process.

The Participants, in conjunction with the Plan Advisors and ETP issuers, studied the potential impact of recategorizing all ETPs currently in Tier 2 into Tier 1, such that they would be subject to narrower Percentage Parameters, and, in turn, narrower Price Bands. The Participants presented their initial findings to Commission staff at a meeting of the LULD Plan Operating Committee on February 25, 2020, and provided supplemental information as a part of the Operating Committee's 2019 Annual Report, submitted in March 2020. The Participants have received and reviewed feedback from Commission staff.

Since that time, the Participants have incorporated additional analyses bearing on the question of whether any ETPs should remain in Tier 2, or whether the operation of fair and orderly markets would be enhanced by moving all ETPs (except for single-stock

ETPs whose underlying stock is in Tier 2) to Tier 1. The results of this expanded study are presented below.

For the reasons below, the Participants propose to amend Appendix A of the Plan as follows. The Participants propose to amend Appendix A, Section I, paragraph (1) to delete the definition of ETPs "eligible" for Tier 1 and to specify that all ETPs except for single-stock ETPs would be assigned to Tier 1:

(1) Tier 1 NMS Stocks shall include all NMS Stocks included in the S&P 500 Index and the Russell 1000 Index, and [the] *all* exchange-traded products ("ETP"), *except for single stock ETPs, which will be assigned to the same Tier as their underlying stock, adjusted for any leverage factor.* [identified as Schedule 1 to this Appendix. Schedule 1 to the Appendix will be reviewed and updated semi-annually based on the fiscal year by the Primary Listing Exchange to add ETPs that meet the criteria, or delete ETPs that are no longer eligible. To determine eligibility for an ETP to be included as a Tier 1 NMS Stock, all ETPs across multiple asset classes and issuers, including domestic equity, international equity, fixed income, currency, and commodities and futures will be identified. Leveraged ETPs will be excluded and the list will be sorted by notional consolidated average daily volume ("CADV"). The period used to measure CADV will be from the first day of the previous fiscal half year up until one week before the beginning of the next fiscal half year. Daily volumes will be multiplied by closing prices and then averaged over the period. ETPs, including inverse ETPs, that trade over \$2,000,000 CADV will be eligible to be included as a Tier 1 NMS Stock. The semi-annual updates to Schedule 1 do not require an amendment to the Plan. The Primary Listing Exchanges will maintain the updated Schedule 1 on their respective websites.]

The Participants also propose to delete Schedule 1 to Appendix A as obsolete.

Because all leveraged ETPs (except Tier 2 single stock ETPs) would be assigned to Tier 1, the Participants also propose to add text into Section I of Appendix A describing how the Percentage Parameters would be set for leveraged ETPs. The Participants propose to insert the following as paragraph (5) of Section I, and to renumber the paragraphs of Section I accordingly:

(5) Notwithstanding the foregoing, the Percentage Parameters for a Tier 1 NMS Stock that is a leveraged ETP shall be the applicable Percentage Parameter set forth in clauses (2), (3), or (4) above, multiplied by the leverage ratio of such product.

Study Data

The Participants reviewed trading and quoting in all ETPs during the period from Q4 of 2019 through Q2 of 2021. This span included periods of greatly

varying volatility and heterogeneous market conditions, including the sell-off during the onset of Covid-19 pandemic, the volatile period surrounding the 2020 U.S. presidential election, and the meme stock episode in early 2021. This time span afforded the Participants the opportunity to study how the Plan performed during these particularly stressful periods.

The ETPs studied covered several asset classes, including domestic equities, international equities, fixed income, currency, commodity, and digital currency ETPs.

At the time the Participants conducted the study, there were not yet any single stock ETPs listed in the U.S. markets. However, as discussed below, the purpose of having different LULD tiers is to assign price bands that are commensurate with a security's underlying volatility. Since a single stock ETP should closely track the price movement and volatility of its underlying security, it should be assigned to the same LULD tier, adjusted for any leverage factor, to maintain the uniform and congruous application of LULD controls.

The Participants also excluded Tier 2 ETPs with a Reference Price of \$3.00 or less, since ETPs with a Reference Price of \$3.00 or less are subject to identical Percentage Parameters under Tier 1 and Tier 2. The Participants also excluded the last 25 minutes of the trading day from the study, since the Percentage Parameters for Tier 1 and Tier 2 NMS Stocks with Reference Prices more than \$3.00 are identical during that period.

Study Methodology

The Participants' study consists of three parts.

First, the Participants compared the realized volatility and incidence of Limit States and Trading Halts in Tier 2 ETPs against both Tier 1 and Tier 2 non-ETPs, to review the reasonableness of assigning ETPs to Tier 2.

Second, the Participants calculated theoretical Tier 1 (*i.e.*, 5%) Price Bands for all Tier 2 ETPs in the study. For example, normally a Tier 2 ETP with a Reference Price of \$10.00 would have a lower Price Band of \$9.00 and an upper Price Band of \$11.00 (*i.e.*, 10% bands). For purposes of the study, that same ETP would have a theoretical Tier 1 lower Price Band of \$9.50 and an upper Price Band of \$10.50 (*i.e.*, 5% bands). Once the theoretical narrower bands were calculated, the Participants identified all trades that occurred at prices between the theoretical narrower bands and the actual Tier 2 bands. The Participants then calculated the total notional value if all trades beyond the

theoretical narrow bands had been prevented, as well as the total notional value if all such trades had occurred at the price of the new bands, to determine the range of potential notional value impact of applying Tier 1 bands to Tier 2 ETPs. The Participants also studied the price movement following these “breaches” of the theoretical narrower bands and the likelihood of reversion to determine the efficacy of tightening the bands.

Third, the Participants compared market quality changes and the frequency of Limit States and Trading Halts for Tier 1 ETPs vs. Tier 2 ETPs by studying the ETPs that shift from one tier to the other as part of the current semi-annual review process.

Study Results

1. Volatility of Tier 2 ETPs vs. Tier 1 and Tier 2 Non-ETPs

In creating the Plan in 2012, the Participants assigned ETPs with more than \$2 million CADV to Tier 1 and all other ETPs to Tier 2. The \$2 million CADV cutoff for Tier 1 ETPs was based on the classification under the prior single stock circuit breaker pilot,⁹ which applied to “more liquid ETPs . . . with a minimum average daily volume of \$2,000,000 . . . that tend to have similar trading characteristics as securities in the S&P 500 and Russell 1000.”¹⁰ However, given the need for a

swift regulatory response to the Flash Crash, the single stock circuit breaker pilot was adopted without an opportunity for the Participants to properly study this classification—or the underlying assumptions it was based upon—and no additional analysis was conducted in connection with the adoption of the LULD Plan pilot in 2012.

For the first part of the study, the Participants examine the reasonableness of the assumption that only “more liquid ETPs . . . tend to have similar trading characteristics as securities in the S&P 500 and Russell 1000” by comparing the volatility of Tier 2 ETPs during the study period to the volatility of non-ETP securities. If the purpose of Tier 2’s wider bands is to address higher expected volatility in Tier 2 NMS Stocks, but ETPs in Tier 2 are already less volatile than non-ETPs in Tier 1, that would suggest that ETPs do not actually need Tier 2’s wider bands.

Except for single-stock, commodity, and foreign exchange-based ETPs, ETPs are, by definition, diversified instruments. According to modern portfolio theory, one would expect that a portfolio of securities will exhibit lower volatility than individual securities, unless those products are perfectly correlated. The results of the study show that this is in fact the case. Notwithstanding the lower trading

volumes associated with the less liquid ETPs included in Tier 2, Tier 2 ETPs exhibit volatilities that are lower than those observed for Tier 1 non-ETPs that already trade with narrower Price Bands today.

The Participants calculated quote volatilities¹¹ for all securities that were part of the Plan during 2021. As shown in Table 1 below, non-leveraged Tier 2 ETPs had an average quote volatility of 0.241 basis points with a 90th percentile of 0.275 basis points. Those figures are lower than for Tier 1 non-ETPs during the same period, which had an average quote volatility of 0.258 basis points with a 90th percentile of 0.446 basis points. Tier 2 non-ETPs had more than four times higher average quote volatility and almost double the average quote volatility at the 90th percentile compared to Tier 2 non-leveraged ETPs. Leveraged Tier 2 ETPs were, not surprisingly, somewhat higher than non-leveraged Tier 2 ETPs, with an average quote volatility of 0.736 basis points and a 90th percentile of 1.317 basis points. Most leveraged ETPs represent commodities or volatility index products, which would be expected to exhibit higher volatility. However, these products’ Price Bands are also multiplied by their leverage factor, which makes their higher volatility relative to other ETPs acceptable.

TABLE 1—QUOTE VOLATILITY OF TIER 1 NON-ETPs VS. TIER 2 ETPs AND NON-ETPs DURING 2021
[basis points]

	Average	90th %ile
Tier 1 Non-ETPs	0.258	0.446
Tier 2 ETPs (non-leveraged)	0.241	0.275
Tier 2 ETPs (leveraged)	0.736	1.317
Tier 2 Non-ETPs	1.182	0.502

Next, in Table 2 below, the Participants compare the incidence of Trading Pauses and Limit States during 2021 by Tier 1 non-ETPs, Tier 2 ETPs,

⁹ See Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext on behalf of the NYSE Exchanges as well as the other parties to the Plan, to Elizabeth M. Murphy, Secretary, Commission, dated November 2, 2011 (“Including only certain ETPs in Tier 1 NMS Stocks and including ETPs in the Plan in phases would treat ETPs in the same manner as they were treated in the trading pause pilot.”).

and Tier 2 non-ETPs priced above \$3.00. The data shows that during 2021, Tier 2 non-leveraged ETPs had fewer Trading Pauses and Limit States than Tier 1 non-ETPs, even though the Tier 2 non-leveraged ETPs comprised nearly 50% more securities. In addition, Tier 2 non-

¹⁰ See Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR-FINRA-2010-033) (Order Approving Proposed Rule Change Relating To Expanding the Pilot Rule for Trading Pauses Due to Extraordinary

ETPs had roughly four times the number of symbols, but 63 times the number of Limit States per day compared to Tier 2 non-leveraged ETPs. Tier 2 ETPs at the 90th percentile did not have any Trading Pauses, while there were 30 Trading Pauses for Tier 2 non-ETPs.

Market Volatility to the Russell 1000® Index and Specified Exchange Traded Products).

¹¹ The Participants measured quote volatility as the average basis point change of each second’s mid-point during core hours annualized.

TABLE 2—INCIDENCE OF LIMIT STATES AND TRADING PAUSES AMONG TIER 1 NON-ETPs AND TIER 2 ETPs AND NON-ETPs DURING 2021

	Average symbol count	Limit states per day	Trading pauses per day	90th %ile limit states per day	90th %ile trading pauses per day
Tier 1 Non-ETPs	1023.3	18.2	0.3	17.0	0.0
Tier 2 ETPs (non-leveraged)	1520.6	4.5	0.2	2.0	0.0
Tier 2 ETPs (leveraged)	169.8	0.0	0.0	0.0	0.0
Tier 2 Non-ETPs	5918.9	284.3	14.6	460.0	30.0

There was a similar pattern in 2020.¹² In 2020, non-leveraged Tier 2 ETPs averaged 19.7 Limit States per day versus 68.8 for Tier 1 non-ETPs. Leveraged ETPs averaged 3.6 Limit States per day, but over 181 symbols, which still comes to fewer Limit States than Tier 1 securities, which average 1,003 securities covered per day. Tier 2 leveraged ETPs averaged 0.4 Trading Pauses per day, versus 2.8 for non-leveraged Tier 2 ETPs and 6.4 for Tier 1 non-ETPs. The 90th percentile results also evidenced a far lower incidence of LULD events for non-leveraged Tier 2 ETPs compared to Tier 1 non-ETPs.

Overall, the comparison between Tier 1 non-ETPs and Tier 2 ETPs shows that quote volatility of Tier 2 ETPs operating

under wider Price Bands is lower than Tier 1 non-ETPs, and that the incidence of Limit States and Trading Pauses for Tier 1 non-ETPs is substantially higher than that of Tier 2 ETPs. By contrast, Tier 2 non-ETPs are considerably more volatile than Tier 1 non-ETPs, which substantiates the wider Price Bands applied to these securities, as the higher number of Limit States and Trading Pauses in Tier 2 non-ETPs are occurring under 10% Price Bands. The Participants believe that these data indicate that the Price Bands are not well-calibrated to the realized volatility for Tier 2 ETPs and should not be twice as wide as those for Tier 1 non-ETPs.

2. Analysis of ETP Trades Executing Past Theoretical Tier 1 Bands

For the second part of the study, the Participants sought to identify the range of potential notional value that would have been impacted during the study period if trades in Tier 2 ETPs had been bounded by 5% Price Bands instead of 10% Price Bands. Specifically, the Participants calculated the theoretical Tier 1 (*i.e.*, 5%, adjusted for leverage factor) Price Bands for all Tier 2 ETPs in the study (“Theoretical Tier 1 Bands”). Once the theoretical narrower bands were calculated, the Participants identified 101,956 trades that occurred at prices between the Theoretical Tier 1 Bands and the actual Tier 2 bands. The results are shown in Table 3 below.

TABLE 3—TRADE COUNTS PAST THEORETICAL TIER 1 BANDS

Period	Avg. daily trades	Median daily trades	Max daily trades	5th %ile daily trades	95th %ile daily trades
2019:Q4	5	3	20	1	15
2020:H1	736	39	17,785	3	2,048
2020:H2	44	23	1,841	6	88
2021:H1	102	33	1,799	4	368

Table 3 divides the study period into four different time segments: Q4 of 2019, the first half of 2020, the second half of 2020, and the first half of 2021. The number of trades occurring between the narrower Theoretical Tier 1 Bands and the actual Tier 2 bands varied substantially between these time segments, reflecting the overall trading volatility during that timeframe. For instance, the first half of 2020 shows the greatest numbers of Tier 2 ETP trades occurring between the narrower Theoretical Tier 1 Bands and the actual Tier 2 bands due to the unprecedented volatility during that period, which included the onset of the Covid-19

pandemic and four market-wide circuit breaker events. The next highest number of trades occurred during the first half of 2021, which did not include a major market-wide event but was roiled by a limited number of securities tied to the meme stock episode in Q1 of that year. The second half of 2020 was impacted by the U.S. presidential election and continued pandemic-induced volatility, while the fourth quarter of 2019 had lower volatility and a lower number of trades overall.

The Participants then calculated the upper and lower ranges of the notional value of the trades that would have been impacted during the study period if Tier

2 ETPs had been subject to the narrower Theoretical Tier 1 Bands instead of the actual Tier 2 bands. Panel A of Table 4 below assumes that all such trades would have been prevented, and thus represents the upper end of the range. Panel B assumes that all such trades would have occurred but at the level of the narrower Theoretical Tier 1 Bands, and thus represents a more conservative estimate of notional value impacted. The panels show the average, mean, maximum, 5th percentile, and 95th percentile daily statistics, as well as the total notional value impacted under each approach.

¹² The Participants have reviewed 2020 data from February 24, 2020 to December 31, 2020, but such data are not included in this filing.

TABLE 4—NOTIONAL VALUE IMPACT OF NARROWER THEORETICAL TIER 1 BANDS FOR TIER 2 ETPs

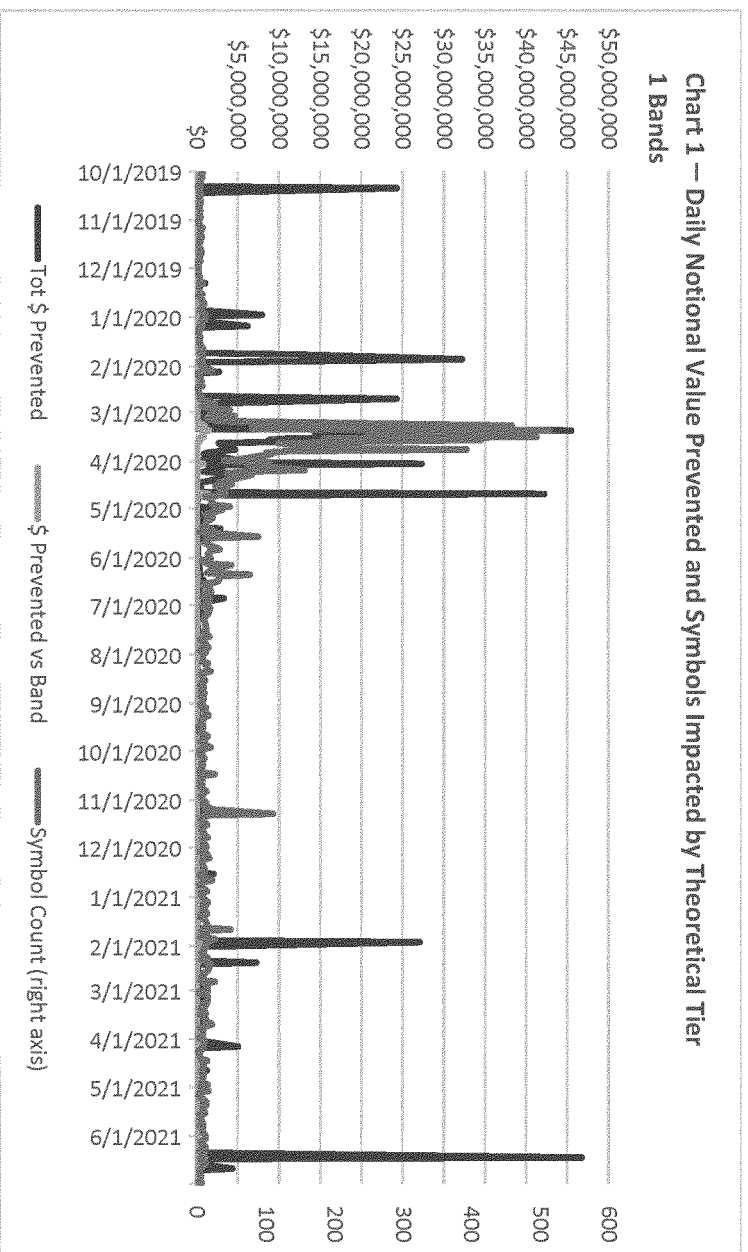
Period	Avg. daily total \$	Median daily total \$	Max daily total \$	5th %ile daily total \$	95th %ile daily total \$	Total period \$
Panel A—Notional Value Impact Assuming All Trades Prevented (Upper Bound)						
2019:Q4	\$24,442	\$6,994	\$308,042	\$45	\$80,777	\$1,442,091
2020:H1	4,617,039	101,311	147,025,863	3,110	12,830,928	577,129,875
2020:H2	276,811	34,007	23,711,212	3,128	330,941	35,413,798
2021:H1	783,202	45,230	46,275,381	3,433	2,025,125	97,117,976
						711,103,740
Panel B—Notional Value Impact Assuming All Trades Occur at New Bands (Lower Bound)						
2019:Q4	1,283	399	14,371	2	4,102	75,709
2020:H1	243,507	5,202	8,049,877	163	588,279	29,956,293
2020:H2	13,403	1,710	1,121,532	158	15,425	1,715,602
2021:H1	40,537	2,319	2,505,951	158	95,941	5,026,635
						36,774,239

The Participants believe that the notional value of trades impacted during the study period would be between these two numbers—at least \$36.8 million on the lower end, with upper end at \$711.1 million. This is because there would likely be more liquidity focused near the narrower Theoretical Tier 1 Bands, resulting in some of those trades executing at or near those revised bands, while other trades would have been prevented by the

narrower Theoretical Tier 1 Bands. Given the lower liquidity typically available in Tier 2 ETPs, it is not likely that all of the market depth would shift to the narrower theoretical bands. However, because there could be significant additional volume executed at prices at or near the narrower bands, it is unlikely that the dollar value prevented could reach the upper bound of \$711.1 million.

Daily Notional Value Prevented and Symbols Impacted by Theoretical Tier 1 Bands

The Participants drilled down into the results discussed above to determine, on a day-by-day basis, the amount of notional value prevented and the number of symbols impacted by the narrower Theoretical Tier 1 Bands. The results are shown in Chart 1 below:



As Chart 1 shows, most of the notional value that would have been

prevented by using the narrower Theoretical Tier 1 Bands for Tier 2 ETPs

occurred across a handful of trade dates when the markets were very volatile.

Together, the 10 days with the highest notional value for trades prevented account for 59% of the trades prevented and 61% of the total notional value overall. More than \$45 million in trades could have been prevented during the pandemic-driven volatility in 2020. In contrast, over the entire study period, the number of Tier 2 ETPs that would have been impacted by using narrower Theoretical Tier 1 Bands was a median of nine ETPs per day.

From Chart 1 and the data above in Tables 3 and 4, the Participants conclude that on most days, tighter Price Bands would have had little impact on the trading of Tier 2 ETPs. However, during periods of extreme volatility overall, the narrower bands may prevent unnecessary volatility in Tier 2 ETPs. Using narrower Tier 1 Bands for these ETPs could protect investors from executing trades at inferior prices that may occur due to transitory gaps in liquidity.

Price Movement After the Theoretical Blocked Trades

The Participants recognize that the positive impacts of using narrower Theoretical Tier 1 Bands would be blunted if the price trend that triggers a Trading Pause continues in the same

direction. Consider, for example, an ETP with a Tier 2 upper Price Band of \$11.00 and a theoretical Tier 1 narrower upper Price Band of \$10.50. If prices continued to move towards or past \$11.00, preventing those trades would likely result in a Trading Pause followed by an auction at a price higher than the Theoretical Tier 1 Band. In that case, investors would be negatively affected, since they could have traded at better prices if the Tier 2 Price Bands were in effect.

To study this issue, the Participants computed several statistics to measure the impact of blocking these trades at the narrower Theoretical Tier 1 Bands. The Participants calculated these statistics as a fraction of simple trade counts, as well as the percentage of shares that were impacted by the theoretical narrower bands. The calculations are as follows:

1. Last mid-quote 5 minutes after the blocked trade compared to the trade execution price.
2. Last mid-quote 10 minutes after the blocked trade compared to the trade execution price.
3. Same as #1, except cases where the stock paused in the next 5 minutes (because there may not be reliable 5-minute mid-quotes).

4. Same as #2, except cases where the stock paused in the next 10 minutes (because there may not be reliable 10-minute mid-quotes).

5. Same as #1–#4, except measured against the theoretical narrower bands. This measures the worst-case situation, where none of the trades would have occurred and the full impact of blocking the trades is shown.

Table 5 below measures quote movement in the 5 and 10 minutes after a breach of the narrower Theoretical Tier 1 Bands. The table below presents several statistics that measure price reversion following a breach of the Theoretical Tier 1 Bands. The first two rows show the percentage of trades where the mid-quote reverts following a theoretical band breach, while the last two rows show the percentage of shares executed at prices past the new Theoretical Tier 1 Bands when the mid-quote subsequently reverts. The table shows two different reversion measures: (1) the first and third columns calculate when the last mid-quote 5 or 10 minutes after the breach reverts past the trade price that caused the breach, and (2) the second and fourth columns show what percentage of trades or share prices move back inside the new Theoretical Tier 1 Bands.

TABLE 5—PRICE PERFORMANCE FOLLOWING THEORETICAL BLOCKED TRADES

	Includes pauses vs. trade price (percent)	Includes pauses vs. revised band (percent)	Excludes pauses vs. trade price (percent)	Excludes pauses vs. revised band (percent)
5-Min % of Trades	70.5	54.5	71.2	55.1
10-Min % of Trades	75.7	65.2	76.0	65.4
5-Min % of Shares	74.2	60.3	74.9	61.1
10-Min % of Shares	78.1	71.4	78.3	71.8

As Table 5 shows, prices 5 and 10 minutes after a theoretically prevented trade usually reverted away from the offending trade price towards prior prices, and less often moved back to levels inside the new bands. When prices do not revert, the benefit of the tighter bands is less clear, but the tendency toward reversion is further evidence in support of narrowing the bands to Tier 1 levels. As shown in the first column, after 5 minutes, more than 70% of the trades and nearly 75% of the shares impacted had their last quote return to price levels prior to the move that caused the breach of the Theoretical Tier 1 Band. After 10 minutes, reversion rates improved further (*i.e.*, more than 75% of trades and 78% of shares). When Trading Pauses are excluded (*e.g.*, third column), the results appeared even more positive, although the Participants

believe that including Trading Pauses is the superior measure, as these situations better reflect the general direction of the market.

It is worth noting that when reversion is measured relative to the narrower Theoretical Tier 1 Bands (*i.e.*, “Revised Bands” in Table 5) instead of the price of the offending trade, mean reversion decreases. As shown in the second column, only about 54% of trades revert after 5 minutes with 65% reverting after 10 minutes and, importantly, 60% of shares revert after 5 minutes and more than 70% of shares revert after 10 minutes. These results offer strong evidence that narrowing the bands for Tier 2 ETPs will likely both decrease volatility as well as protect investors.

Likely Impact on Trading Pauses

The Participants note that during the study period, only 7.1% of the trades that executed beyond the narrower Theoretical Tier 1 Bands (4.6% of shares executed across the entire study period) ultimately resulted in a Trading Pause under the LULD bands currently in place. This further highlights the benefits of tightening the bands. Prices did ultimately hit a Limit State within 10 minutes in 12.6% of the trades that moved through the bands, accounting for 10.3% of shares traded, but as noted above, less than half of these shares resulted in a Trading Pause.

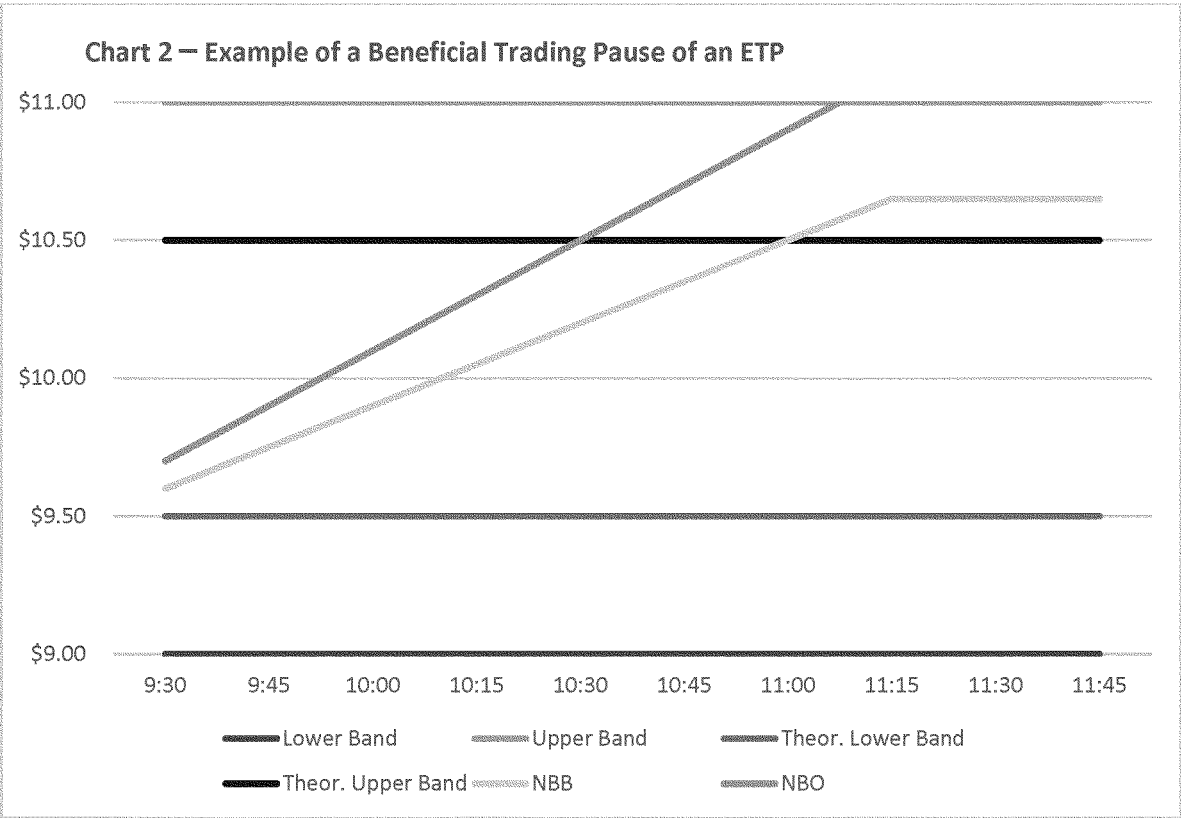
The Participants note that by narrowing the bands, in all likelihood, there may be an increase in Trading Pauses, even with market makers moving liquidity in front of the revised tighter bands. Because prices may likely

revert inside the bands after 10 minutes, these Trading Pauses may be beneficial for investors.

Such Trading Pauses may also be beneficial for investors because many Tier 2 ETPs do not trade actively. Their initial Price Bands are often based on the prior day's official closing price, which may not perfectly reflect current market conditions, but their Reference Prices and Price Bands are not reset if there are no trades. In such cases, it may be beneficial to trigger a Trading Pause that will permit a reopening auction, which can more efficiently aggregate liquidity, determine equilibrium prices, reset the Price Bands, and further mitigate volatility.

Consider the hypothetical situation as depicted by Chart 2 below. The red line represents the Tier 2 10% upper Price Band, while the purple line represents the theoretical narrower Tier 1 5% upper Price Band. The aqua and orange lines represent the movement of the NBBO throughout the day. An ETP's price is typically based on a basket of products, so the NBBO tracks the underlying value of the securities comprising the ETP. As the orange NBO moves above the red line at 11:15 a.m., the ETP enters a Straddle State. This means that even though the ETP's quoted prices had been rising throughout the morning, if a customer actually wanted to aggressively buy the

ETP, they would not be able to because the NBO is above the upper Price Band—in a Straddle State.
Note, however, that by 11:00 a.m., the NBB had touched the theoretical narrower upper Price Band. If the ETP were then to enter a Trading Pause, the Price Bands would be reset. In this example, there would be no damage caused by the ETP entering a Trading Pause—it was not currently trading, and the Price Bands would reset after an auction at the end of the Trading Pause (or reopening on a quote), permitting the aggressive buyer to purchase the ETP in the reopening auction or when the bands are reset and continuous trading resumes.



3. Market Quality Changes When ETPs Change Tier Designation

For the third part of the study, the Participants examined ETPs that have moved between tiers. As background, at launch, each ETP is assigned to Tier 2. Per Appendix A, tiers are recalculated at the end of each June and December and any non-leveraged ETPs that trade over \$2,000,000 CADV during the measurement period move from Tier 2 to Tier 1. It is common for an otherwise-illiquid ETP to have one or two very high-volume days immediately after listing, causing it to be recategorized

into Tier 1, and then ultimately settle back into Tier 2 following its second measurement period.
These tier changes provide the Participants with an opportunity to evaluate and compare the market quality of ETPs under different price band regimes. The Participants understand that, in some cases, changes in the volume of trades are what cause an ETP to change from one tier to another, and the improvements in market quality may be attributable to that increased volume, and not the tier change in and of itself. But as noted above, the Plan initially assigns ETPs

into Tier 2 irrespective of their volume of trades, and many are then subsequently reassigned to Tier 1 due to high notional volume on a few days after they are first funded, without experiencing any real change in notional volume overall. As such, the Participants believe that market quality changes after a tier shift are meaningful because they are often not due to developments in the character of the market for the ETPs.
The Participants compared quoted spreads and notional liquidity at the NBBO, comparing changes in these two values from half-year to half-year for

ETPs that: stayed in Tier 1; stayed in Tier 2; switched from Tier 1 to Tier 2; and switched from Tier 2 to Tier 1. Charts 3 and 4 below summarize the results.

Spread Changes

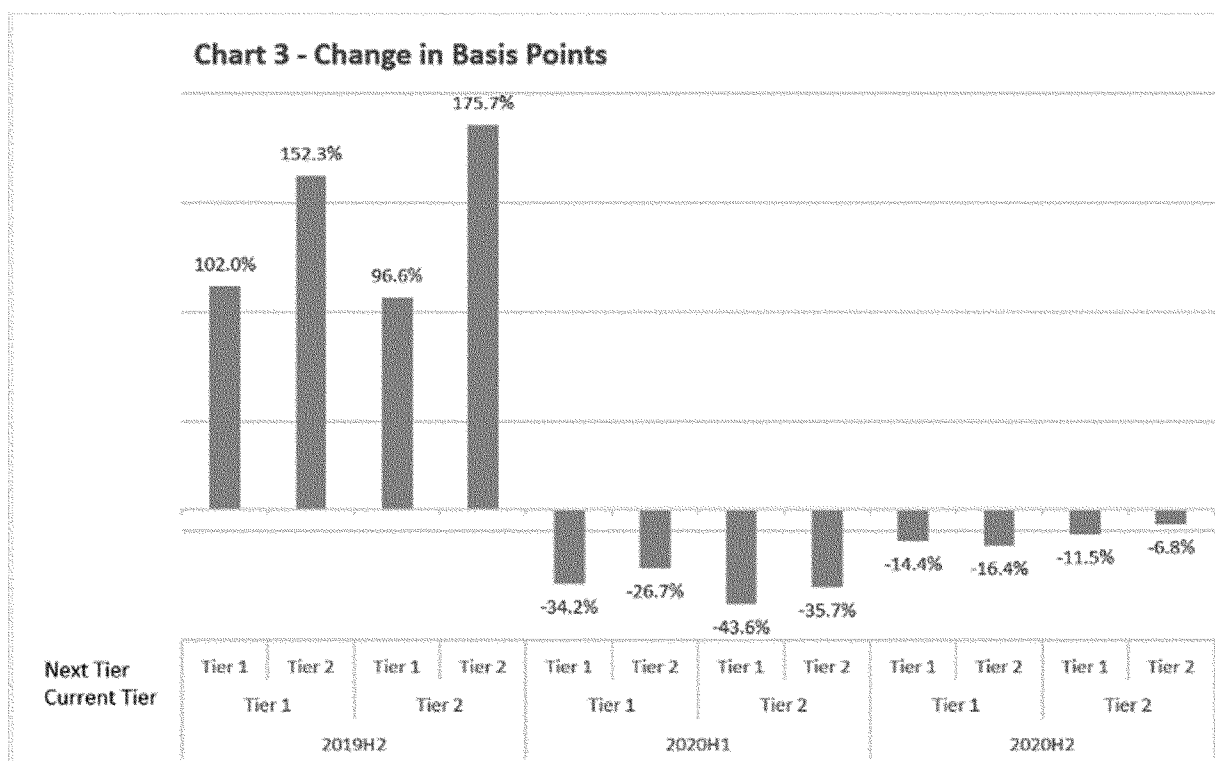
Chart 3 below summarizes the changes to quoted spreads among ETPs that shifted tiers vs. stayed in their tiers.

As Chart 3 shows, ETPs that were in Tier 1 in the second half of 2019 and stayed in Tier 1 during the first half of 2020 (see the section labeled “2019H2” in Chart 2) had their consolidated quoted spread increase by 102.0%,

while those that shifted to Tier 2 saw their consolidated quoted spread widen by 152.3%. Tier 2 ETPs that moved to Tier 1 in the first half of 2020 had their spreads rise 96.6%—less than those that stayed in Tier 1 for both periods. ETPs that stayed in Tier 2 performed the worst, with their spreads increasing by 175.7%. The pattern is similar regarding ETPs that changed tier in the second half of 2020 (labeled “2020H1” in Chart 3). Chart 3 shows that ETPs that stayed in Tier 1 had their spreads narrow by 34.2% while those that moved to Tier 2 performed worse, with their spreads

tightening by 26.7%. Tier 2 ETPs that remained in Tier 2 performed similarly to those that stayed in Tier 1, with their spreads narrowing by 35.7%. The best performing category was ETPs that moved to Tier 1 from Tier 2, as their spreads narrowed by 43.6%.

The last period (labeled “2020H2” in Chart 3) did not show the same consistency, but spreads were much less volatile. Chart 3 shows that spreads fell the most for ETPs that moved from Tier 1 to Tier 2. However, Tier 2 ETPs that moved to Tier 1 saw a larger drop than Tier 2 ETPs that remained in Tier 2.

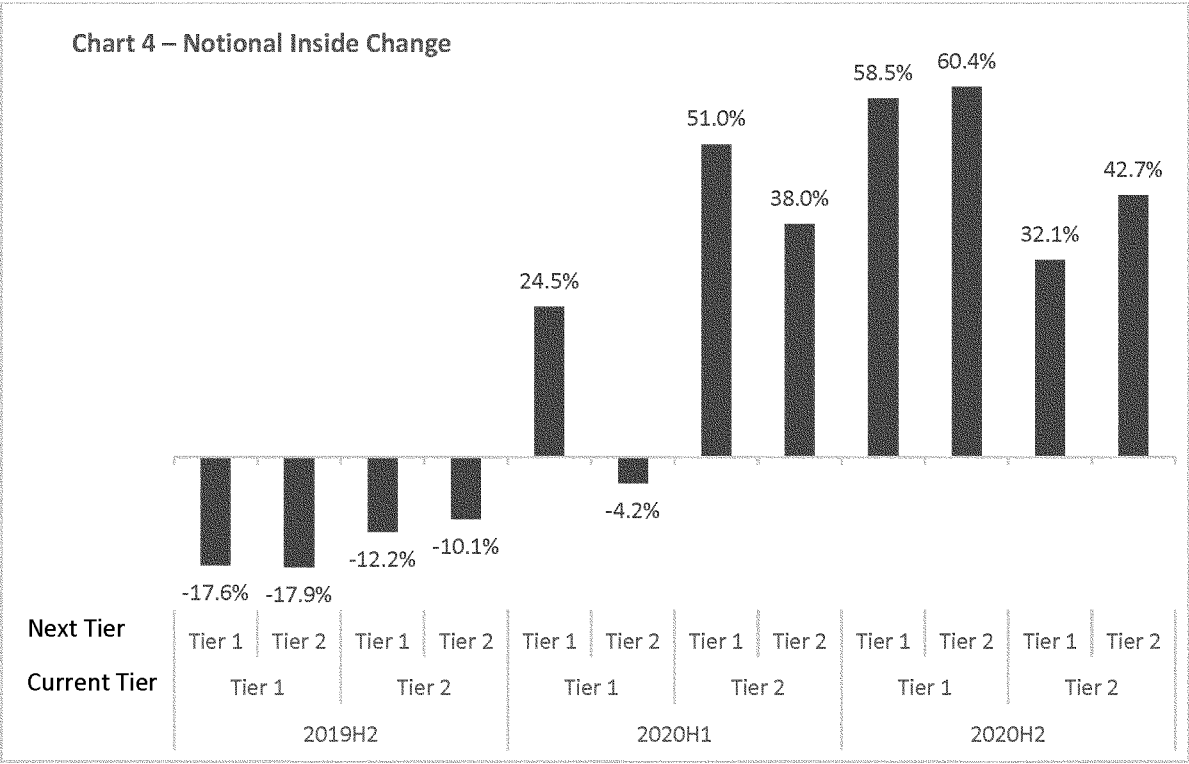


Notional Liquidity Inside

The Participants note that narrower spreads can lead to less available liquidity, but the tier changes studied above do not appear to have caused a negative impact on liquidity. Chart 4 below shows that for ETPs that changed tiers between the second half of 2019 and the first half of 2020 (“2019H2”), the amount of available liquidity dropped a similar amount for Tier 1 ETPs that stayed in Tier 1 or moved to

Tier 2. Tier 2 ETPs in general lost fewer dollars at the inside, but those Tier 2 ETPs that transferred to Tier 1 did lose slightly more—12.2% versus 10.1%. Chart 4 shows that for ETPs that changed tiers between the first half and second half of 2020, Tier 2 ETPs again saw the largest increase in liquidity, with those that moved to Tier 1 gaining 51.0% versus just 38.0% for those that stayed in Tier 2. Tier 1 ETPs that moved to Tier 2 saw a drop in liquidity inside of 4.2%.

Finally, for those ETPs that changed tiers between the second half of 2020 and the first half of 2021, Chart 4 shows that Tier 2 ETPs that moved to Tier 1 saw the smallest gains in liquidity at the inside, increasing just 32.1% compared to Tier 2 ETPs that remained in Tier 2, which gained 42.7%. Tier 1 ETPs, whether they stayed in Tier 1 or moved to Tier 2, garnered larger gains of liquidity at the inside.



In sum, for two of the three half-year changes the Participants studied, spreads improved and there was a neutral to positive effect on inside liquidity for ETPs shifting from Tier 2 to Tier 1. The opposite was true for Tier 2 ETPs that changed tier from the second half of 2020 to the first half of 2021.

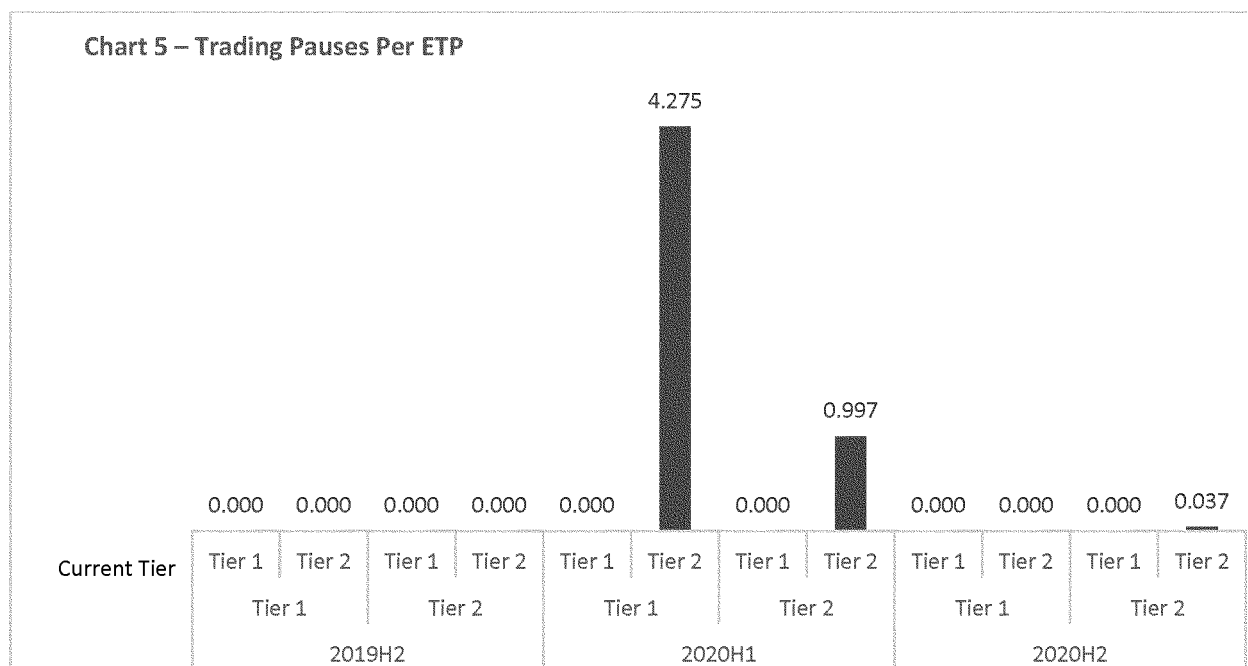
These results show that, on balance, market quality statistics improved for Tier 2 ETPs that moved to Tier 1.

Incidence of Limit States and Trading Pauses for ETPs That Changed LULD Tiers

The Participants note that even if market quality statistics improved for Tier 2 ETPs that moved to Tier 1, the efficacy of such a move might be questioned if the move created notably more Limit States or Trading Pauses. To study this issue, the Participants examined three statistics for ETPs that had a tier change in either direction from one period to the next:

- the average number of Trading Pauses per symbol during the next half-year;

- the average number of Limit States per symbol during the next half-year; and
 - the average number of seconds in a Limit State per symbol during the next half-year.
- The results are shown in Charts 5, 6, and 7 below.
- Regarding Trading Pauses, Chart 5 below shows that ETPs that switched from Tier 2 to Tier 1 had fewer Trading Pauses than those that remained in Tier 2. ETPs that moved from Tier 1 to Tier 2 had more Trading Pauses than those that remained in Tier 1.



Regarding Limit States, Chart 6 below shows similar results. ETPs that were recategorized from Tier 2 to Tier 1

showed a decrease in the number Limit States, while ETPs that were moved

from Tier 1 to Tier 2 showed an increase in the number of Limit States.

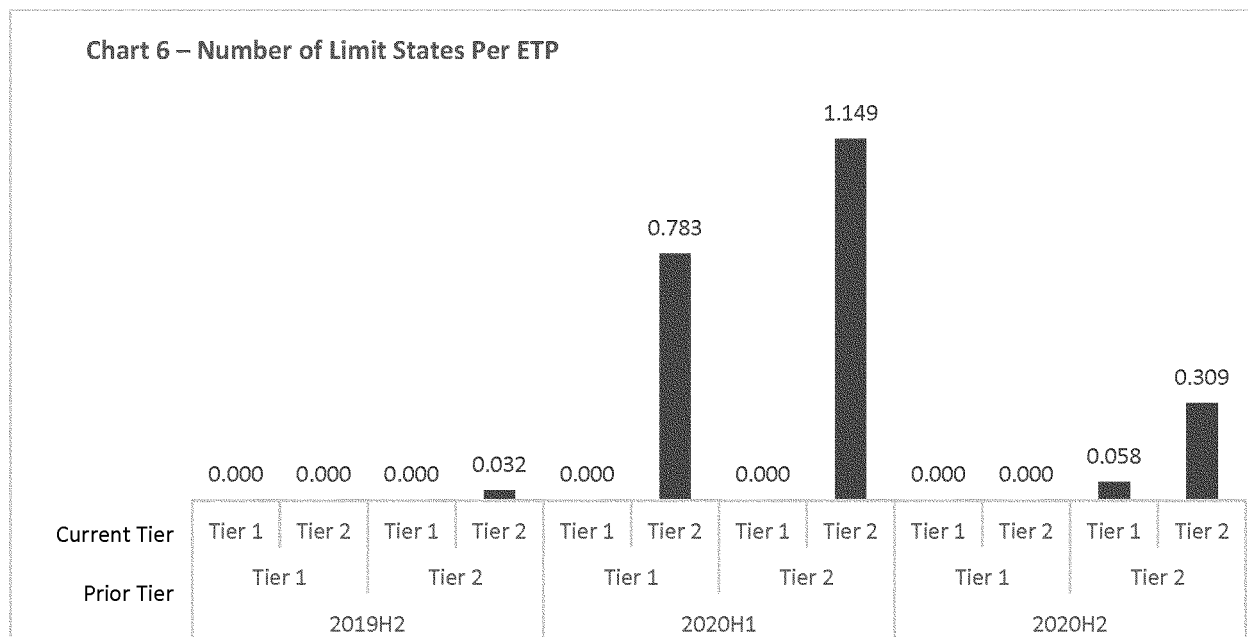
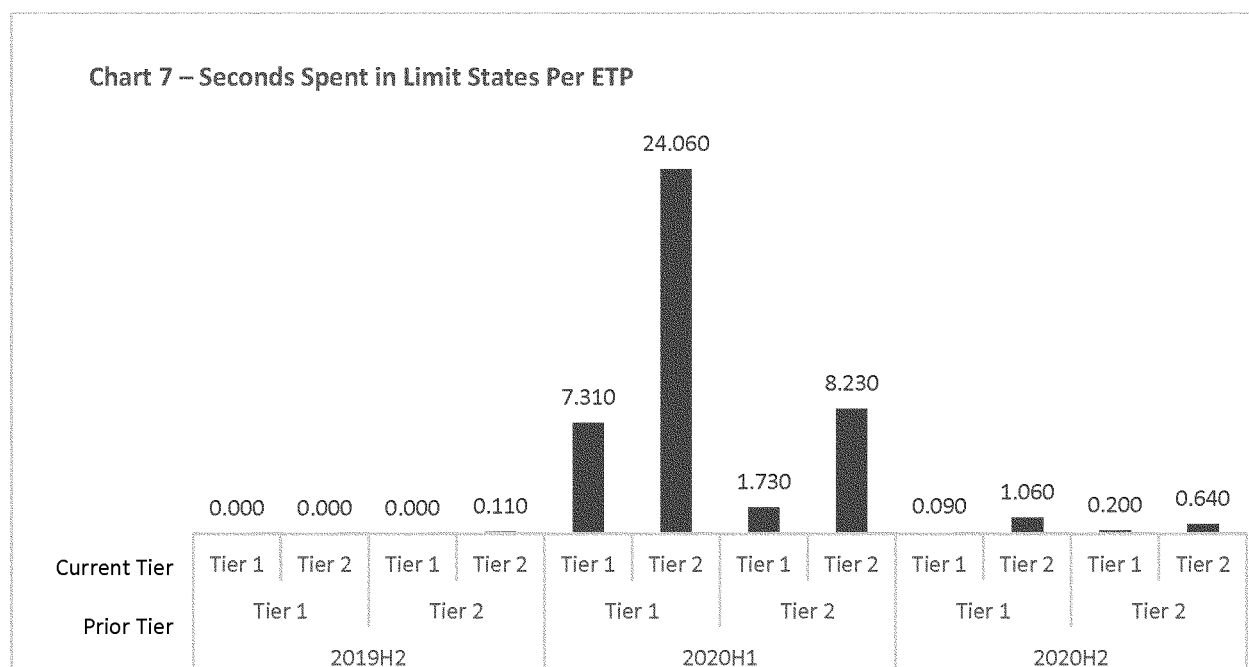


Chart 7 below shows the amount of time that ETPs spent in Limit States for each period. ETPs that moved from Tier

1 to Tier 2 spent more time in Limit States than those that remained in Tier 1. ETPs that shifted from Tier 2 to Tier

2 saw a decrease in the amount of time in Limit States when compared to Tier 2 ETPs that stayed in Tier 2.



As these data show, contrary to expectations, narrowing the Price Bands for ETPs that moved from Tier 2 into Tier 1 did not increase the incidence of Trading Pauses, Limit States, or the amount of time spent in Limit States. This is likely because market participants adjust their behavior and provide more liquidity to ETPs once their bands are tightened. The Participants acknowledge that the number of ETPs that move between Tiers, especially into Tier 1 after being in Tier 2, is relatively small and may not provide a significant enough population to offer strong support for that statistic. The Participants note, however, that Amendment 18 removed double-wide bands at the open for all stocks and at the close for Tier 2 stocks, market participants adjusted to the tighter bands without a large increase in LULD Trading Pauses.

Study Conclusions

In sum, the Participants' study shows the following:

- Tier 1 non-ETPs are far more likely than Tier 2 ETPs to enter into Limit States and Trading Pauses due to the underlying volatility of these securities. This finding suggests that the Price Band width for Tier 2 ETPs is poorly calibrated relative to their actual trading behavior.

- During the study period, the notional value of trades that would have been prevented if Tier 2 ETPs had used tighter Tier 1 bands would have been substantial for such thinly traded products, bounded on the lower end at

\$36.8 million and the upper end at \$711.1 million.

- In the majority of cases where a trade would have been prevented by the narrower Theoretical Tier 1 Bands, prices reverted by the end of the following 5- and 10- minute periods, suggesting that having these thinly-traded ETPs in Tier 1 would protect investors from executing trades at inferior prices that may occur due to transitory gaps in liquidity rather than fundamental valuation changes.

- In most cases where ETPs have been reclassified from Tier 2 to Tier 1, market quality improved as evidenced by the lower quote volatility, tighter spreads, and increased liquidity for ETPs that moved from Tier 2 to Tier 1.

- Using tighter Tier 1 bands for all ETPs would provide greater investor protection from temporary liquidity gaps, which are facilitated by the wider price bands in Tier 2.

- The number of Limit States and Trading Pauses decreased when Tier 2 ETPs moved to Tier 1 and increased when Tier 1 ETPs moved to Tier 2.

From this evidence, the Participants conclude that moving Tier 2 ETPs to Tier 1 would improve market quality, more effectively dampen volatility, provide greater investor protection, and decrease the number of unnecessary Limit States and Trading Pauses.

Accordingly, the Participants seek approval of this amendment because it enhances the public interest, the protection of investors, and the maintenance of fair and orderly markets, and would remove impediments to and perfect the mechanisms of a national

market system in conformance with Rule 608.¹³

B. Governing or Constituent Documents

The governing documents of the Processor, as defined in Section I(P) of the Plan, will not be affected by the Plan.

C. Implementation of Amendment

After Commission approval of the proposed amendment, the Participants propose to announce to market participants the future date on which the change will be implemented.

D. Development and Implementation Phases

The Participants propose to implement the proposed amendment on a permanent basis upon Commission approval.

E. Analysis of Impact on Competition

The Participants believe that the proposed amendment does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed amendment to the Plan would apply to all market participants equally and would not impose a competitive burden on one category of market participants in favor of another category of market participant. The proposed amendment would apply to trading on all Trading Centers and all NMS Stocks would be subject to the amended Plan's requirements. The Participants do not believe that the

¹³ 17 CFR 242.608(b)(2).

proposed amendment introduces terms that are unreasonably discriminatory for the purposes of section 11A(c)(1)(D) of the Exchange Act because it would apply to all market participants equally.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plans

The Participants have no written understandings or agreements relating to interpretation of the Plan. Section II(C) of the Plan sets forth how any entity registered as a national securities exchange or national securities association may become a Participant.

G. Approval of Amendment of the Plan

On October 24, 2023, the Operating Committee, duly constituted and chaired by Mr. Robert Books of Cboe Global Markets, Inc., voted unanimously to amend the Plan as set forth herein in accordance with Section III(C) of the Plan. The Plan Advisory Committee was notified in connection with the Twentieth-Amendment and was in favor. Each of the Plan's Participants has executed a written amended Plan.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Section II(C) of the Plan provides that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) becoming a participant in the applicable Market Data Plans, as defined in Section I(F) of the Plan; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

This section is not applicable as the proposed amendment to the Plan does not involve fees or charges.

K. Method and Frequency of Processor Evaluation

This section is not applicable as the operation of the Plan is conducted by the Primary Listing Exchange.

L. Dispute Resolution

Section III(C) of the Plan provides that each Participant shall designate an individual to represent the Participant as a member of an Operating Committee. No later than the initial date of the Plan,

the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee. Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the Commission as a request for an amendment to the Plan initiated by the Commission under Rule 608.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Twenty-Third Amendment is consistent with the Exchange Act and the rules thereunder.

1. The Participants propose to amend Appendix A of the Plan by deleting the definition of ETPs "eligible" for Tier 1 and to specify that all ETPs, except for single stock ETPs, would be assigned to Tier 1. What are commenters' views on whether the proposal is consistent with the Exchange Act?

2. Because all leveraged ETPs (except Tier 2 single stock ETPs) would be assigned to Tier 1, the Participants also propose to add text into Section I of Appendix A describing how the Percentage Parameters would be set for leveraged ETPs. What are commenters' views on whether this proposal regarding leveraged ETPs to the Plan is consistent with the Exchange Act?

3. The proposal acknowledges that the ETPs studied covered several asset classes, including domestic equities, international equities, fixed income, currency, commodity, and digital currency ETPs. For example, the Participants' analysis provides aggregate statistical information with respect to Tier 2 ETPs as a whole. In addition, the proposal states that, except for single-stock, commodity, and foreign exchange-based ETPs, ETPs are by definition diversified instruments. The proposed amendment to the Plan, which would assign all ETPs to Tier 1, only excludes single stock ETPs, but does not propose to exclude other ETPs based on other single reference assets, such as ETPs based on single commodities or single digital currency-related assets. Do commenters agree that the methodology and results of the analysis support the conclusions drawn by the Participants? Please explain. Does this aggregated approach to evaluating Tier 2 ETPs as a whole support the conclusions drawn by the Participants with respect to different segments of Tier 2 ETPs? For example, what are commenters' views on whether the proposal's study explains why such other ETPs based on

a single asset (other than stocks) should be assigned to Tier 1?

4. The proposal compares the quote volatility of Tier 2 ETPs to that of Tier 1 non-ETPs, where quote volatility is measured using the mid-point at each second. With this measure of volatility, the proposal concludes that Tier 2 ETPs have lower quote volatility than Tier 1 non-ETPs, suggesting that Tier 2 ETPs are not too volatile for the Tier 1 price bands. In addition, the proposal acknowledges that Tier 2 ETPs are often thinly traded, and we request comment on whether being thinly traded might bias the particular volatility measure used in the analysis due to infrequent updates of the mid-point. What are commenters' views on whether the analysis has adequately captured Tier 2 ETP volatility in support of the conclusion that they are not too volatile for the Tier 1 price bands? If not, what measure of volatility would be more appropriate? Please explain.

5. The Participants conclude that the proposal would protect investors from executing trades at inferior prices (Theoretical Blocked Trades). To support this conclusion, the Participants deduce from an analysis that if the proposal was in place from 2019–2021, it would have prevented \$45 million in trades during the pandemic-driven volatility in 2020. Do commenters agree that the analysis supports the conclusion that preventing Theoretical Blocked Trades would have protected investors during this volatile period? Please explain.

6. The Participants' analysis finds that *trades* in Tier 2 ETPs that executed outside the Tier 1 price bands (Theoretical Blocked Trades) are generally followed by *midpoint prices* within the Tier 1 bands. Based on this finding, the Participants conclude that prices revert after these Theoretical Blocked Trades, indicating that the Theoretical Blocked Trades executed during temporary liquidity gaps. Do commenters agree that the analysis measures price reversion and that the Theoretical Blocked Trades often executed during temporary liquidity gaps? If not, how do commenters suggest the analysis could examine the extent to which Theoretical Blocked Trades executed during temporary liquidity gaps? Please explain.

7. The Participants state that Plan does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Do commenters believe that the Plan imposes any burden on competition that is not necessary or appropriate in

furtherance of the purposes of the Exchange Act?

8. Further, would the proposal have a positive, negative, or neutral impact on competition? Please explain. How would the proposal impact competition across ETP issuers or ETPs on similar baskets of securities currently in different tiers? Please explain. How would any impact on competition from the proposal benefit or harm the national market system or the various market participants? Please describe and explain how, if at all, aspects of the national market system or different market participants would be affected. Please support any response with data, if possible.

9. More generally, to the extent possible please provide specific data, analyses, or studies for support regarding any impacts of the proposal on competition.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number 4-631 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number 4-631. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions;

you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number 4-631 and should be submitted on or before December 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,
Assistant Secretary.

Exhibit A

Proposed new language is *italicized*; proposed deletions are in [brackets]

PLAN TO ADDRESS EXTRAORDINARY MARKET VOLATILITY SUBMITTED TO THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 608 OF REGULATION NMS UNDER THE SECURITIES EXCHANGE ACT OF 1934

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Preamble

The Participants submit to the SEC this Plan establishing procedures to address extraordinary volatility in NMS Stocks. The procedures provide for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses to accommodate more fundamental price moves. The Plan procedures are designed, among other things, to protect investors and promote fair and orderly markets. The Participants developed this Plan pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act, which authorizes the Participants to act jointly in preparing, filing, and implementing national market system plans.

I. Definitions

(A) “Eligible Reported Transactions” shall have the meaning prescribed by the Operating Committee and shall generally mean transactions that are

eligible to update the last sale price of an NMS Stock.

(B) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(C) “Limit State” shall have the meaning provided in Section VI of the Plan.

(D) “Limit State Quotation” shall have the meaning provided in Section VI of the Plan.

(E) “Lower Price Band” shall have the meaning provided in Section V of the Plan.

(F) “Market Data Plans” shall mean the effective national market system plans through which the Participants act jointly to disseminate consolidated information in compliance with Rule 603(b) of Regulation NMS under the Exchange Act.

(G) “National Best Bid” and “National Best Offer” shall have the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act.

(H) “NMS Stock” shall have the meaning provided in Rule 600(b)(47) of Regulation NMS under the Exchange Act.

(I) “Opening Price” shall mean the price of a transaction that opens trading on the Primary Listing Exchange. If the Primary Listing Exchange opens with quotations, the “Opening Price” shall mean the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no such closing price exists, the last sale on the Primary Listing Exchange.

(J) “Operating Committee” shall have the meaning provided in Section III(C) of the Plan.

(K) “Participant” means a party to the Plan.

(L) “Plan” means the plan set forth in this instrument, as amended from time to time in accordance with its provisions.

(M) “Percentage Parameter” shall mean the percentages for each tier of NMS Stocks set forth in Appendix A of the Plan.

(N) “Price Bands” shall have the meaning provided in Section V of the Plan.

(O) “Primary Listing Exchange” shall mean the Participant on which an NMS Stock is listed. If an NMS Stock is listed on more than one Participant, the Participant on which the NMS Stock has been listed the longest shall be the Primary Listing Exchange.

(P) “Processor” shall mean the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act.

¹⁴ 17 CFR 200.30-3(a)(85).

(Q) “Pro-Forma Reference Price” shall have the meaning provided in Section V(A)(2) of the Plan.

(R) “Reference Price” shall have the meaning provided in Section V of the Plan.

(S) “Regular Trading Hours” shall have the meaning provided in Rule 600(b)(64) of Regulation NMS under the Exchange Act. For purposes of the Plan, Regular Trading Hours can end earlier than 4:00 p.m. ET in the case of an early scheduled close.

(T) “Regulatory Halt” shall have the meaning specified in the Market Data Plans.

(U) “Reopening Price” shall mean the price of a transaction that reopens trading on the Primary Listing Exchange following a Trading Pause or a Regulatory Halt, or, if the Primary Listing Exchange reopens with quotations, the midpoint of those quotations.

(V) “SEC” shall mean the United States Securities and Exchange Commission.

(W) “Straddle State” shall have the meaning provided in Section VII(A)(2) of the Plan.

(X) “Trading center” shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Exchange Act.

(Y) “Trading Pause” shall have the meaning provided in Section VII of the Plan.

(Z) “Upper Price Band” shall have the meaning provided in Section V of the Plan.

II. Parties

(A) List of Parties

The parties to the Plan are as follows:

- (1) Cboe BZX Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605
- (2) Cboe BYX Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605
- (3) Cboe EDGA Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605
- (4) Cboe EDGX Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605
- (5) Financial Industry Regulatory Authority, Inc., 1735 K Street NW, Washington, DC 20006
- (6) Investors Exchange LLC, 4 World Trade Center, 44th Floor, New York, New York 10007
- (7) Long-Term Stock Exchange, Inc., 101 Greenwich Street, Suite 11A, New York, New York 10006
- (8) MEMX LLC, 111 Town Square Place, Suite 520, Jersey City, New Jersey 07310

(9) MIAX Pearl, LLC, 7 Roszel Road, Suite 1A, Princeton, New Jersey 08540

(10) NASDAQ BX, Inc., One Liberty Plaza, 165 Broadway, New York, New York 10006

(11) NASDAQ PHLX LLC, 1900 Market Street, Philadelphia, Pennsylvania 19103

(12) The Nasdaq Stock Market LLC, One Liberty Plaza, 165 Broadway, New York, NY 10006

(13) NYSE National, Inc., 11 Wall Street, New York, NY 10005

(14) New York Stock Exchange LLC, 11 Wall Street, New York, New York 10005

(15) NYSE American LLC, 11 Wall Street, New York, New York 10005

(16) NYSE Arca, Inc., 11 Wall Street, New York, New York 10005

(17) NYSE Chicago, Inc., 11 Wall Street, New York, New York 10005

(B) Compliance Undertaking

By subscribing to and submitting the Plan for approval by the SEC, each Participant agrees to comply with and to enforce compliance, as required by Rule 608(c) of Regulation NMS under the Exchange Act, by its members with the provisions of the Plan. To this end, each Participant shall adopt a rule requiring compliance by its members with the provisions of the Plan, and each Participant shall take such actions as are necessary and appropriate as a participant of the Market Data Plans to cause and enable the Processor for each NMS Stock to fulfill the functions set forth in this Plan.

(C) New Participants

The Participants agree that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) becoming a participant in the applicable Market Data Plans; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III (B) of the Plan.

(D) Advisory Committee

(1) *Formation.* Notwithstanding other provisions of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.

(2) *Composition.* Members of the Advisory Committee shall be selected for two-year terms as follows:

(A) *Advisory Committee Selections.* By affirmative vote of a majority of the Participants, the Participants shall select at least one representatives from each of

the following categories to be members of the Advisory Committee: (1) a broker-dealer with a substantial retail investor customer base; (2) a broker-dealer with a substantial institutional investor customer base; (3) an alternative trading system; (4) a broker-dealer that primarily engages in trading for its own account; and (5) an investor.

(3) *Function.* Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters. Such matters shall include, but not be limited to, proposed material amendments to the Plan.

(4) *Meetings and Information.* Members of the Advisory Committee shall have the right to attend meetings of the Operating Committee and to receive any information concerning Plan matters; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants, the Operating Committee determines that an item of Plan business requires confidential treatment.

III. Amendments to Plan

(A) General Amendments

Except with respect to the addition of new Participants to the Plan, any proposed change in, addition to, or deletion from the Plan shall be effected by means of a written amendment to the Plan that: (1) sets forth the change, addition, or deletion; (2) is executed on behalf of each Participant; and, (3) is approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act, or otherwise becomes effective under Rule 608 of Regulation NMS under the Exchange Act.

(B) New Participants

With respect to new Participants, an amendment to the Plan may be effected by the new national securities exchange or national securities association executing a copy of the Plan, as then in effect (with the only changes being the addition of the new Participant's name in Section II(A) of the Plan) and submitting such executed Plan to the SEC for approval. The amendment shall be effective when it is approved by the SEC in accordance with Rule 608 of Regulation NMS under the Exchange Act or otherwise becomes effective pursuant to Rule 608 of Regulation NMS under the Exchange Act.

(C) Operating Committee

(1) Each Participant shall select from its staff one individual to represent the Participant as a member of an Operating

Committee, together with a substitute for such individual. The substitute may participate in deliberations of the Operating Committee and shall be considered a voting member thereof only in the absence of the primary representative. Each Participant shall have one vote on all matters considered by the Operating Committee. No later than the initial date of Plan operations, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee.

(2) The Operating Committee shall monitor the procedures established pursuant to this Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. The Operating Committee shall establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of this Plan and the Appendixes thereto. With respect to matters in this paragraph, Operating Committee decisions shall be approved by a simple majority vote.

(3) Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the SEC as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS.

IV. Trading Center Policies and Procedures

All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down requirements specified in Sections VI of the Plan, and to comply with the Trading Pauses specified in Section VII of the Plan.

V. Price Bands

(A) Calculation and Dissemination of Price Bands

(1) The Processor for each NMS stock shall calculate and disseminate to the public a Lower Price Band and an Upper Price Band during Regular Trading Hours for such NMS Stock. The Price Bands shall be based on a Reference Price for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS stock over the immediately preceding five-minute period (except for

periods following openings and reopenings, which are addressed below). If no Eligible Reported Transactions for the NMS Stock have occurred over the immediately preceding five-minute period, the previous Reference Price shall remain in effect. The Price Bands for an NMS Stock shall be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. The Price Bands shall be calculated during Regular Trading Hours. Between 3:35 p.m. and 4:00 p.m. ET, or in the case of an early scheduled close, during the last 25 minutes of trading before the early scheduled close, the Price Bands shall be calculated by applying double the Percentage Parameters set forth in Appendix A for (i) all Tier 1 NMS Stocks and (ii) Tier 2 NMS Stocks priced equal to or below \$3.00. If the Processor has not yet disseminated Price Bands, but a Reference Price is available, a trading center may calculate and apply Price Bands based on the same Reference Price that the Processor would use for calculating such Price Bands until such trading center receives Price Bands from the Processor. If, under Section VII(B)(2), the Primary Listing Exchange notifies the Processor that it is unable to reopen an NMS Stock due to a systems or technology issue and it has not declared a Regulatory Halt, the Processor will calculate and disseminate Price Bands by applying triple the Percentage Parameters set forth in Appendix A for the first 30 seconds such Price Bands are disseminated.

(2) The Processor shall calculate a Pro-Forma Reference Price on a continuous basis during Regular Trading Hours, as specified in Section V(A)(1) of the Plan. If a Pro-Forma Reference Price has not moved by 1% or more from the Reference Price currently in effect, no new Price Bands shall be disseminated, and the current Reference Price shall remain the effective Reference Price. When the Pro-Forma Reference Price has moved by 1% or more from the Reference Price currently in effect, the Pro-Forma Reference Price shall become the Reference Price, and the Processor shall disseminate new Price Bands based on the new Reference Price; provided, however, that each new Reference Price shall remain in effect for at least 30 seconds.

(B) Openings

(1) Except when a Regulatory Halt is in effect at the start of Regular Trading

Hours, the first Reference Price for a trading day shall be the Opening Price on the Primary Listing Exchange in an NMS Stock if such Opening Price occurs less than five minutes after the start of Regular Trading Hours. During the period less than five minutes after the Opening Price, a Pro-Forma Reference Price shall be updated on a continuous basis to be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock during the period following the Opening Price (including the Opening Price), and if it differs from the current Reference Price by 1% or more shall become the new Reference Price, except that a new Reference Price shall remain in effect for at least 30 seconds. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) If the Opening Price on the Primary Listing Exchange in an NMS Stock does not occur within five minutes after the start of Regular Trading Hours, the first Reference Price for a trading day shall be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(C) Reopenings

(1) Following a Trading Pause in an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, if the Primary Listing Exchange reopens trading with a transaction or quotation that does not include a zero bid or zero offer, the next Reference Price shall be the Reopening Price on the Primary Listing Exchange. Subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If the Primary Listing Exchange notifies the Processor that it is unable to reopen an NMS Stock due to a systems or technology issue, or if the Primary Listing Exchange reopens trading with a quotation that has a zero bid or zero offer, or both, the next Reference Price shall be the last effective Price Band that was in a Limit State before the Trading Pause. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) Following a Regulatory Halt, the next Reference Price shall be the Opening or Reopening Price on the Primary Listing Exchange if such Opening or Reopening Price occurs within five minutes after the end of the Regulatory Halt, and subsequent Reference Prices shall be determined in the manner prescribed for normal

openings, as specified in Section V(B)(1) of the Plan. If such Opening or Reopening Price has not occurred within five minutes after the end of the Regulatory Halt, the Reference Price shall be equal to the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

VI. Limit Up-Limit Down Requirements

(A) Limitations on Trades and Quotations Outside of Price Bands

(1) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the Lower Price Band or above the Upper Price Band for an NMS Stock. Single-priced opening, reopening, and closing transactions on the Primary Listing Exchange, however, shall be excluded from this limitation. In addition, any transaction that both (i) does not update the last sale price (except if solely because the transaction was reported late or because the transaction was an odd-lot sized transaction), and (ii) is excepted or exempt from Rule 611 under Regulation NMS shall be excluded from this limitation.

(2) When a National Best Bid is below the Lower Price Band or a National Best Offer is above the Upper Price Band for an NMS Stock, the Processor shall disseminate such National Best Bid or National Best Offer with an appropriate flag identifying it as non-executable. When a National Best Offer is equal to the Lower Price Band or a National Best Bid is equal to the Upper Price Band for an NMS Stock, the Processor shall distribute such National Best Bid or National Best Offer with an appropriate flag identifying it as a "Limit State Quotation".

(3) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processor shall disseminate an offer below the Lower Price Band or bid above the Upper Price Band that may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; provided, however, that

any such bid or offer shall not be included in National Best Bid or National Best Offer calculations.

(B) Entering and Exiting a Limit State

(1) All trading for an NMS Stock shall immediately enter a Limit State if the National Best Offer equals the Lower Price Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer.

(2) When trading for an NMS Stock enters a Limit State, the Processor shall disseminate this information by identifying the relevant quotation (*i.e.*, a National Best Offer that equals the Lower Price Band or a National Best Bid that equals the Upper Price Band) as a Limit State Quotation. At this point, the Processor shall cease calculating and disseminating updated Reference Prices and Price Bands for the NMS Stock until either trading exits the Limit State or trading resumes with an opening or reopening as provided in Section V.

(3) Trading for an NMS Stock shall exit a Limit State if, within 15 seconds of entering the Limit State, the entire size of all Limit State Quotations are executed or cancelled.

(4) If trading for an NMS Stock exits a Limit State within 15 seconds of entry, the Processor shall immediately calculate and disseminate updated Price Bands based on a Reference Price that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period (including the period of the Limit State).

(5) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry, the Limit State will terminate when the Primary Listing Exchange declares a Trading Pause pursuant to Section VII of the Plan or at the end of Regular Trading Hours.

VII. Trading Pauses

(A) Declaration of Trading Pauses

(1) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry during Regular Trading Hours, then the Primary Listing Exchange shall declare a Trading Pause for such NMS Stock and shall notify the Processor.

(2) The Primary Listing Exchange may also declare a Trading Pause for an NMS Stock when an NMS Stock is in a Straddle State, which is when National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State, and trading in that NMS Stock deviates from normal trading characteristics such that declaring a Trading Pause would support the Plan's goal to address

extraordinary market volatility. The Primary Listing Exchange shall develop policies and procedures for determining when it would declare a Trading Pause in such circumstances. If a Trading Pause is declared for an NMS Stock under this provision, the Primary Listing Exchange shall notify the Processor.

(3) The Processor shall disseminate Trading Pause information to the public. No trades in an NMS Stock shall occur during a Trading Pause, but all bids and offers may be displayed.

(B) Reopening of Trading During Regular Trading Hours

(1) Five minutes after declaring a Trading Pause for an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the Primary Listing Exchange shall attempt to reopen trading using its established reopening procedures. The Processor will publish the following information that the Primary Listing Exchange provides to the Processor in connection with such reopening: auction reference price; auction collars; and number of extensions to the reopening auction. The Trading Pause shall end when the Primary Listing Exchange reports a Reopening Price.

(2) The Primary Listing Exchange shall notify the Processor if it is unable to reopen trading in an NMS Stock due to a systems or technology issue and if it has not declared a Regulatory Halt. The Processor shall disseminate this information to the public.

(3) Trading centers may not resume trading in an NMS Stock following a Trading Pause without Price Bands in such NMS Stock.

(4) The Processor shall update the Price Bands as set forth in Section V(C)(1)–(2) of the Plan after receiving notification from the Primary Listing Exchange of a Reopening Price following a Trading Pause (or a resume message in the case of a reopening quote that has a zero bid or zero offer, or both) or that it is unable to reopen trading following a Trading Pause due to a systems or technology issue, provided that if the Primary Listing Exchange is unable to reopen due to a systems or technology issue, the update to the Price Bands will be no earlier than ten minutes after the beginning of the Trading Pause.

(C) Trading Pauses Within Ten Minutes of the End of Regular Trading Hours

(1) If an NMS Stock is in a Trading Pause during the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall not reopen trading and shall attempt to execute a closing

transaction using its established closing procedures. All trading centers may begin trading the NMS Stock when the Primary Listing Exchange executes a closing transaction.

(2) If the Primary Listing Exchange does not execute a closing transaction within five minutes after the end of Regular Trading Hours, all trading centers may begin trading the NMS Stock.

VIII. Implementation

The initial date of Plan operations shall be April 8, 2013.

IX. Withdrawal From Plan

If a Participant obtains SEC approval to withdraw from the Plan, such Participant may withdraw from the Plan at any time on not less than 30 days' prior written notice to each of the other Participants. At such time, the withdrawing Participant shall have no further rights or obligations under the Plan.

X. Counterparts and Signatures

The Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

In witness thereof, this Plan has been executed as of the ____ day of ____ 2023 by each of the parties hereto.

Cboe BZX EXCHANGE, INC.

BY: _____

Cboe BYX EXCHANGE, INC.

BY: _____

Cboe EDGA EXCHANGE, INC.

BY: _____

Cboe EDGX EXCHANGE, INC.

BY: _____

FINANCIALINDUSTRY REGULATORY AUTHORITY, INC.

BY: _____

INVESTORS EXCHANGE LLC

BY: _____

LONG-TERM STOCK EXCHANGE

BY: _____

MEMX LLC

BY: _____

MIAx PEARL, LLC

BY: _____

NASDAQ BX, Inc.

BY: _____

NASDAQ PHLX LLC

BY: _____

THE NASDAQ STOCK MARKET LLC

BY: _____

NEW YORK STOCK EXCHANGE LLC

BY: _____

NYSE AMERICAN LLC

BY: _____

NYSE ARCA, INC.

BY: _____

NYSE CHICAGO, INC.

BY: _____

NYSE NATIONAL, INC.

BY: _____

Appendix A—Percentage Parameters

I. Tier 1 NMS Stocks

(1) Tier 1 NMS Stocks shall include all NMS Stocks included in the S&P 500 Index and the Russell 1000 Index, and [the] *all* exchange-traded products ("ETP"), *except for single stock ETPs, which will be assigned to the same Tier as their underlying stock, adjusted for any leverage factor, if applicable.* [identified as Schedule 1 to this Appendix. Schedule 1 to the Appendix will be reviewed and updated semi-annually based on the fiscal year by the Primary Listing Exchange to add ETPs that meet the criteria, or delete ETPs that are no longer eligible. To determine eligibility for an ETP to be included as a Tier 1 NMS Stock, all ETPs across multiple asset classes and issuers, including domestic equity, international equity, fixed income, currency, and commodities and futures will be identified. Leveraged ETPs will be excluded and the list will be sorted by notional consolidated average daily volume ("CADV"). The period used to measure CADV will be from the first day of the previous fiscal half year up until one week before the beginning of the next fiscal half year. Daily volumes will be multiplied by closing prices and then averaged over the period. ETPs, including inverse ETPs, that trade over \$2,000,000 CADV will be eligible to be included as a Tier 1 NMS Stock. The semi-annual updates to Schedule 1 do not require an amendment to the Plan. The Primary Listing Exchanges will maintain the updated Schedule 1 on their respective websites.]

(2) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price more than \$3.00 shall be 5%.

(3) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price equal to \$0.75 and up to and including \$3.00 shall be 20%.

(4) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price less than \$0.75 shall be the lesser of (a) \$0.15 or (b) 75%.

(5) *Notwithstanding the foregoing, the Percentage Parameters for a Tier 1 NMS Stock that is a leveraged ETP shall be the applicable Percentage Parameter set forth in clauses (2), (3), or (4) above, multiplied by the leverage ratio of such product.*

(6) [5] The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

II. Tier 2 NMS Stocks

(1) Tier 2 NMS Stocks shall include all NMS Stocks other than those in Tier 1, provided, however, that all rights and warrants are excluded from the Plan.

(2) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price more than \$3.00 shall be 10%.

(3) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price equal to \$0.75 and up to and including \$3.00 shall be 20%.

(4) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price less than \$0.75 shall be the lesser of (a) \$0.15 or (b) 75%.

(5) Notwithstanding the foregoing, the Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP shall be the applicable Percentage Parameter set forth in clauses (2), (3), or (4) above, multiplied by the leverage ratio of such product.

(6) The Reference Price used for determining which Percentage Parameter shall be applicable during a trading day shall be based on the closing price of the NMS Stock on the Primary Listing Exchange on the previous trading day, or if no closing price exists, the last sale on the Primary Listing Exchange reported by the Processor.

[Appendix A—Schedule 1]

Appendix B—Data and Reporting

I. Data Provision

The Commission may request from the Primary Listing Exchanges the below data that is not otherwise publicly available. The requested data shall be collected and transmitted to the Commission in an agreed-upon format, to be provided 30 calendar days following the date of the request, or such other date as agreed upon by the Commission and Primary Listing Exchange. Data collected in connection with a Commission request shall be transmitted to the Commission with a request for confidential treatment under the Freedom of Information Act, 5 U.S.C. 552, and the Commission's rules and regulations thereunder. This section shall expire at the time the below data becomes available via the National Market System Plan Governing the Consolidated Audit Trail or becomes publicly available.

A. Data set of all orders entered during halts or Trading Pauses.

1. Normal or Auction Only orders, Arrivals, Changes, Cancels, # shares, limit/market, side, Limit State side
2. Pipe delimited with field name as first record

B. Data set of order events received during Limit States.

C. Summary data on order flow of arrivals and cancellations for each 15-second period for discrete time periods and sample stocks to be determined by the SEC in subsequent data requests. Must indicate side(s) of Limit State.

1. Market/marketable sell orders arrivals and executions
 - a. Count
 - b. Shares
 - c. Shares executed
2. Market/marketable buy orders arrivals and executions
 - a. Count
 - b. Shares
 - c. Shares executed
3. Count arriving, volume arriving and shares

- executing in limit sell orders above NBO mid-point
4. Count arriving, volume arriving and shares executing in limit sell orders at or below NBBO mid-point (non-marketable)
 5. Count arriving, volume arriving and shares executing in limit buy orders at or above NBBO mid-point (non-marketable)
 6. Count arriving, volume arriving and shares executing in limit buy orders below NBBO mid-point
 7. Count and volume arriving of limit sell orders priced at or above NBBO midpoint plus \$0.05
 8. Count and volume arriving of limit buy orders priced at or below NBBO midpoint minus \$0.05
 9. Count and volume of (3–8) for cancels
 10. Include: ticker, date, time at start, time of Limit State, all data item fields in 1, last sale prior to 15-second period (null if no trades today), range during 15-second period, last trade during 15-second period

II. Reporting

A. Annual Report

No later than March 31, 2020 and annually thereafter, the Operating Committee, in consultation with the Advisory committee, will provide the Commission and make publicly available a report containing key information concerning the Plan's performance during the preceding calendar year which shall include the following items: (1) an update on the Plan's operations; (2) an analysis of any amendments to the Plan implemented during the period covered by the report; and (3) an analysis of potential material emerging issues that may directly impact the operation of the Plan.

1. Update on the Plan's Operations. This section of the Annual Report shall analyze the Plan's operations during the covered period, including a discussion of any areas of the Plan's operation that require additional analysis. In particular, this section of the Annual Report shall examine the calibration of the parameters set forth in the Plan (*e.g.*, Price Bands, duration of Limit States, impact of Straddle States, duration of Trading Pauses, and the performance of reopening procedures following a Trading Pause). This section of the Annual Report also shall consider stock characteristics and variations in market conditions over time, and may include tests that differentiate results for different characteristics, both in isolation and in combination.

2. Analysis of Amendments Implemented. This section of the Annual Report shall provide an analysis of any amendments implemented during the covered period. The analysis shall include a discussion of any such amendment's operation and its impact on the overall operation of the Plan.

3. Analysis of Emerging Issues. This section of the Annual Report should vary from year-to-year and will include a discussion and analysis of the Plan's operation during a significant market event that may have occurred during the covered period. This section shall also include any additional analyses performed during the covered period on issues that were raised in previous Annual Reports.

B. Quarterly Data

Thirty days following the end of each calendar quarter, the Operating Committee shall provide the Commission and make publicly available a report ("Monitoring Report") including basic statistics aggregated across primary listing exchanges regarding the Plan's operation during the preceding calendar quarter, as well as data aggregated across primary listing exchanges from the previous 12 quarters beginning with the calendar quarter covered by the first Monitoring Report. The purpose of the Monitoring Report is to identify trends in the performance and impact of the Plan on market activity. The Monitoring Report shall include data on the following events for each month during the preceding calendar quarter:

1. Limit States, Trading Pauses, Straddle States, and Clearly Erroneous Events

a. *Definitions.* For the purpose of this Section B.1, the following definitions apply:

- i. "Category" means the following categories of securities:

- (1) Tier 1 non-ETP securities > \$3.00
- (2) Tier 1 non-ETP securities >= \$0.75 and <= \$3.00
- (3) Tier 1 non-ETP securities < \$0.75
- (4) Tier 1 non-leveraged ETPs > \$3.00
- (5) Tier 1 non-leveraged ETPs >= \$0.75 and <= \$3.00
- (6) Tier 1 non-leveraged ETPs < \$0.75
- (7) Tier 1 leveraged ETPs > \$3.00
- (8) Tier 1 leveraged ETPs >= \$0.75 and <= \$3.00
- (9) Tier 1 leveraged ETPs < \$0.75
- (10) Tier 2 non-ETPs > \$3.00
- (11) Tier 2 non-ETPs >= \$0.75 and <= \$3.00
- (12) Tier 2 non-ETPs < \$0.75
- (13) Tier 2 non-leveraged ETPs > \$3.00
- (14) Tier 2 non-leveraged ETPs >= \$0.75 and <= \$3.00
- (15) Tier 2 non-leveraged ETPs < \$0.75
- (16) Tier 2 leveraged ETPs > \$3.00
- (17) Tier 2 leveraged ETPs >= \$0.75 and <= \$3.00
- (18) Tier 2 leveraged ETPs < \$0.75

- ii. "Time of Day" means the following time spans:

- (1) Opening (prior to 9:45 a.m. ET)
- (2) Regular (between 9:45 a.m. ET and 25 minutes prior to the end of core trading hours)
- (3) Closing (the last 25 minutes of core trading hours)
- (4) Within five minutes of a Trading Pause reopen or IPO open

b. *Limit States.* The Monitoring Report will include:

- i. Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of Limit States per day, broken out by Category and Time of Day.
- ii. Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of NMS Stocks that experienced more than one Limit State on a single day, broken out by Category.
- iii. Monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the number of Limit States experienced per day by individual NMS Stocks that had more than one Limit State on a single day, broken out by Category.

iv. Monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the total length of Limit States experienced per day by individual NMS Stocks that had more than one Limit State on a single day, broken out by Category.

c. *Trading Pauses.* The Monitoring Report will include:

- i. Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of Trading Pauses per day, broken out by Category and Time of Day.
- ii. Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of NMS Stocks that experienced more than one Trading Pause on a single day, broken out by Category.
- iii. Monthly distribution statistics (mean, median, 90th percentile, and maximum) on the number of Trading Pauses per day experienced by individual NMS Stocks having more than one Trading Pause on a single day, broken out by Category.

d. *Straddle States.* The Monitoring Report will include:

- i. Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of Straddle States per day, broken out by Category and Time of Day.
- ii. Monthly distribution statistics (mean, median, 25th percentile, and maximum) on the number of NMS Stocks that experienced more than one Straddle State on a single day, broken out by Category.
- iii. Monthly distribution statistics (mean, median, 90th percentile, and 99.9th percentile) on the total time spent in a Straddle State per day for individual NMS Stocks experiencing one or more Straddle States on a single day, broken out by Category.

e. The Monitoring Report will include the number of Clearly Erroneous Events per day for all NMS Stocks that occurred during the time when Price Bands are disseminated by the Processor, broken out by Category and Time of Day.

2. Reopening Data

a. *Definitions.* For the purpose of this Section B.2, the following definitions apply:

- i. "Type of Reopening" means either (1) manual or (2) automated.

- ii. "Category" means the following categories of securities:

 - (1) Tier 1 non-ETP securities
 - (2) Tier 1 non-leveraged ETPs
 - (3) Tier 1 leveraged ETPs
 - (4) Tier 2 non-ETP securities
 - (5) Tier 2 non-leveraged ETPs
 - (6) Tier 2 leveraged ETPs

iii. "Length of the Trading Pause" means the following durations:

- (1) less than 6 minutes (for manual reopenings) or no extensions of the Trading Pause (for automated reopenings);
- (2) 6 to 10 minutes (for manual reopenings) or one extension of the Trading Pause (for automated reopenings);
- (3) more than 10 minutes (for manual reopenings) or more than one extension of the Trading Pause (for automated reopenings)

b. The Monitoring Report will include the following monthly data on reopenings:

i. The number of Trading Pauses per month, broken out by (1) Type of Reopening, (2) Category, and (3) Length of the Trading Pause.

ii. Monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the duration of each Trading Pause, broken out by (1) Type of Reopening and (2) Category.

iii. The number of Trading Pauses ending in a:

(1) trade;
(2) quote; and
(3) potential closing auction, broken out by (a) Type of Reopening, (b) Category, and (c) Length of Trading Pause.

iv. For Trading Pauses in NMS Stocks preceded by a Limit Up state, monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the percentage price change from the Limit Up pricing that triggered the Trading Pause to the reopening price on exiting the Trading Pause (*i.e.*, the reopening trade or midpoint price), broken out by (1) Category and (2) whether the Trading Pause ended in a trade or (3) in a quote (*i.e.*, the reopening price was a midpoint).

v. For Trading Pauses in NMS Stocks preceded by a Limit Down state, monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the percentage price change from the Limit Down pricing that triggered the Trading Pause to the reopening price on exiting the Trading Pause (*i.e.*, the reopening trade or midpoint price), broken out by (1) Category and (2) whether the Trading Pause ended in a trade or (3) in a quote (*i.e.*, the reopening price was a midpoint).

vi. For Trading Pauses in NMS Stocks where the reopening process ended in a trade or quote (with resulting reference price equal to the midpoint of that quote), monthly distribution statistics (mean, median, 90th percentile, and 99th percentile) on the percentage price change from the reopening price on exiting the Trading Pause (*i.e.*, the reopening trade or midpoint price) to

(1) the highest price of all last sale eligible trades;

(2) the lowest price of all last sale eligible trades; and

(3) the trade-weighted average price of all last sale eligible trades for the five minutes following the conclusion of the Trading Pause, broken out by (a) Category, (b) whether the Trading Pause was preceded by a Limit Up state or (c) a Limit Down state, and (d) whether the Trading Pause ended in a trade or (e) in a quote (*i.e.*, the reopening price was a midpoint).

C. Reports on Market Events

At the Commission's request, the Operating Committee shall provide the Commission and make publicly available a report analyzing the Plan's operation during a significant market event that (1) materially impacted the trading of more than one security across multiple Trading Centers; and (2) is directly related to or implicating the performance of the Plan. Such report shall be provided to the Commission no later than 30 days following the Commission's request, or at a later date as agreed upon between the

Commission and the Operation Committee. The requirement to submit a report under this section may be satisfied by including the required analysis within an Annual Report.

[FR Doc. 2023-25543 Filed 11-20-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98945; File No. SR-CboeBZX-2023-072]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Franklin Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

November 15, 2023.

On September 26, 2023, Cboe BZX Exchange, Inc. ("BZX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares of the Franklin Bitcoin ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on October 3, 2023.³

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 17, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98562 (Sept. 27, 2023), 88 FR 68240. The Commission has received no comments on the proposal.

⁴ 15 U.S.C. 78s(b)(2).

to Section 19(b)(2) of the Act,⁵ designates January 1, 2024 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-CboeBZX-2023-072).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-25660 Filed 11-20-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98941; File No. SR-Phlx-2023-47]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7, Sections 4 and 7 Regarding Multiply Listed Options Fees and Routing Fees

November 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 1, 2023, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx's Pricing Schedule at Options 7, Section 4, Multiply Listed Options Fees, and Options 7, Section 7, Routing Fees.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to amend its Pricing Schedule at Options 7, Section 4, Multiply Listed Options Fees, and Options 7, Section 7, Routing Fees. Each pricing change will be described below.

Options 7, Section 4

Phlx proposes to amend its Pricing Schedule at Options 7, Section 4, "Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and broad-based index options symbols listed within Options 7, Section 5.A)." Specifically, Phlx proposes to amend its Qualified Contingent Cross ("QCC") Rebates.

Today, the Exchange assesses a \$.20 per contract QCC Transaction Fee for a Lead Market Maker,³ Market Maker,⁴

Firm⁵ and Broker-Dealer.⁶ Customers⁷ and Professionals⁸ are not assessed a QCC Transaction Fee. QCC Transaction Fees apply to electronic QCC Orders⁹ and Floor QCC Orders.¹⁰ Additionally, today, Phlx pays QCC rebates. Specifically, Phlx pays a QCC Rebate of \$.12 per contract on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. This rebate is \$.17 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month. Further, this rebate is \$.22 per contract in the event that a member or member organization executes: (1) greater than 1,000,000 qualifying QCC contracts in a given month, (2) Floor Originated Strategy Executions in excess of 3,500,000 contracts in a given month, and (3) at least 40% of the member or member organization's QCC executed contracts in that month are comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side.

Also, the Exchange pays a QCC Rebate of \$.14 per contract on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side.

This rebate is \$.19 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month. Further, this rebate is \$.27 per contract in the event that a member or member organization executes: (1) greater than 1,000,000 qualifying QCC contracts in a given month, (2) Floor Originated Strategy Executions in excess of 3,500,000 contracts in a given month, and (3) at least 40% of the member or member organization's QCC executed contracts in that month are comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side.

At this time, the Exchange proposes to amend the number of qualifying QCC contracts that must be executed in a given month with respect to these aforementioned rebates. The Exchange proposes to amend the current 1,000,000 qualifying QCC contracts to 750,000 qualifying QCC contracts in. With this proposed change, the rule text would provide:

- A QCC Rebate of \$.12 per contract will be paid on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. This rebate will be \$.17 per contract in the event that a member or member organization executes greater than 750,000 qualifying QCC contracts in a given month. This rebate will be \$.22 per contract in the event that a member or member organization executes: (1) greater than 750,000 qualifying QCC contracts in a given month, (2) Floor Originated Strategy Executions in excess of 3,500,000 contracts in a given month, and (3) at least 40% of the member or member organization's QCC executed contracts in that month are comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side.

- A QCC Rebate of \$.14 per contract will be paid on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. This rebate will be \$.19 per contract in the event

³ The term "Lead Market Maker" applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). A Lead Market Maker is an Exchange member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). An options Lead Market Maker includes a Remote Lead Market Maker which is defined as an options Lead Market Maker in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Options 2, Section 11. See Options 7, Section 1(c). The term "Floor Lead Market Maker" is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange's trading floor. See Options 8, Section 2(a)(3).

⁴ The term "Market Maker" is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a). A Market Maker includes SQTs and RSQTs as well as Floor Market Makers. See Options 7, Section 1(c). The term "Floor Market Maker" is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. See Options 8, Section 2(a)(4).

⁵ The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation. See Options 7, Section 1(c).

⁶ The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. See Options 7, Section 1(c).

⁷ The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(b)(45)). See Options 7, Section 1(c).

⁸ The term "Professional" applies to transactions for the accounts of Professionals, as defined in Options 1, Section 1(b)(45) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Options 7, Section 1(c).

⁹ Electronic QCC Orders are described in Options 3, Section 12.

¹⁰ Floor QCC Orders are described in Options 8, Section 30(e).

that a member or member organization executes greater than 750,000 qualifying QCC contracts in a given month. This rebate will be \$0.27 per contract in the event that a member or member organization executes: (1) greater than 750,000 qualifying QCC contracts in a given month, (2) Floor Originated Strategy Executions in excess of 3,500,000 contracts in a given month, and (3) at least 40% of the member or member organization's QCC executed contracts in that month are comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side.

The Exchange believes that lowering the number of qualifying QCC contracts for purpose of qualifying for these QCC Rebates from 1,000,000 to 750,000 qualifying QCC contracts will incentivize Phlx members and member organizations to transact a greater amount of QCC Orders on Phlx.

Options 7, Section 7

Currently, Phlx assesses a Non-Customer routing fee of \$0.99 per contract and a Customer routing fee of \$0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to markets other than The Nasdaq Options Market LLC ("NOM") and Nasdaq BX, Inc. ("BX"). Currently, if the away market pays a rebate, the Exchange assesses a Customer a Routing Fee of \$0.13 per contract for markets other than NOM and BX. Currently, Phlx assesses a Customer a \$0.13 per contract Fixed Fee in addition to the actual transaction fee assessed when routing to NOM and BX.

At this time, the Exchange proposes to assess a Non-Customer an increased routing fee to route to any options exchange of \$1.20 per contract. The Exchange also proposes to assess a Customer a Fixed Fee of \$0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange. The Exchange would no longer assess the lower routing of \$0.13 per contract, in addition to the actual transaction fee assessed, when routing to NOM and BX. The Exchange will continue to assess a \$0.13 per contract routing fee if the away market pays a rebate, including NOM and BX. The purpose of the proposed routing fees is to recoup costs incurred by the Exchange when routing orders to other options exchanges on behalf of options members and member organizations. In determining its proposed routing fees, the Exchange took into account

transaction fees assessed by other options exchanges, the Exchange's projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. The Exchange will continue to use its affiliated broker-dealer, Nasdaq Execution Services, to route orders to other options exchanges. Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that market participants may elect to mark their orders as "Do Not Route" to avoid any routing fees.¹¹ The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges. Also, the Exchange's proposal would uniformly assess the same Customer routing fees, regardless of the away venue, of \$0.23 per contract, in addition to the actual transaction fee assessed, or \$0.13 per contract if the away market pays a rebate.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹³ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*¹⁴ ("NetCoalition"), the D.C. Circuit stated, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their

order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'"¹⁵

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of seventeen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

Options 7, Section 4

The Exchange's proposal to amend a qualifier for several QCC Rebates to lower the number of qualifying QCC contracts that must be executed in a given month from 1,000,000 to 750,000 qualifying QCC contracts is reasonable because lowering the number of qualifying QCC contracts for purpose of these QCC Rebates from 1,000,000 to 750,000 qualifying QCC contracts will incentivize Phlx members and member organizations to transact a greater number of QCC Orders on Phlx.

The Exchange's proposal to amend a qualifier for several QCC Rebates to lower the number of qualifying QCC contracts that must be executed in a given month from 1,000,000 qualifying QCC contracts to 750,000 qualifying QCC contracts is equitable and not unfairly discriminatory because all members and member organizations may qualify for QCC Rebates, provided they transact the requisite volume.

Options 7, Section 7

The Exchange's proposal to assess a Non-Customer an increased routing fee of \$1.20 to route to another options exchange and a Customer a Fixed Fee of \$0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange¹⁶ is reasonable

¹¹ See Phlx Options 3, Section 7(d).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

¹⁴ *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

¹⁵ *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

¹⁶ The Exchange would no longer assess the lower routing of \$0.13 per contract, in addition to the

because the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges. In determining its proposed routing fees, the Exchange took into account transaction fees assessed by other options exchanges, the Exchange's projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. While the Exchange is no longer offering a discounted Routing Fee to route to NOM and BX, the Exchange notes that the Routing Fee will be \$0.13 for these markets, similar to other options markets, if they pay a rebate.¹⁷ Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that market participants may elect to mark their orders as "Do Not Route" to avoid any routing fees.¹⁸

The Exchange's proposal to assess a Non-Customer an increased routing fee of \$1.20 to route to another options exchange and a Customer a Fixed Fee of \$0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange is equitable and not unfairly discriminatory as all Non-Customers would be assessed a uniform routing fee. Additionally, Customers will be uniformly assessed the same fee, regardless of the destination market. Customers will continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances market quality on the Exchange by providing more trading opportunities, which benefits all market participants. Finally, the Exchange notes that market participants may elect to market orders as Do Not Route to avoid any routing fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

actual transaction fee assessed, when routing to NOM and BX.

¹⁷ Both NOM and BX offer rebates. See NOM's Pricing Schedule at Options 7, Section 2 and BX's Pricing Schedule at Options 7, Section 2.

¹⁸ See Phlx Options 3, Section 7(d).

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-Market Competition

The proposed amendments do not impose an undue burden on intra-market competition.

Options 7, Section 4

The Exchange's proposal to amend a qualifier for several QCC Rebates to lower the number of qualifying QCC contracts that must be executed in a given month from 1,000,000 qualifying QCC contracts to 750,000 qualifying QCC contracts does not impose an undue burden on competition because all members and member organizations may qualify for QCC Rebates, provided they transact the requisite volume.

Options 7, Section 7

The Exchange's proposal to assess a Non-Customer an increased routing fee of \$1.20 to route to another options exchange and a Customer a Fixed Fee of \$0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange does not impose an undue burden on competition as all Non-Customers would be assessed a uniform routing fee. Additionally, Customers will be uniformly assessed the same fee, regardless of the destination market. Customers will continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances market quality on the Exchange by providing more trading opportunities, which benefits all market participants. Finally, the Exchange notes that market participants may elect to market orders

as Do Not Route to avoid any routing fees.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2023-47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-Phlx-2023-47. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2023-47 and should be submitted on or before December 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-25657 Filed 11-20-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98954; File No. SR-NASDAQ-2023-046]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Shorten the Standard Settlement Cycle

November 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 13, 2023, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Nasdaq Rules 11140 (Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants"), 11150 (Transactions "Ex-Interest" in Bonds Which Are Dealt in "Flat"), 11210 (Sent by Each Party), 11320 (Dates of Delivery), and 11620 (Computation of Interest), to conform them to the Commission's amendment to Rule 15c6-1(a) of the Act³ to shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date ("T+2") to one business days after the trade date ("T+1").

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective May 5, 2023, the Commission adopted rule amendments to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1.⁴ In light of the recently adopted rule amendments to Rule 15c6-1(a) of the Act to require standard settlement no later than T+1, Nasdaq proposes to amend its rules pertaining to securities settlement by, among other things, amending the definition of "standard" settlement as occurring on T+1.

Specifically, Nasdaq proposes to amend the following Rules: 11140 (Transactions in Securities "Ex-

Dividend," "Ex-Rights" or "Ex-Warrants"), 11150 (Transactions "Ex-Interest" in Bonds Which Are Dealt in "Flat"), 11210 (Sent by Each Party), 11320 (Dates of Delivery), and 11620 (Computation of Interest). The details of the proposed rule changes are described below.

Nasdaq Rule 11140

Rule 11140(b)(1) currently provides that for dividends or distributions, and the issuance or distribution of warrants, that are less than 25 percent of the value of the subject security, if definitive information is received sufficiently in advance of the record date, the date designated as the "ex-dividend date" shall be the first business day preceding the record date if the record date falls on a business day, or the second business day preceding the record date if the record date falls on a day designated by Nasdaq Regulation as a non-delivery date. Nasdaq proposes to amend Rule 11140(b)(1) to shorten the time frames by one business day. With this change the ex-dividend date would be the same business day as the record date if the record date falls on a business day, or the first business day preceding the record date if the record date falls on a day designated by Nasdaq Regulation as a non-delivery date.

Rule 11150

Rule 11150(a) currently prescribes the manner for establishing "ex-interest dates" for transactions in bonds or other similar evidence of indebtedness which are traded "flat." Such transactions are "ex-interest" on the first business day preceding the record date if the record date falls on a business day, on the second business day preceding the record date if the record date falls on a day other than a business day, or on the third business day preceding the date on which an interest payment is to be made if no record date has been fixed. Nasdaq proposes to amend Rule 11150(a) to shorten the time frames by one business day.

Rule 11210

Paragraphs (c) and (d) of Rule 11210 set forth the "Don't Know" ("DK") voluntary procedures for using "DK Notices" or other forms of notices, respectively. When a party to a transaction sends a comparison or confirmation of a trade, but does not receive a comparison or confirmation or a signed DK, from the contra-member by the close of one business day following the trade date of the transaction, the confirming member shall send a DK Notice to the contra-member. Thereafter, the contra-member has two business

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 96930, Investment Advisers Act Release No. 6239 (February 15, 2023), 88 FR 13872 (March 6, 2023) ("T+1 Adopting Release").

⁴ See *supra* note 3.

days after receipt of the confirming member's notice to either confirm or "DK" the transaction.

Nasdaq proposes to amend paragraphs (c) and (d) of Rule 11210 to provide that the "DK" procedures may be used by the confirming member if it does not receive a comparison or confirmation or signed "DK" from the contra-member by the close of the business day of the trade date of the transaction, rather than the current time frame of one day after the trade date. In addition, Nasdaq proposes to amend paragraphs (c)(2)(A), (c)(3), and (d)(5) of Rule 11210 to adjust the time in which a contra-member has to respond to a "DK Notice" (or similar notice) from two business days after the contra-member's receipt of the notice to one business day after the contra-member's receipt of the notice.

Rule 11320

Rule 11320 currently prescribes delivery dates for various transactions. Currently, paragraph (b) states that for a "regular way" transaction, delivery must be made on, but not before, the second business day after the date of the transaction. Nasdaq proposes to amend Rule 11320(b) to change the reference from the second business day to the first business day following the date of the transaction. Currently, paragraph (c) provides that in a "seller's option" transaction, delivery may be made by the seller on any business day after the second business day following the date of the transaction. Nasdaq proposes to amend Rule 11320(c) to change the reference from the second business day to the first business day following the date of the transaction and prior to the expiration of the option.

Rule 11620

In the settlement of contracts in interest-paying securities other than for cash, Rule 11620(a) currently requires the calculation of interest at the rate specified in the security up to but not including the second business day after the date of the transaction. The proposed amendment would shorten the time frame to the first business day following the date of the transaction.

Implementation

The operative date of this proposed rule change will be Tuesday, May 28, 2024, which is the compliance date specified in the Commission's amendment to Rule 15c6-1(a) of the Act⁵ to require standard settlement no later than T+1.⁶ With the

implementation of the T+1 settlement cycle, the ex-dividend date for "normal" distributions pursuant to Rule

11140(b)(1) will be the same business day as the record date. Accordingly, Nasdaq proposes to interpret Rule 11140(b)(1) so that the first record date to which this new ex-dividend date rationale will be applied will be Wednesday, May 29, 2024. During the implementation of the T+1 settlement cycle, the "regular" ex-dividend dates will be as follows:

Record Date May 24, 2024—Ex date May 23, 2024

Record Date May 28, 2024—Ex date May 24, 2024

Record Date May 29, 2024—Ex date May 29, 2024 *

* May 27, 2024 is Memorial Day and not a business day.

By way of explanation, a record date of Friday, May 24, 2024 would be a date prior to the effective date of the adopted T + 1 rules. Current Rule 1140(b) [sic] would apply to this record date, and, therefore, the "ex-dividend date" would be the first business day preceding the record date or Thursday, May 23, 2024. Monday, May 27, 2024 is Memorial Day is a federal holiday and not a business day; there would be no record date on a holiday. As noted above, Nasdaq proposes to interpret Rule 11140(b)(1) so that the first record date to which this new ex-dividend date rationale will be applied would be Wednesday, May 29, 2024. Therefore, a record date of Tuesday, May 28, 2024 would fall under current Rule 1140(b) [sic] and the first business day preceding the record date would be Friday, May 24, 2024. Finally, as noted above, Wednesday, May 29, 2024 is the first record date pursuant to the new T + 1 rules, therefore, proposed Rule 1140(b) [sic] applies to this date and the "ex-dividend date" would be the same business day as the record date (May, 29, 2024).

The ex-dividend date for "large" distributions under Rule 11140(b)(2) is not being amended with the adoption of the T+1 settlement cycle. Therefore, the ex-dividend date for "large" distributions under Rule 11140(b)(2) will continue to be the first business day following the payable date as provided in the current rule text. In order to ensure that no

Wednesday, May 29, 2024 because these transactions occurred before the rule was effective and continue to settle two days after the trade date. Additionally, transactions with a trade date of Tuesday, May 28, 2024 would also settle on Wednesday, May 29, 2024 because these transactions occurred when the T + 1 rule was effective and would settle one day after the trade date. Of note, May 27, 2024 is Memorial Day and not a business day counted for purposes of settlement.

securities will be ex-dividend on May 28, 2024 for purposes of "large" distributions, Nasdaq similarly proposes to interpret Rule 11140(b) so that, if an issuer sets May 28, 2024 as the payment date for a large distribution, the ex-dividend date would be May 29, 2024, not May 28, 2024. Nasdaq will issue an Issuer Alert addressing the application of the T+1 implementation date on Rule 11140(b).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. The proposed rule change seeks to conform Nasdaq's rules with the adopted rule amendments to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1.⁹ The proposal is consistent with the Commission's amendment to Rule 15c6-1(a) of the Act to require standard settlement no later than T+1. This proposal will provide Nasdaq members with regulatory certainty as to the settlement cycle that will be utilized to settle transactions executed on the Exchange.

As noted herein, Nasdaq will announce the operative date of the proposed rule change in an Equity Regulatory Alert, which date would correspond with the industry-led transition to a T+1 standard settlement, and the compliance date of the Commission's amendment to Rule 15c6-1(a) of the Act to require standard settlement no later than T+1.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal amends Nasdaq's rules pertaining to securities settlement and is intended to facilitate the implementation of the industry-led transition to a T+1 settlement cycle. The shortened settlement cycle will apply uniformly to all contracts for the purchase or sale of a security (other than exempted

⁵ See *supra* note 3.

⁶ See *supra* note 3. Transactions with a trade date of Friday, May 24, 2024 would settle on

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See *supra* note 3.

securities) that provide for payment of funds and delivery of securities that occur on Nasdaq or other self-regulatory organizations.¹⁰ Moreover, the proposal is consistent with the Commission's amendment to Rule 15c6-1(a) of the Act to require standard settlement no later than T+1. Accordingly, Nasdaq believes that the proposed amendments do not impose any intra-market or inter-market burdens on competition because the amendments conform Nasdaq's rules with the adopted rule amendments to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1.¹¹ Specifically, the proposed amendments include changes to rules that specifically establish the settlement cycle as well as rules that establish time frames based on settlement dates, including for certain post-settlement rights and obligations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2023-046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2023-046. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2023-046 and should be submitted on or before December 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-25667 Filed 11-20-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98948; File No. SR-NASDAQ-2023-035]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Hashdex Nasdaq Ethereum ETF Under Nasdaq Rule 5711(i)

November 15, 2023.

On September 20, 2023, The Nasdaq Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares of the Hashdex Nasdaq Ethereum ETF under Nasdaq Rule 5711(i) (Trust Units). The proposed rule change was published for comment in the **Federal Register** on October 3, 2023.³

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 17, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant

¹⁰ Of note, pursuant to (a) and (d) of Rule 15c6-1, the parties may expressly agree to a different settlement date at the time of the transaction.

¹¹ See *supra* note 3.

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98563 (Sept. 27, 2023), 88 FR 68214. The Commission has received no comments on the proposal.

⁴ 15 U.S.C. 78s(b)(2).

to Section 19(b)(2) of the Act,⁵ designates January 1, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NASDAQ-2023-035).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-25662 Filed 11-20-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98951; File No. SR-NYSEAMER-2023-58]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Options Proprietary Market Data Fee Schedule

November 15, 2023.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (“Act”) ² and Rule 19b-4 thereunder, ³ notice is hereby given that, on November 1, 2023, NYSE American LLC (“NYSE American” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Options Proprietary Market Data Fee Schedule (“Fee Schedule”) to adopt fees for the NYSE Options Open-Close Volume Summary market data product, effective November 1, 2023. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt fees for the NYSE Options Open-Close Volume Summary, ⁴ which will be available for purchase by any market participant, *i.e.*, members ⁵ and non-members. The Exchange proposes to implement fees for the NYSE Options Open-Close Volume Summary market data product on November 1, 2023. ⁶ The proposed fees would be applied equally to all market participants and all market participants would receive the same information in the data feed.

Background

By way of background, pursuant to the Product Filing, the Exchange adopted two versions of the NYSE Options Open-Close Volume Summary: an End of Day Volume Summary market data product and an Intra-Day Volume Summary market data product. The Exchange initially introduced the End of Day Volume Summary market data product on March 1, 2022 and adopted fees for the End of Day Volume

Summary market data product. ⁷ The purpose of this filing is to adopt fees for the Intra-Day Volume Summary market data product.

The Intra-Day Volume Summary provides a volume summary of trading activity on the Exchange at the option level by origin (Customer, Professional Customer, Firm, Broker-Dealer, and Market Maker ⁸), side of the market (buy or sell), contract volume, and transaction type (opening or closing). The Customer, Professional Customer, Firm, Broker-Dealer, and Market Maker volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Intra-Day Volume Summary provides similar information to that of the End of Day Volume Summary but is produced and updated every 10 minutes during the trading day. The data is captured in “snapshots” taken every 10 minutes throughout the trading day and will be available to subscribers within five minutes of the conclusion of each 10-minute period. Each update would represent combined data captured from the current “snapshot” and all previous “snapshots” and thus would provide open-close data on an aggregate basis.

The NYSE Options Open-Close Volume Summary is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed.

The Exchange anticipates a wide variety of market participants to purchase the Intra-Day Volume Summary data product, including, but not limited to, individual customers, buy-side investors, and investment banks. The Exchange believes the Intra-Day Volume Summary would provide subscribers data that should enhance their ability to analyze options trade and volume data, and to create and test trading models and analytical strategies. The Exchange believes the Intra-Day Volume Summary will be a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular options series. The Intra-Day Volume Summary is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may

⁴ See Securities Exchange Act Release No. 93803 (December 16, 2021), 86 FR 72647 (December 22, 2021) (SR-NYSEAMER-2021-46) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a New Historical Market Data Product to Be Known as the NYSE Options Open-Close Volume Summary) (“Product Filing”).

⁵ References to “member organization” as used in Exchange rules include American Trading Permit (“ATP”) Holders, which are registered brokers or dealers approved to effect transactions on the Exchange’s options marketplace. Under the Exchange’s rules, an ATP Holder has the status as a “member” of the Exchange as that term is defined in Section 3 of the Act. See Rule 900.2NY.

⁶ The Exchange has announced that it will begin [sic] migrating Exchange-listed options to the Pillar technology platform on October 23, 2023, *available here*: <https://www.nyse.com/trader-update/history?page=5#110000635130>.

⁷ See Securities Exchange Act Release No. 94334 (March 1, 2022), 87 FR 12748 (March 7, 2022) (SR-NYSEAMER-2022-11) (Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Options Proprietary Market Data Fee Schedule).

⁸ The terms Customer, Professional Customer, Firm and Market Maker are defined in Rule 900.2NY.

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

purchase it only if they voluntarily choose to do so. The Exchange notes that other exchanges offer a similar product,⁹ including the Exchange's affiliate, NYSE Arca, Inc. (NYSE Arca").¹⁰

The Intra-Day Volume Summary is subject to direct competition from similar end of day options trading summaries offered by other options exchanges.¹¹ All of these exchanges offer essentially the same intra day options trading summary information. The options trading summary files offered by the Exchange's competitors are substitutes, not complements. The Intra-Day Volume Summary provides data on options market activity which can be used to infer longer-term trends. The information provided by one exchange is generally similar to that provided by other exchanges because order flow can move from one exchange to another, and market sentiment trends that appear on one exchange are likely to be similar to the sentiment trends on other exchanges. The key differentiator in the quality of the data depends on the volume of transactions on a given exchange. The greater the volume of transactions, the greater the value of the data.

Proposed Rule Change

The Exchange proposes to adopt subscription fees for the purchase of the Intra-Day Volume Summary on a monthly basis. The Exchange proposes to assess a fee of \$2,000 per month for subscribing to the Intra-Day Volume Summary. As noted on the Fee Schedule, for mid-month subscriptions, new subscribers will be charged for the full calendar month for which they subscribe and will be provided NYSE Options Open-Close Volume Summary data for each trading day of the calendar

month in which they subscribed. The proposed monthly fees will apply to all market participants. The Exchange notes that other exchanges provide similar data products that may be purchased on a monthly basis and are comparably priced.¹²

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the Intra-Day Volume Summary market data product is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁶ in particular, in that it is an equitable allocation of dues, fees and

other charges among its members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations ("SROs") and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. Particularly, the Intra-Day Volume Summary further broadens the availability of U.S. options market data to investors consistent with the principles of Regulation NMS. Subscribers to the data may also be able to enhance their ability to analyze options trade and volume data and create and test trading models and analytical strategies. The Exchange believes the Intra-Day Volume Summary would provide a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. Moreover, other exchanges offer a similar data product.¹⁷

The Exchange operates in a highly competitive market. Indeed, there are currently 17 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹⁸ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in July 2023, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.¹⁹

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices

⁹ See Securities Exchange Act Release Nos. 89497 (August 6, 2020), 85 FR 48747 (August 12, 2020) (SR-CboeBZX-2020-059); 89498 (August 6, 2020), 85 FR 48735 (August 12, 2020) (SR-Cboe-EDGX-2020-36); 89496 (August 6, 2020), 85 FR 48743 (August 12, 2020) (SR-C2-2020-010); 89586 (August 17, 2020), 85 FR 51833 (August 21, 2020) (SR-C2-2020-012); 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121); 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR-NASDAQ-2011-144); 61317 (January 8, 2010), 75 FR 2915 (January 19, 2010) (SR-ISE-2009-103); 81632 (September 15, 2017), 82 FR 44235 (September 21, 2017) (SR-GEMX-2017-42); 91963 (May 21, 2021), 86 FR 28662 (May 27, 2021) (SR-EMERALD-2021-18); 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR-PEARL-2021-24); and 91965 (May 21, 2021), 86 FR 28665 (May 27, 2021) (SR-MIAX-2021-18).

¹⁰ See Securities Exchange Act Release No. 95201 (July 6, 2022), 87 FR 41366 (July 12, 2022) (SR-NYSEArca-2022-37) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Options Proprietary Market Data Fee Schedule).

¹¹ See *supra* note 9 [sic].

¹² See Price List—U.S. Derivatives Data for Nasdaq PHLX, LLC ("PHLX"), The Nasdaq Stock Market, LLC ("Nasdaq"), Nasdaq ISE, LLC ("ISE"), and Nasdaq GEMX, LLC ("GEMX"), available at <http://www.nasdaqtrader.com/Trader.aspx?id=DPPPriceListOptions#web>. Particularly, PHLX offers "Nasdaq PHLX Options Trade Outline (PHOTO)" and assesses \$2,500 per month for an intra-day subscription; Nasdaq offers the "Nasdaq Options Trade Outline (NOTO)" and assesses \$750 per month for an intra-day subscription; ISE offers the "Nasdaq ISE Open/Close Trade Profile" and assesses \$2,000 per month for an intra-day subscription; and GEMX offers the "Nasdaq GEMX Open/Close Trade Profile" and assesses \$1,000 per month for an intra-day subscription. Cboe EDGX Exchange, Inc. ("EDGX") assesses \$1,000 per month for an intraday subscription and Cboe BZX Exchange, Inc. ("BZX") assesses \$1,500 per month for an intraday subscription. See EDGX fee schedule available at http://markets.cboe.com/us/options/membership/fee_schedule/edgx/; and BZX fee schedule available at http://markets.cboe.com/us/options/membership/fee_schedule/bzx/. Miami International Securities Exchange, LLC ("MIAX"), MIAX Emerald, LLC ("Emerald") and MIAX PEARL, LLC ("PEARL") each assesses \$2,000 per month for an intra-day subscription. See MIAX Fee Schedule, available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_09282021.pdf; Emerald Fee Schedule, available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_09282021.pdf; and PEARL Fee Schedule, available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Options_Fee_Schedule_092821.pdf.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ See *supra* notes 9 and 10.

¹⁸ The Options Clearing Corporation ("OCC") publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

¹⁹ Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see *id.*, the Exchange's market share in equity-based options decreased from 7.26% for the month of July 2022 to 7.09% for the month of July 2023.

and SRO revenues, and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁰

With respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC* upheld the Commission’s reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data:

In fact, the legislative history indicates that the Congress intended that the market system “evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed” and that the SEC wield its regulatory power “in those situations where competition may not be sufficient,” such as in the creation of a “consolidated transactional reporting system.”²¹

The court agreed with the Commission’s conclusion that “Congress intended that ‘competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.’”²²

More recently, the Commission confirmed that it applies a “market-based” test in its assessment of market data fees, and that under that test:

the Commission considers whether the exchange was subject to significant competitive forces in setting the terms of its proposal for [market data], including the level of any fees. If an exchange meets this burden, the Commission will find that its fee rule is consistent with the Act unless there is a substantial countervailing basis to find that the terms of the rule violate the Act or the rules thereunder.²³

Making similar historic data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract

purchasers of the Intra-Day Volume Summary data product.

The Exchange believes the proposed fees are reasonable as they are comparable to the fees assessed by other exchanges that provide similar data products.²⁴ Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange’s data product, which as noted, is entirely optional. Like the Intra-Day Volume Summary, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange. Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only the Intra-Day Volume Summary data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange’s data as more attractive than the Exchange’s data product, then such market participant can merely choose not to purchase the Exchange’s data product and instead purchase another exchange’s product, which offer similar data points, albeit based on that other market’s trading activity.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new historic market data product that is designed to aid investors by providing insight into trading on the Exchange. Once the Intra-Day Volume Summary is made available, it would provide options market participants with valuable information about opening and closing transactions executed on the Exchange throughout the trading day, similar to other trade data products offered by competing options exchanges. In turn, this data would assist market participants in gauging investor sentiment and trading activity, resulting in potentially better-informed trading decisions. As noted above, subscribers may also use such data to create and test trading models and analytical strategies.

Selling historic market data is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting

subscribers to the Exchange’s historic data product, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, subscribers can diminish or discontinue their use of the historic data and/or avail themselves of similar products offered by other exchanges.²⁵ The Exchange therefore believes that the proposed fees reflect the competitive environment and would be properly and equally assessed to all subscribers. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all subscribers who choose to purchase such data. Nothing in this proposal treats any category of market participant any differently from any other category of market participant. The Intra-Day Volume Summary is available to all market participants, *i.e.*, members and non-members, and all market participants would receive the same information in the data feed.

As noted above, the Exchange anticipates a wide variety of market participants to purchase the Exchange’s data product, including but not limited to individual customers, buy-side investors and investment banks. The Exchange reiterates that the decision as to whether or not to purchase the Intra-Day Volume Summary is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the data product, and the Exchange is not required to make the data product available to market participants. Rather, the Exchange is voluntarily making the Intra-Day Volume Summary data product available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential subscribers may request the data at any time if they believe it to be valuable or may decline to purchase such data.

In sum, the fierce competition for order flow constrains any exchange from pricing its historic market data at a supra-competitive price, and constrains the Exchange here in setting its fees for the Intra-Day Volume Summary data product. As described above, the Exchange’s data product competes head-to-head with numerous products currently available in the marketplace. These products each serve as reasonable substitutes for one another as they are each designed to provide data on options market activity which can be used to infer longer-term trends. The information provided by one

²⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²¹ *NetCoalition v. SEC*, 615 F.3d 525, 535 (D.C. Cir. 2010) (quoting H.R. Rep. No. 94–229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323).

²² *Id.* at 535.

²³ See Securities Exchange Act Release No. 34–90217 (October 16, 2020), 85 FR 67392 (October 22, 2020) (SR–NYSENAT–2020–05) (internal quotation marks omitted), quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (ArcaBook Approval Order).

²⁴ See *supra* note 12.

²⁵ See *supra* notes 9 and 10.

exchange is generally similar to that provided by other exchanges because order flow can move from one exchange to another, and market sentiment trends that appear on one exchange are likely to be similar to the sentiment trends on other exchanges. The key differentiator in the quality of the data depends on the volume of transactions on a given exchange. The greater the volume of transactions, the greater the value of the historic data. The proposed fees are therefore reasonable because in setting them, the Exchange is constrained by the availability of numerous substitute venues offering historic market data products and trading. Such substitutes need not be identical, but only substantially similar to the product at hand.

More specifically, in setting fees for the Intra-Day Volume Summary, the Exchange is constrained by the fact that, if its pricing is unattractive to subscribers, subscribers have their pick of an increasing number of alternative venues to use instead of the Exchange. The existence of numerous alternatives to the Exchange ensures that the Exchange cannot set unreasonable fees for historic market data without suffering the negative effects of that decision in the fiercely competitive market in which it operates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable historic data product and adopt fees to better compete with the Exchange's offering. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to sell a data product similar to those offered by other competitor options exchanges.²⁶ The Exchange is offering the Intra-Day Volume Summary in order to keep pace with changes in the industry and evolving customer needs, and believes the data product will contribute to robust competition among national securities exchanges. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Exchange's offering. As a result, the Exchange believes this proposed rule change

permits fair competition among national securities exchanges.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price Intra-Day Volume Summary is constrained by competition among exchanges that offer similar data products to their customers. As discussed above, there are currently a number of similar products available to market participants and investors. At least eight other U.S. options exchanges offer a market data product that is substantially similar to the Exchange's offering, which the Exchange must consider in its pricing discipline in order to compete effectively.²⁷ For example, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize or purchase. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed fees would apply uniformly to any subscriber, in that the Exchange would not differentiate between subscribers that purchase the Intra-Day Volume Summary and all subscribers would receive the same information in the data feed. The Exchange believes the proposed fees are set at a modest level that would allow interested subscribers to purchase such data based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)²⁸ of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2023-58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEAMER-2023-58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEAMER-2023-58 and should

²⁶ *Id.*

²⁷ See *supra* note 12.

²⁸ 15 U.S.C. 78s(b)(3)(A).

be submitted on or before December 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25664 Filed 11–20–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98955; File No. SR–Phlx–2023–49]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Shorten the Standard Settlement Cycle

November 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on November 14, 2023, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rules at Equity 11, Sections 6 (Ex-dividend, Ex-rights) and Section 7 (Ex-warrants) to conform them to the Commission’s amendment to Rule 15c6–1(a) of the Act³ to shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date (“T+2”) to one business days after the trade date (“T+1”).

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective May 5, 2023, the Commission adopted rule amendments to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1.⁴ In light of the recently adopted rule amendments to Rule 15c6–1(a) of the Act to require standard settlement no later than T+1, Phlx proposes to amend its rules pertaining to securities settlement by, among other things, amending the definition of “standard” settlement as occurring on T+1.

Specifically, Phlx proposes to amend Equity 11, Sections 6 (Ex-dividend, Ex-rights) and Section 7 (Ex-warrants). The details of the proposed rule changes are described below.

Equity 11, Section 6

Equity 11, Section 6, Ex-dividend, Ex-rights, currently provides that transactions in stocks (except for those made for cash) shall be ex-dividend or ex-rights on the first business day preceding the record date fixed by the corporation or the date of the closing of transfer books thereof. It also provides that if the record date or closing of transfer books occurs on a day other than a business day, the transaction will be ex-dividend or ex-rights on the second preceding business day.

The Exchange proposes to amend Equity 11, Section 6 to shorten the time frames by one business day. With this change the ex-dividend or ex-right date would be the same business day as the record date if the record date falls on a business day, or the first business day preceding the record date if the record date falls on a day other than a business

day. Additionally, transactions in stocks made for “cash” would be ex-dividend or ex-rights on the same business day as the record date or date of closing of transfer books.

Equity 11, Section 7

Equity 11, Section 7, Ex-warrants, currently provides that transactions in securities which have subscription warrants attached (except those made for cash) shall be ex-warrants on the first business day preceding the date of expiration of the warrants, except that when the date of expiration occurs on a day other than a business day, the transactions will be ex-warrants on the second business day preceding the date of expiration.

The Exchange proposes to amend Equity 11, Section 7 to shorten the time frames by one business day. With this change, transactions in securities which have subscription warrants attached (except those made for “cash”) shall be ex-warrants on the same business day preceding the date of expiration of the warrants, except that when the date of expiration occurs on a day other than a business day, said transactions shall be ex-warrants on the first business day preceding said date of expiration.

Implementation

The operative date of this proposed rule change will be Tuesday, May 28, 2024, which is the compliance date specified in the Commission’s amendment to Rule 15c6–1(a) of the Act⁵ to require standard settlement no later than T+1.⁶ With the implementation of the T+1 settlement cycle, the ex-dividend date for “normal” distributions pursuant to Equity 11, Section 6 will be the same business day as the record date. Accordingly, Phlx proposes to interpret Equity 11, Section 6 so that the first record date to which this new ex-dividend date rationale will be applied will be Wednesday, May 29, 2024. During the implementation of the T+2 settlement cycle, the “regular” ex-dividend dates will be as follows:

⁵ See *supra* note 3.

⁶ See *supra* note 3. Transactions with a trade date of Friday, May 24, 2024 would settle on Wednesday, May 29, 2024 because these transactions occurred before the rule was effective and continue to settle two days after the trade date. Additionally, transactions with a trade date of Tuesday, May 28, 2024 would also settle on Wednesday, May 29, 2024 because these transactions occurred when the T+1 rule was effective and would settle one day after the trade date. Of note, May 27, 2024 is Memorial Day and not a business day counted for purposes of settlement.

²⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 96930, Investment Advisers Act Release No. 6239 (February 15, 2023), 88 FR 13872 (March 6, 2023) (“T+1 Adopting Release”).

⁴ See *supra* note 3.

Record Date May 24, 2024.	Ex date May 23, 2024.
Record Date May 28, 2024.	Ex date May 24, 2024.
Record Date May 29, 2024.	Ex date May 29, 2024.*

* May 27, 2024 is Memorial Day and not a business day.

By way of explanation, a record date of Friday, May 24, 2024 would be a date prior to the effective date of the adopted T+1 rules. Current Rule 1140(b) [sic] would apply to this record date, and, therefore, the “ex-dividend date” would be the first business day preceding the record date or Thursday, May 23, 2024. Monday, May 27, 2024 is Memorial Day is a federal holiday and not a business day; there would be no record date on a holiday. As noted above, Phlx proposes to interpret Rule 11140(b)(1) so that the first record date to which this new ex-dividend date rationale will be applied would be Wednesday, May 29, 2024. Therefore, a record date of Tuesday, May 28, 2024 would fall under current Rule 1140(b) [sic] and the first business day preceding the record date would be Friday, May 24, 2024. Finally, as noted above, Wednesday, May 29, 2024 is the first record date pursuant to the new T+1 rules, therefore, proposed Rule 1140(b) [sic] applies to this date and the “ex-dividend date” would be the same business day as the record date (May, 29, 2024).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. The proposed rule change seeks to conform Phlx’s rules with the adopted rule amendments to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1.⁹ The proposal is consistent with the Commission’s amendment to Rule 15c6–1(a) of the Act to require standard settlement no later than T+1. This proposal will provide Phlx members with regulatory certainty as to the settlement cycle that will be utilized to settle transactions executed on the Exchange.

As noted herein, Phlx will announce the operative date of the proposed rule change in an Equity Regulatory Alert, which date would correspond with the industry-led transition to a T+1 standard settlement, and the compliance date of the Commission’s amendment to Rule 15c6–1(a) of the Act to require standard settlement no later than T+1.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal amends Phlx’s rules pertaining to securities settlement and is intended to facilitate the implementation of the industry-led transition to a T+1 settlement cycle. The shortened settlement cycle will apply uniformly to all contracts for the purchase or sale of a security (other than exempted securities) that provide for payment of funds and delivery of securities that occur on Phlx or other self-regulatory organizations.¹⁰ Moreover, the proposal is consistent with the Commission’s amendment to Rule 15c6–1(a) of the Act to require standard settlement no later than T+1. Accordingly, Phlx believes that the proposed amendments do not impose any intra-market or inter-market burdens on competition because the amendments conform Phlx’s rules with the adopted rule amendments to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1.¹¹ Specifically, the proposed amendments include changes to rules that specifically establish the settlement cycle as well as rules that establish time frames based on settlement dates, including for certain post-settlement rights and obligations.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and subparagraph (f)(6) of Rule 19b–4 thereunder.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–Phlx–2023–49 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–Phlx–2023–49. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See *supra* note 3.

¹⁰ Of note, pursuant to (a) and (d) of Rule 15c6–1, the parties may expressly agree to a different settlement date at the time of the transaction.

¹¹ See *supra* note 3.

public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2023-49 and should be submitted on or before December 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-25668 Filed 11-20-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98958; File No. SR-BX-2023-028]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Shorten the Standard Settlement Cycle

November 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 13, 2023, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BX Rules 11140 (Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants"), 11150 (Transactions "Ex-

Interest" in Bonds Which Are Dealt in "Flat"), 11210 (Sent by Each Party), 11320 (Dates of Delivery), and 11620 (Computation of Interest), to conform them to the Commission's amendment to Rule 15c6-1(a) of the Act³ to shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date ("T+2") to one business days after the trade date ("T+1").

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective May 5, 2023, the Commission adopted rule amendments to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1.⁴ In light of the recently adopted rule amendments to Rule 15c6-1(a) of the Act to require standard settlement no later than T+1, BX proposes to amend its rules pertaining to securities settlement by, among other things, amending the definition of "standard" settlement as occurring on T+1.

Specifically, BX proposes to amend the following Rules: 11140 (Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants"), 11150 (Transactions "Ex-Interest" in Bonds Which Are Dealt in "Flat"), 11210 (Sent by Each Party), 11320 (Dates of Delivery), and 11620 (Computation of Interest). The details of

the proposed rule changes are described below.

Rule 11140

Rule 11140(b)(1) currently provides that for dividends or distributions, and the issuance or distribution of warrants, that are less than 25 percent of the value of the subject security, if definitive information is received sufficiently in advance of the record date, the date designated as the "ex-dividend date" shall be the first business day preceding the record date if the record date falls on a business day, or the second business day preceding the record date if the record date falls on a day designated by BX Regulation as a non-delivery date. BX proposes to amend Rule 11140(b)(1) to shorten the time frames by one business day. With this change the ex-dividend date would be the same business day as the record date if the record date falls on a business day, or the first business day preceding the record date if the record date falls on a day designated by BX Regulation as a non-delivery date.

Rule 11150

Rule 11150(a) currently prescribes the manner for establishing "ex-interest dates" for transactions in bonds or other similar evidence of indebtedness which are traded "flat." Such transactions are "ex-interest" on the first business day preceding the record date if the record date falls on a business day, on the second business day preceding the record date if the record date falls on a day other than a business day, or on the third business day preceding the date on which an interest payment is to be made if no record date has been fixed. BX proposes to amend Rule 11150(a) to shorten the time frames by one business day.

Rule 11210

Paragraphs (c) and (d) of Rule 11210 set forth the "Don't Know" ("DK") voluntary procedures for using "DK Notices" or other forms of notices, respectively. When a party to a transaction sends a comparison or confirmation of a trade, but does not receive a comparison or confirmation or a signed DK, from the contra-member by the close of one business day following the trade date of the transaction, the confirming member shall send a DK Notice to the contra-member. Thereafter, the contra-member has two business days after receipt of the confirming member's notice to either confirm or "DK" the transaction.

BX proposes to amend paragraphs (c) and (d) of Rule 11210 to provide that the "DK" procedures may be used by the

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 96930, Investment Advisers Act Release No. 6239 (February 15, 2023), 88 FR 13872 (March 6, 2023) ("T+1 Adopting Release").

⁴ See *supra* note 3.

confirming member if it does not receive a comparison or confirmation or signed “DK” from the contra-member by the close of the business day of the trade date of the transaction, rather than the current time frame of one day after the trade date. In addition, BX proposes to amend paragraphs (c)(2)(A), (c)(3), and (d)(5) of Rule 11210 to adjust the time in which a contra-member has to respond to a “DK Notice” (or similar notice) from two business days after the contra-member’s receipt of the notice to one business day after the contra-member’s receipt of the notice.

Rule 11320

Rule 11320 currently prescribes delivery dates for various transactions. Currently, paragraph (b) states that for a “regular way” transaction, delivery must be made on, but not before, the second business day after the date of the transaction. BX proposes to amend Rule 11320(b) to change the reference from the second business day to the first business day following the date of the transaction. Currently, paragraph (c) provides that in a “seller’s option” transaction, delivery may be made by the seller on any business day after the second business day following the date of the transaction. BX proposes to amend Rule 11320(c) to change the reference from the second business day to the first business day following the date of the transaction and prior to the expiration of the option.

Rule 11620

In the settlement of contracts in interest-paying securities other than for cash, Rule 11620(a) currently requires the calculation of interest at the rate specified in the security up to but not including the second business day after the date of the transaction. The proposed amendment would shorten the time frame to the first business day following the date of the transaction.

Implementation

The operative date of this proposed rule change will be Tuesday, May 28, 2024, which is the compliance date specified in the Commission’s amendment to Rule 15c6–1(a) of the Act⁵ to require standard settlement no later than T+1.⁶ With the

implementation of the T+1 settlement cycle, the ex-dividend date for “normal” distributions pursuant to Rule 11140(b)(1) will be the same business day as the record date. Accordingly, BX proposes to interpret Rule 11140(b)(1) so that the first record date to which this new ex-dividend date rationale will be applied will be Wednesday, May 29, 2024. During the implementation of the T+1 settlement cycle, the “regular” ex-dividend dates will be as follows:

Record Date May 24, 2024.	Ex date May 23, 2024.
Record Date May 28, 2024.	Ex date May 24, 2024.
Record Date May 29, 2024.	Ex date May 29, 2024.*

* May 27, 2024 is Memorial Day and not a business day.

By way of explanation, a record date of Friday, May 24, 2024 would be a date prior to the effective date of the adopted T + 1 rules. Current Rule 1140(b) [sic] would apply to this record date, and, therefore, the “ex-dividend date” would be the first business day preceding the record date or Thursday, May 23, 2024. Monday, May 27, 2024 is Memorial Day is a federal holiday and not a business day; there would be no record date on a holiday. As noted above, BX proposes to interpret Rule 11140(b)(1) so that the first record date to which this new ex-dividend date rationale will be applied would be Wednesday, May 29, 2024. Therefore, a record date of Tuesday, May 28, 2024 would fall under current Rule 1140(b) [sic] and the first business day preceding the record date would be Friday, May 24, 2024. Finally, as noted above, Wednesday, May 29, 2024 is the first record date pursuant to the new T + 1 rules, therefore, proposed Rule 1140(b) [sic] applies to this date and the “ex-dividend date” would be the same business day as the record date (May, 29, 2024).

The ex-dividend date for “large” distributions under Rule 11140(b)(2) is not being amended with the adoption of the T+1 settlement cycle. Therefore, the ex-dividend date for large” distributions under Rule 11140(b)(2) will continue to be the first business day following the payable date as provided in the current rule text. In order to ensure that no securities will be ex-dividend on May 28, 2024 for purposes of “large” distributions, BX similarly proposes to interpret Rule 11140(b) so that, if an issuer sets May 28, 2024 as the payment date for a large distribution, the ex-dividend date would be May 29, 2024, not May 28, 2024. BX will issue an

date. Of note, May 27, 2024 is Memorial Day and not a business day counted for purposes of settlement.

Issuer Alert addressing the application of the T+1 implementation date on Rule 11140(b).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. The proposed rule change seeks to conform BX’s rules with the adopted rule amendments to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1.⁹ The proposal is consistent with the Commission’s amendment to Rule 15c6–1(a) of the Act to require standard settlement no later than T+1. This proposal will provide BX members with regulatory certainty as to the settlement cycle that will be utilized to settle transactions executed on the Exchange.

As noted herein, BX will announce the operative date of the proposed rule change in an Equity Regulatory Alert, which date would correspond with the industry-led transition to a T+1 standard settlement, and the compliance date of the Commission’s amendment to Rule 15c6–1(a) of the Act to require standard settlement no later than T+1.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal amends BX’s rules pertaining to securities settlement and is intended to facilitate the implementation of the industry-led transition to a T+1 settlement cycle. The shortened settlement cycle will apply uniformly to all contracts for the purchase or sale of a security (other than exempted securities) that provide for payment of funds and delivery of securities that occur on BX or other self-regulatory organizations.¹⁰ Moreover, the proposal is consistent with the Commission’s amendment to Rule 15c6–1(a) of the Act to require standard settlement no later than T+1. Accordingly, BX believes that

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See *supra* note 3.

¹⁰ Of note, pursuant to (a) and (d) of Rule 15c6–1, the parties may expressly agree to a different settlement date at the time of the transaction.

⁵ See *supra* note 3.

⁶ See *supra* note 3. Transactions with a trade date of Friday, May 24, 2024 would settle on Wednesday, May 29, 2024 because these transactions occurred before the rule was effective and continue to settle two days after the trade date. Additionally, transactions with a trade date of Tuesday, May 28, 2024 would also settle on Wednesday, May 29, 2024 because these transactions occurred when the T + 1 rule was effective and would settle one day after the trade

the proposed amendments do not impose any intra-market or inter-market burdens on competition because the amendments conform BX's rules with the adopted rule amendments to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1.¹¹ Specifically, the proposed amendments include changes to rules that specifically establish the settlement cycle as well as rules that establish time frames based on settlement dates, including for certain post-settlement rights and obligations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-BX-2023-028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-BX-2023-028. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-BX-2023-028 and should be submitted on or before December 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-25671 Filed 11-20-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-385, OMB Control No. 3235-0441]

Proposed Collection; Comment Request; Extension: Rule 18f-3

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("Paperwork Reduction Act"), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 18f-3 (17 CFR 270.18f-3) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) exempts from sections 18(f)(1) and 18(f)(i), a fund that issues multiple classes of shares representing interests in the same portfolio of securities (a "multiple class fund") if the fund satisfies the conditions of the rule. In general, each class must differ in its arrangement for shareholder services or distribution or both, must pay the related expenses of that different arrangement, and must satisfy certain voting rights provisions.

The rule includes one requirement for the collection of information. A multiple class fund must prepare, and fund directors must approve, a written plan setting forth the separate arrangement and expense allocation of each class, and any related conversion features or exchange privileges ("rule 18f-3 plan"). Approval of the plan must occur before the fund issues any shares of multiple classes and whenever the fund materially amends the plan. In approving the plan, the fund board, including a majority of the independent directors, must determine that the plan is in the best interests of each class and the fund as a whole.

The requirement that the fund prepare, and directors approve, a written rule 18f-3 plan is intended to ensure that the fund compiles information relevant to the fairness of the separate arrangement and expense allocation for each class, and that directors review and approve the information. Without a blueprint that highlights material differences among classes, directors might not perceive potential conflicts of interests when

¹¹ See *supra* note 3.

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 17 CFR 200.30-3(a)(12).

they determine whether the plan is in the best interests of each class and the fund. In addition, the plan may be useful to Commission staff in reviewing the fund's compliance with the rule.

The following estimates of average burden hours are made solely for

purposes of the Paperwork Reduction Act of 1995¹ and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Compliance with the information collection requirements of rule 18f-3 is

necessary to obtain the benefit of the rule's exemption. Responses to the collection of information requirements will not be kept confidential.

TABLE 1—RULE 18f-3 PRA ESTIMATES

	Internal annual burden	Wage rate ¹	Internal time costs
ESTIMATES FOR RULE 18f-3			
Prepare and approve a written 18f-3 plan ²	6 hours ³ .		
Average number of responses annually per registrant.	0.5 responses ³ .		
Total number of hours per registrant per year ⁴	3 hours ³	\$484 (in-house attorney)	\$936,056 (in-house attorney).
		\$4,770 (fund board of directors) ⁶ .	\$4,612,590 (board of directors). ⁷
Total number of registrants	967 ⁴ .		
Total annual hour burden	2,901 hours ⁵		\$5,548,646. ⁸

Notes:

1. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's *Office Salaries in the Securities Industry 2013*. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

2. The Commission estimates that each registrant prepares and approves a rule 18f-3 plan every two years when issuing a new fund or class or amending a plan (or that 484 of all 967 registrants prepare and approve a plan each year).

3. This estimate assumes that each response will take 6 hours, requiring 3 hours per registrant per year (0.5 responses per registrant × 6 hours per response = 3 hours per registrant).

4. The Commission estimates that there are approximately 6,733 multiple class funds offered by 967 registrants.

5. 967 registrants × 3 hours = 2,901 hours.

6. The estimate for the cost of board time as a whole is derived from estimates made by the staff regarding typical board size and compensation that is based on information received from fund representatives and publicly available sources. The \$4,770 per hour estimate for a fund board of directors was last adjusted for inflation through 2019, and assumes an average of 9 board members per board.

7. This estimate assumes that two-thirds (1,934) of the internal hours are spent by in-house attorneys to prepare the plan (1,934 hours × \$484 estimated hourly rate = \$936,056 per year) and that one-third (967) are spent by the fund's board of directors to approve the plan (967 hours × \$4,770 per hour = \$4,612,590).

8. \$936,056 + \$4,612,590 = \$5,548,646.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by January 22, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington,

DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: November 16, 2023.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-25724 Filed 11-20-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98934; File No. SR-NASDAQ-2023-044]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend The Nasdaq Options Market LLC Pricing Schedule at Options 7, Section 2

November 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 1, 2023, The Nasdaq Stock Market LLC

("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend The Nasdaq Options Market LLC ("NOM") Pricing Schedule at Options 7, Section 2.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 44 U.S.C. 3501 *et seq.*

¹⁵ U.S.C. 78s(b)(1).

¹⁷ CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend NOM's Pricing Schedule at Options 7, Section 2(1) (setting forth fees and rebates for execution of contract on NOM) and Section 2(3) (setting forth fees for routing contracts to markets other than NOM). Each change will be described below.

Options 7, Section 2(1)

Fees To Remove Liquidity in Non-Penny Symbols

As set forth in Options 7, Section 2(1), the Exchange currently charges NOM Market Makers,³ Non-NOM Market Makers,⁴ Firms,⁵ and Broker-Dealers⁶ a \$1.10 per contract fee for removing liquidity in Non-Penny Symbols. The Exchange now proposes to increase this fee to \$1.25 per contract.

Note 8 Incentive

Today, the Exchange provides Customers⁷ with tiered rebates for

adding liquidity in Penny Symbols that are \$0.20 (Tier 1), \$0.25 (Tier 2), \$0.43 (Tier 3), \$0.44 (Tier 4), \$0.45 (Tier 5), and \$0.48 (Tier 6). These rebates are paid based on the highest volume tier that the Customer achieves in a given month.⁸

Today, the Exchange also links the tiered Penny Symbol Customer add liquidity rebate program described above to its Market Access and Routing Subsidy ("MARS") program in Section 2(4) as a means to attract additional liquidity to the Exchange from market participants. Under MARS, the Exchange pays qualifying NOM Participants to subsidize their costs of providing routing services to route orders to NOM. To qualify for MARS, NOM Participants must have System Eligibility.⁹ In addition, NOM Participants that have System Eligibility, and have routed and executed the requisite number of Eligible Contracts¹⁰ daily in a month ("Average Daily Volume" or "ADV") that add liquidity on NOM are entitled to the tiered MARS Payments set forth in Section 2(4), depending on the highest ADV tier achieved.¹¹

In particular, the Exchange currently links the tiered Penny Symbol Customer rebate to add liquidity program in Penny Symbols and MARS, each as

Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(a)(47)).

⁸ See Options 7, Section 2(1), note 1.

⁹ To qualify for MARS, the Participant's routing system ("System") would be required to: (1) enable the electronic routing of orders to all of the U.S. options exchanges, including NOM; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with NOM's API to access current NOM match engine functionality. Further, the Participant's System would also need to cause NOM to be the one of the top three default destination exchanges for (a) individually executed marketable orders if NOM is at the national best bid or offer ("NBBO"), regardless of size or time or (b) orders that establish a new NBBO on NOM's Order Book, but allow any user to manually override NOM as a default destination on an order-by-order basis. Any NOM Participant would be permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies NOM that it appears to be robust and reliable. The Participant remains solely responsible for implementing and operating its System.

¹⁰ For the purpose of qualifying for the MARS Payment, Eligible Contracts may include Firm, Non-NOM Market Maker, Broker-Dealer, or Joint Back Office or "JBO" equity option orders that add liquidity and are electronically delivered and executed. Eligible Contracts do not include Mini Option orders.

¹¹ The specified MARS Payment will be paid on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System and meet the requisite Eligible Contracts ADV. No payment will be made with respect to orders that are routed to NOM, but not executed.

described above, through note 8 of Options 7, Section 2(1) where NOM Participants that qualify for any MARS Payment Tier in Section 2(4) receive: (1) an additional \$0.05 per contract Penny Symbol Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Symbols in that month, in addition to qualifying Customer Rebate to Add Liquidity Tiers 1–5, or (2) an additional \$0.04 per contract Penny Symbol Customer Rebate to Add Liquidity for each transaction which adds liquidity in Penny Symbols in that month, in addition to qualifying Penny Symbol Customer Rebate to Add Liquidity Tier 6 ("Note 8 Incentive"). As such, NOM Participants may earn Customer Rebates to Add Liquidity in Penny Symbols up to \$0.25 in Tier 1, \$0.30 in Tier 2, \$0.48 in Tier 3, \$0.49 in Tier 4, \$0.50 in Tier 5, and \$0.52 in Tier 6, provided they meet the qualifications in note 8.

The Note 8 Incentive was intended to attract additional order flow to NOM by way of encouraging participation in both the tiered Customer add liquidity rebate program and in MARS. The Exchange, however, has observed that this rebate program has not accomplished its objective and therefore proposes to eliminate this program in note 8 of Options 7, Section 2(1).

Note 9 Incentive

Today, pursuant to note 9 of Options 7, Section 2(1), NOM Participants that transact in all securities through one or more of its Nasdaq Market Center MPIDs that represent 3.00% or more of Consolidated Volume in the same month on The Nasdaq Stock Market receive a \$0.50 per contract Rebate to Add Liquidity in Penny Symbols as Customer, a \$0.48 per contract rebate as Professional,¹² a \$1.00 per contract Rebate to Add Liquidity in Non-Penny Symbols as Customer, and a \$0.90 per contract Rebate to Add liquidity in Non-Penny Symbols as Professional ("Note 9 Incentive"). Participants that qualify for the Note 9 Incentive are not be eligible for any other rebates in Tiers 1–6 or other rebate incentives on NOM for Customer and Professional order flow in Options 7, Section 2(1).

The Exchange now proposes to increase \$1.00 Customer Rebate to Add Liquidity in Non-Penny Symbols to \$1.10. The Exchange is increasing the rebate amount without changing the

¹² The term "Professional" or ("P") means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Options 1, Section 1(a)(47). All Professional orders shall be appropriately marked by Participants.

³ The term "NOM Market Maker" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

⁴ The term "Non-NOM Market Maker" or ("O") is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

⁵ The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

⁶ The term "Broker-Dealer" or ("B") applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

⁷ The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options

qualifications in the Note 9 Incentive so that NOM Participants can bring the same amount of volume as they do today on The Nasdaq Stock Market to receive larger rebate in Customer Add Liquidity volume in Non-Penny Symbols.¹³ Overall, the Exchange believes that the increased rebate will bring greater volume to both The Nasdaq Stock Market and NOM, to the benefit of all market participants.

Note 10 Incentive

Today, pursuant to note 10 of Options 7, Section 2(1), NOM Participants that (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 1.20% of total industry customer equity and ETF option ADV contracts per day in a month, (b) execute greater than 0.04% of Consolidated Volume (“CV”) via Market-on-Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross within a month, and (c) add greater than 1.5 million shares per day of non-displayed volume within The Nasdaq Stock Market within a month receive a \$0.55 per contract Rebate to Add Liquidity in Penny Symbols as Customer, a \$0.48 per contract Rebate to Add Liquidity in Penny Symbols as Professional, and a \$1.05 per contract Rebate to Add Liquidity in Non-Penny Symbols as Customer, and a \$0.90 per contract Rebate to Add Liquidity in Non-Penny Symbols as Professional (“Note 10 Incentive”). Participants that qualify for the Note 10 Incentive are not be eligible for any other rebates in Tiers 1–6 or other rebate incentives on NOM for Customer and Professional order flow in Options 7, Section 2(1).

The Exchange now proposes to amend the NOM volume threshold in part (a) of the Note 10 Incentive by increasing 1.20% to 1.50% of total industry customer equity and ETF option ADV contracts per day in a month. The Exchange also proposes to increase the \$1.05 Customer Rebate to Add Liquidity in Non-Penny Symbols to \$1.15. No other changes are being proposed to the rebates and qualifications in the Note 10 Incentive. As amended, the Note 10 Incentive will provide: “NOM Participants that (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in

Penny Symbols and/or Non-Penny Symbols above 1.50% of total industry customer equity and ETF option ADV contracts per day in a month, (b) execute greater than 0.04% of Consolidated Volume (“CV”) via Market-on-Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross within a month, and (c) add greater than 1.5 million shares per day of non-displayed volume within The Nasdaq Stock Market within a month will receive a \$0.55 per contract Rebate to Add Liquidity in Penny Symbols as Customer, a \$0.48 per contract Rebate to Add Liquidity in Penny Symbols as Professional, and a \$1.15 per contract Rebate to Add Liquidity in Non-Penny Symbols as Customer, and a \$0.90 per contract Rebate to Add Liquidity in Non-Penny Symbols as Professional. Participants that qualify for this rebate would not be eligible for any other rebates in Tiers 1–6 or other rebate incentives on NOM for Customer and Professional order flow in Options 7, Section 2(1).”

Options 7, Section 2(3)

As set forth in Options 7, Section 2(3), the Exchange currently assesses a Non-Customer routing fee of \$0.99 per contract to any options exchange. The Exchange also assesses a Customer routing fee of \$0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange other than the Exchange’s affiliates, Nasdaq BX, Inc. (“BX”) and Nasdaq Phlx LLC (“Phlx”). If the away market (other than BX and Phlx) pays a rebate, this Customer routing fee is \$0.13 per contract instead. When routing to BX and Phlx, the Exchange currently assesses a Customer routing fee of \$0.13 per contract in addition to the actual transaction fee assessed.

At this time, the Exchange proposes to assess a Non-Customer an increased routing fee to route to any options exchange of \$1.20 per contract. The Exchange also proposes to assess a Customer a routing fee of \$0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange. With this change, the Exchange would no longer assess the lower routing of \$0.13 per contract, in addition to the actual transaction fee assessed, when routing to BX and Phlx. The Exchange would continue to assess a \$0.13 per contract routing fee if the away market pays a rebate, including BX and Phlx. The purpose of the proposed routing fees is to recoup costs incurred by the Exchange when routing

orders to other options exchanges on behalf of NOM Participants. In determining its proposed routing fees, the Exchange took into account transaction fees assessed by other options exchanges, the Exchange’s projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. The Exchange will continue to use its affiliated broker-dealer, Nasdaq Execution Services, to route orders to other options exchanges. Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that NOM Participants may elect to mark their orders as “Do-Not-Route” to avoid any routing fees.¹⁴ The Exchange believes that the proposed routing fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges. Also, the Exchange’s proposal would uniformly assess the same Customer routing fees, regardless of the away venue, of \$0.23 per contract, in addition to the actual transaction fee assessed, or \$0.13 per contract of the away market pays a rebate.

Technical Amendment

The Exchange proposes a technical amendment in note 11 of Options 7, Section 2(1). Note 11 currently provides that NOM Participants that qualify for the Tier 5 NOM Market Maker Rebate to Add Liquidity in Penny Symbols and add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.50% of total industry customer equity and ETF option ADV contracts per day in a month, will receive a \$0.46 contract rebate to add liquidity in Penny Symbols as Market Maker in lieu of the Tier 5 rebate (“Note 11 Incentive”). The Tier 5 NOM Market Maker Rebate to Add Liquidity in Penny Symbol currently has two alternative routes in “a” and “b” to qualify for the Tier 5 rebate, but when the Exchange adopted the Note 11 Incentive, the intent was to provide the Note 11 Incentive for NOM participants that qualified pursuant to route “b” in Tier 5.¹⁵ The Exchange subsequently adopted an alternative

¹³ Any NOM Participant may trade equities on The Nasdaq Stock Market because they are already approved members. Although a NOM Participant may potentially incur additional labor and/or costs to establish connectivity to The Nasdaq Stock Market, there are no additional membership fees for NOM Participants that want to transact on The Nasdaq Stock Market.

¹⁴ See Options 3, Section 7(c).

¹⁵ See Securities Exchange Act Release No. 87276 (October 10, 2019), 84 FR 55644 (October 17, 2019) (SR-NASDAQ-2019-084). At the time of adopting the Note 11 Incentive, only route “b” was available to qualify for Tier 5.

route “a” to qualify for the Tier 5 NOM Market Maker Rebate to Add Liquidity in Penny Symbols, but did not update the Note 11 Incentive to specify which route applied.¹⁶ The Exchange therefore proposes to clarify that the Note 11 Incentive is available for NOM Participants that qualify for the Tier 5(b) NOM Market Maker Rebate to Add Liquidity in Penny Symbols. The proposed change will align the rule text with the original intent of the incentive.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange’s proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . .”¹⁹

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission

highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁰

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of seventeen options venues to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Options 7, Section 2(1)

The Exchange believes that the proposed changes to the fees and rebates in Options 7, Section 2(1) are reasonable in several ways. The Exchange believes that it is reasonable to increase the Fees to Remove Liquidity in Non-Penny Symbols for NOM Market Makers, Non-NOM Market Makers, Firms, and Broker-Dealers from \$1.10 to \$1.25 because the proposed Non-Penny Symbol fee increases will be balanced by the Non-Penny Symbol rebate increases for Customers, which are intended to improve overall market quality on the Exchange by incentivizing market participants to bring additional order flow and, in turn, provide more trading opportunities to the benefit of all market participants. As discussed above, the Exchange is proposing to increase the Non-Penny Symbol Customer Rebate to Add Liquidity in the Note 9 Incentive from \$1.00 to \$1.10 per contract without amending the current volume qualifications in note 9 so that NOM Participants can bring the same amount of volume as they do today on The Nasdaq Stock Market to receive larger rebate in Customer Add Liquidity volume in Non-Penny Symbols.²¹ The Exchange believes that the increased rebate as set forth in the Note 9 Incentive will incentivize market participants to send additional order flow to both The Nasdaq Stock Market and NOM, which will in turn benefit all

market participants on the equities and options markets from the opportunity to interact with such order flow.

As discussed above, the Exchange is also proposing to increase the Non-Penny Symbol Customer Rebate to Add Liquidity in the Note 10 Incentive from \$1.05 to \$1.15 per contract if the NOM Participant meets the qualifications in note 10, including the increased NOM volume threshold that requires NOM Participants to add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 1.50% (increased from above 1.20%) of total industry customer equity and ETF option ADV contracts per day in a month.²² While the NOM volume threshold in the Note 10 Incentive will be increased under this proposal, the Exchange believes that the proposed increase is commensurate with the corresponding increase in the Non-Penny Symbol Customer Rebate to Add Liquidity in the Note 10 Incentive as described above. To the extent NOM Participants add greater liquidity on NOM to meet the proposed volume threshold to receive the larger rebate, the Exchange believes that its proposal will benefit all market participants who will be able to interact with the additional liquidity. The proposed changes to the Note 10 Incentive are designed as a means to improve overall market quality by providing NOM Participants with a larger incentive to increase their provision of liquidity on the Exchange’s equity and options markets.²³ The Exchange believes that its proposal will continue to encourage NOM Participants to send order flow to both the options and equity markets to receive the Note 10 Incentive.

The Exchange also believes that the proposed changes to the fees and rebates in Options 7, Section 2(1) as described above are equitable and not unfairly discriminatory because they will apply uniformly to all similarly situated participants. As it relates to the Non-Penny Symbol fee increases, the Exchange will apply the increase to NOM Market Makers, Non-NOM Market Makers, Firms, and Broker-Dealers while Customers and Professionals will

²² The NOM Participant will also continue to be required to meet the following volume qualifications (in addition to the proposed NOM volume threshold) to receive the \$1.15 Non-Penny Symbol Customer Rebate to Add Liquidity in the Note 10 Incentive: execute greater than 0.04% of Consolidated Volume (“CV”) via Market-on-Close/Limit-on-Close (“MOC/LOC”) volume within The Nasdaq Stock Market Closing Cross within a month, AND add greater than 1.5 million shares per day of non-displayed volume within The Nasdaq Stock Market within a month.

²³ See *supra* note 22.

¹⁶ See Securities Exchange Act Release No. 98721 (October 11, 2023), 88 FR 71616 (October 17, 2023) (SR-NASDAQ-2023-040).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

¹⁹ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR-NYSEArca-2006–21)).

²⁰ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²¹ See *supra* note 13.

continue to be uniformly assessed at a lower rate. The Exchange also notes that the Note 9 Incentive and the Note 10 Incentive, each as modified under this proposal, are available to only Customers and Professionals. The Exchange has historically provided more favorable pricing to both Customers and Professionals throughout its Pricing Schedule. Furthermore, both Customer and Professional liquidity offer benefits to the market that ultimately benefit all market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. With respect to Professionals, the Exchange believes that continuing to encourage NOM Participants to bring Professional order flow to NOM creates competition among options exchanges because the more favorable pricing may cause market participants to select NOM as a venue to send Professional order flow.

The Exchange believes that its proposal to eliminate the Note 8 Incentive is reasonable because this rebate program has not been successful in accomplishing its objective of incentivizing NOM Participants to send order flow and add liquidity on the Exchange by fortifying participation in the MARs program and the tiered Penny Symbol Customer Rebate to Add Liquidity program. The proposed elimination of the Note 8 Incentive will streamline the Exchange's Pricing Schedule. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall objectives to increase order flow and liquidity on NOM. The Exchange also believes that eliminating the Note 8 Incentive is equitable and not unfairly discriminatory because the incentive will be eliminated in its entirety and would no longer be available to any NOM Participants.

Options 7, Section 2(3)

The Exchange's proposal to assess a Non-Customer an increased routing fee of \$1.20 to route to another options exchange, and a Customer a routing fee of \$0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to

any options exchange²⁴ is reasonable because the proposed routing fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges. In determining its proposed routing fees, the Exchange took into account transaction fees assessed by other options exchanges, the Exchange's projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that market participants may elect to mark their orders as "Do-Not-Route" to avoid any routing fees.²⁵

The Exchange's proposal to assess a Non-Customer an increased routing fee of \$1.20 to route to another options exchange is equitable and not unfairly discriminatory as all Non-Customers would be assessed a uniform routing fee. Additionally, the Exchange's proposal to assess a Customer a routing fee of \$0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange is equitable and not unfairly discriminatory as all Customers will be uniformly assessed the same routing fee, regardless of the destination market. Customers will continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances market quality on the Exchange by providing more trading opportunities, which benefits all market participants. Finally, the Exchange notes that market participants may elect to market orders as Do-Not-Route to avoid any routing fees.

Technical Amendment

The Exchange believes that its proposal to clarify that the Note 11 Incentive is available for NOM Participants that qualify for the Tier 5(b) NOM Market Maker Rebate to Add Liquidity in Penny Symbols is reasonable because the proposal will align the rule text with the original intent of the Note 11 Incentive and avoid any potential confusion about the application of the Exchange's Pricing

Schedule. The Exchange also believes that its proposal is equitable and not unfairly discriminatory because it will apply uniformly to all similarly situated market participants. Continuing to apply the Note 11 Incentive to only NOM Market Makers is equitable and not unfairly discriminatory in light of their obligations on NOM (e.g., continuous quoting obligations).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. While some aspects of the proposal apply directly to certain market participants as described above (e.g., increased Non-Penny Symbol Customer Rebates to Add Liquidity), Exchange believes that the changes, taken together, will ultimately fortify and encourage activity on the Exchange. As discussed above, all market participants will benefit from any increase in market activity that the proposal effectuates.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

²⁴ With the proposed changes, the Exchange would no longer assess the lower routing fee of \$0.13 per contract, in addition to the actual transaction fee assessed, when routing to BX and Phlx.

²⁵ See Options 3, Section 7(c).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2023-044 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2023-044. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE,

Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2023-044 and should be submitted on or before December 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-25656 Filed 11-20-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98944; File No. SR-NYSEARCA-2023-63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Grayscale Ethereum Futures Trust (ETH) ETF Under NYSE Arca Rule 8.200-E, Commentary .02 (Trust Issued Receipts)

November 15, 2023.

On September 19, 2023, NYSE Arca, Inc. ("NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares of the Grayscale Ethereum Futures Trust (ETH) ETF under NYSE Arca Rule 8.200-E, Commentary .02 (Trust Issued Receipts). The proposed rule change was published for comment in the **Federal Register** on October 3, 2023.³

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may

designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 17, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates January 1, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSEARCA-2023-63).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-25659 Filed 11-20-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98947; File No. SR-NYSEARCA-2023-58]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Hashdex Bitcoin Futures ETF Under NYSE Arca Rule 8.500-E (Trust Units)

November 15, 2023.

On September 22, 2023, NYSE Arca, Inc. ("NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares of the Hashdex Bitcoin Futures ETF under NYSE Arca Rule 8.500-E (Trust Units). The proposed rule change was published for

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98567 (Sept. 27, 2023), 88 FR 68171. The Commission has received no comments on the proposal.

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

comment in the **Federal Register** on October 3, 2023.³

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 17, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates January 1, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSEARCA-2023-58).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-25661 Filed 11-20-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98950; File No. SR-Phlx-2023-45]

Self-Regulatory Organizations; Nasdaq PHLX, LLC; Order Approving a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index® Options With a Third-Friday-of-the-Month Expiration

November 15, 2023.

I. Introduction

On September 28, 2023, Nasdaq PHLX, LLC (“Phlx” or “Exchange”)

³ See Securities Exchange Act Release No. 98564 (Sept. 27, 2023), 88 FR 68188. Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nysearca-2023-58/srnysearca202358.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(31).

filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to permit the listing and trading of p.m.-settled Nasdaq-100 Index options with a third-Friday-of-the-month (“Third Friday”) expiration. The proposed rule change was published for comment in the **Federal Register** on October 4, 2023.³ The Commission did not receive any comment letters and is approving the proposed rule change.

II. Description of the Proposal

Phlx proposes to amend its rules to permit the listing and trading of p.m.-settled Nasdaq-100 Index (“NDXP”) options with a Third Friday expiration. The Exchange currently can list a.m.-settled Third Friday expirations on Nasdaq-100 Index (“NDX”) options.⁴ With this proposal, the Exchange would have Third Friday expirations on NDX options that are both a.m.-settled and p.m.-settled on the same day.⁵ The Exchange states that the conditions for listing options on NDXP with Third Friday expirations will be similar to the a.m.-settled NDX Third Friday expirations.⁶ The Exchange proposes to amend Options 4A, Section 12(a)(6) to provide that in addition to a.m.-settled Nasdaq-100 Index options approved for trading on the Exchange, the Exchange may also list options on the Nasdaq-100 Index whose exercise settlement value is the closing value of the Nasdaq-100 Index on the expiration day.

The proposed contract would use a \$100 multiplier, and the minimum trading increment would be \$0.05 for options trading below \$3.00 and \$0.10 for all other series.⁷ Strike price intervals would be set at no less than \$2.50.⁸ Consistent with existing rules for index options, the Exchange would allow up to nine near-term expiration months⁹ as well as LEAPS.¹⁰ The product would have European-style exercise. Because the product is based

on NDX, there would be no position limits.¹¹

NDXP options are series of the NDX options class.¹² Currently, these NDXP options may expire any day of the week: Mondays, Tuesdays, Wednesdays, Thursdays, Fridays, as applicable (other than third-Friday-of-the-month), and the last trading day of the month.¹³ Third Friday p.m.-settled options trading under the NDXP symbol will be a new type of series under the Nasdaq-100 Index options class and not a new options class—therefore all Third-Friday NDXP options will be aggregated together with all other standard expirations for applicable reporting and other requirements.¹⁴

As with NDX, whenever the Exchange determines that additional margin is warranted in light of the risks associated with an under-hedged NDXP option position, including Third Friday NDXP, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position pursuant to its authority pursuant to Exchange Rules Options 6E, Section 2.¹⁵ The trading hours for NDXP, including Third Friday NDXP, will be from 9:30 a.m. to 4:15 p.m. Eastern Time.¹⁶

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁸ which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

¹¹ For a more detailed description of the proposed Third Friday NDXP contract, see Notice, *supra* note 3.

¹² See Notice, *supra* note 3 at 68886.

¹³ See Options 4A, Section 12(b)(5)(A).

¹⁴ See Options 3, Section 6(e).

¹⁵ See Notice, *supra* note 3 at 68886.

¹⁶ The Exchange notes that trading in NDXP will ordinarily cease at 4:00 p.m. on the day on which the exercise-settlement value is calculated. See Notice, *supra* note 3 at 68886, n. 17.

¹⁷ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98644 (September 29, 2023), 88 FR 68885 (“Notice”).

⁴ See Notice, *supra* note 3 at 68885.

⁵ See *id.*

⁶ See *id.*

⁷ See Options 3, Section 3, Minimum Increments.

⁸ See Options 4A, Section 12(a)(3).

⁹ The Exchange proposes the same expiration month options for NDXP as are permitted for the Nasdaq-100 Index, since both options classes are derived from the Nasdaq-100 Index.

¹⁰ See Options 4A, Section 12(b).

In support of its proposal, the Exchange notes that the Commission recently approved trading of Third Friday expirations for options based on 1/100 the value of the Nasdaq-100 Index (“XND”).¹⁹ The Exchange states that the introduction of Third Friday NDXP will attract order flow to the Exchange, increase the variety of listed options to investors, and provide a valuable hedge tool to investors.²⁰ The Exchange further believes that listing Third Friday NDXP would not have any adverse effects or impact on market volatility and the operation of fair and orderly markets on the underlying cash market at or near the close of trading in its Nasdaq-100 Index options.²¹ Further, the Exchange states it does not believe that any market disruptions will be encountered with the introduction of Nasdaq-100 Index options with third-Friday-of-the-month expiration dates.²² The Exchange states it will monitor for any such disruptions or the development of any factors that could cause such disruptions.²³ Finally, the Exchange represents it has sufficient capacity to handle additional traffic associated with listing Third Friday NDXP options and that it has in place adequate surveillance procedures to monitor trading in Third Friday NDXP options.²⁴

The Commission has had concerns about the adverse effects and impact of p.m.-settlement upon market volatility and the operation of fair and orderly markets on the underlying cash market at or near the close of trading on expiration days.²⁵ However, the Commission recently approved proposals from several exchanges, including the Exchange, to permanently establish programs permitting the listing and trading of certain p.m.-settled broad-based index options.²⁶ In

approving these proposals, the Commission reviewed data provided by the exchanges in their filings, the exchanges’ pilot data and reports, as well as an analysis conducted at the direction of Staff from the Commission’s Division of Economic and Risk Analysis and concluded that analysis of the pilot data did not identify any significant economic impact on the underlying component securities surrounding the close as a result of expiring p.m.-settled options nor did it indicate a deterioration in market quality for an existing product when a new p.m.-settled expiration was introduced.²⁷ Further, the Commission stated that significant changes in closing procedures in the decades since index options moved to a.m. settlement may also serve to mitigate the potential impact of p.m.-settled index options on the underlying cash markets.²⁸

As noted above, the Exchange currently may trade Third Friday XND options in addition to p.m.-settled NDX option with nonstandard expirations.²⁹ The Exchange’s proposal, which would permit p.m.-settled Third Friday NDX, is reasonably designed as a limited expansion of existing p.m.-settled broad-based index option programs and may provide the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions. The Exchange has represented that it has an adequate surveillance program in place to monitor trading in the Third Friday NDXP options and has the necessary systems capacity to support the new options series.³⁰ The Commission expects the Exchange to continue to monitor any potential risks from large p.m.-settled positions and take appropriate action on a timely basis if warranted.

Accordingly, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act³¹ and the rules and regulations thereunder applicable to a national securities exchange.

CBOE–2023–005)(Order approving p.m.-settled Third Friday SPX options).

²⁷ See e.g., Phlx Pilot Approval, 88 FR at 66091.

²⁸ See *id.*

²⁹ See *supra* note 19. In addition, the Commission previously approved a pilot program permitting the listing and trading of Third Friday NDX options on the Exchange. See Securities Exchange Act Release No. 81293 (August 2, 2017), 82 FR 37138 (August 8, 2017) (approving SR–Phlx–2017–04). Phlx did not list any options under the program and subsequently removed the rule from its rule book. See Securities Exchange Act Release No. 87517 (November 13, 2019), 84 FR 63910 (November 19, 2019) (SR–Phlx–2019–49).

³⁰ See *supra* note 24 and accompanying text.

³¹ 15 U.S.C. 78f(b)(5).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³² that the proposed rule change (SR–Phlx–2023–45) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25663 Filed 11–20–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 12268]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “The Harlem Renaissance and Transatlantic Modernism” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “The Harlem Renaissance and Transatlantic Modernism” at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30–3(a)(12).

¹⁹ See Securities Exchange Act Release No. 98451 (September 20, 2023), 88 FR 66088 (September 26, 2023) (SR–Phlx–2023–07) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Make Permanent Certain P.M.-Settled Pilots)(“Phlx Pilot Approval”).

²⁰ See Notice, *supra* note 3 at 68887.

²¹ See Notice, *supra* note 3 at 68886.

²² See *id.*

²³ See *id.*

²⁴ See *id.*

²⁵ See Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969, at 55972 (September 9, 2011) (SR–C2–2011–008) (Order approving proposed rule change to establish a pilot program to list and trade SPXPM options on the C2 Options Exchange, Incorporated).

²⁶ See e.g., Phlx Pilot Approval; Securities Exchange Act Release Nos. 98450 (September 20, 2023), 88 FR 66111 (September 26, 2023) (SR–ISE–2023–08) (Order approving a nonstandard expirations pilot program and p.m.-settled 1/5 NDX options) and 98454 (September 20, 2023), 88 FR 66103 at 66103–04 (September 26, 2023) (SR–

Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–25655 Filed 11–20–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–2246]

Agency Information Collection

Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Means of Compliance, Declarations of Compliance, and Labeling Requirements for Unmanned Aircraft With Remote Identification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves information necessary to submit a Means of Compliance or Declaration of Compliance for Unmanned Aircraft with Remote Identification to the FAA. The collection also involves information necessary to label Unmanned Aircraft that have an FAA-accepted Declaration of Compliance. The information to be collected will be used by the FAA to determine compliance with the requirements for submission of a Means of Compliance or Declaration of Compliance, as well as determine compliance with the Unmanned Aircraft labeling requirements.

DATES: Written comments should be submitted by January 22, 2024.

ADDRESSES: Please send written comments:

By Electronic Docket:

www.regulations.gov (Enter docket number into search field)

By mail: Benjamin Walsh, FAA Flight Standards Service, Emerging Technologies Division, AFS–700, 800 Independence Ave. SW, Washington, DC 20591

By fax: 202–267–8233

FOR FURTHER INFORMATION CONTACT: Benjamin Walsh by email at:

ben.walsh@faa.gov; phone: 202–267–8233

SUPPLEMENTARY INFORMATION: Public Comments Invited:

You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0781.

Title: Means of Compliance,

Declarations of Compliance, and Labeling Requirements for Unmanned Aircraft with Remote Identification.

Form Numbers: N/A.

Type of Review: Renewal of an information collection.

Background: Regulations for the Remote Identification of Unmanned Aircraft were published on January 15, 2021, and are contained in 14 Code of Federal Regulations (14 CFR), part 89. Requirements for the means of compliance are in part 89, subpart E, while requirements for the declaration of compliance and unmanned aircraft labeling are in part 89, subpart F.

Means of Compliance

The FAA requires any person who develops a means of compliance for the production of a standard remote identification unmanned aircraft or remote identification broadcast module to submit those means of compliance for review and acceptance by the FAA. The means of compliance must include testing and validation procedures for producers to demonstrate through analysis, ground test, or flight test, as appropriate, how the standard remote identification unmanned aircraft or remote identification broadcast module perform their intended functions and how they meet the remote identification requirements of the final rule.

To request acceptance of a means of compliance, a person is required to submit the following information to the FAA at 9-AVS-AIR-UASMOC@faa.gov:

(1) The name of the person or entity submitting the means of compliance, the name of the main point of contact for communications with the FAA, the physical address, email address, and other contact information.

(2) A detailed description of the means of compliance.

(3) An explanation of how the means of compliance addresses all of the

minimum performance requirements in the rule so that any standard remote identification unmanned aircraft or remote identification broadcast module designed and produced in accordance with such means of compliance meets the remote identification requirements.

(4) Any substantiating material the person wishes the FAA to consider as part of the request.

The FAA will indicate acceptance of a means of compliance by notifying the submitter of the acceptance of the submitted means of compliance. The FAA also expects to notify the public that it has accepted the means of compliance by including it on a list of accepted means of compliance at <https://uasdoc.faa.gov>. The FAA will not disclose commercially sensitive information in this notice. It will only provide general information stating that FAA has accepted the means of compliance. The FAA may disclose non-proprietary broadcast specification and radio frequency spectrum so that sufficient information is available to develop receiving and processing equipment and software for the FAA, law enforcement, and members of the public.

A person who submits a means of compliance that is accepted by the FAA is required to retain the following data for as long as the means of compliance is accepted plus an additional 24 calendar months: (1) all documentation and substantiating data submitted to the FAA for the acceptance of the means of compliance; (2) records of all test procedures, methodology, and other procedures, as applicable; and (3) any other information necessary to justify and substantiate how the means of compliance enables compliance with the remote identification requirements imposed by the FAA.

Declarations of Compliance

The FAA has a website and online form at <https://uasdoc.faa.gov> for the submission of declarations of compliance. The following information must be included in a producer's declaration of compliance:

(1) The name, physical address, telephone number, and email address of the person responsible for production of the standard remote identification unmanned aircraft or remote identification broadcast module.

(2) The standard remote identification unmanned aircraft or remote identification broadcast module make and model.

(3) The standard remote identification unmanned aircraft or remote identification broadcast module serial number, or the range of serial numbers

for which the person responsible for production is declaring compliance.

(4) The FCC Identifier of the 47 CFR part 15-compliant radio frequency equipment used and integrated into the standard remote identification unmanned aircraft or the remote identification broadcast module.

(5) The means of compliance used in the design and production of the standard remote identification unmanned aircraft or remote identification broadcast module.

(6) Whether the declaration of compliance is an initial declaration or an amended declaration, and if the declaration of compliance is an amended declaration, the reason for the amendment.

(7) A declaration that the person responsible for the production of the standard remote identification unmanned aircraft or remote identification broadcast module can demonstrate that the standard remote identification unmanned aircraft or remote identification broadcast module was designed and produced to meet the respective minimum performance requirements for a standard remote identification unmanned aircraft or remote identification broadcast module by using an FAA-accepted means of compliance.

(8) A statement that 47 CFR part 15-compliant radio frequency equipment is used and is integrated into the standard remote identification unmanned aircraft or remote identification broadcast module without modification to its authorized radio frequency parameters. For the remote identification broadcast module, the declaration must include a statement that instructions have been provided for installation of the 47 CFR part 15-compliant remote identification broadcast module without modification to the broadcast module's authorized radio frequency parameters.

The FAA will indicate acceptance or non-acceptance of a declaration of compliance by notifying the submitter. The FAA will also publish a list of accepted declarations of compliance at <https://uasdoc.faa.gov>.

A person or entity who submits a declaration of compliance that is accepted by the FAA must retain the following information for as long as the standard remote identification unmanned aircraft or remote identification broadcast module listed on that declaration of compliance are produced, plus an additional 24 calendar months: (1) the means of compliance, all documentation, and substantiating data related to the means of compliance used; (2) records of all test results; and (3) any other

information necessary to demonstrate compliance with the means of compliance so that the standard remote identification unmanned aircraft or remote identification broadcast module meets the remote identification requirements and the design and production requirements of the final rule.

Labeling

The final rule requires a person responsible for the production of a standard remote identification unmanned aircraft or remote identification broadcast module to label each unmanned aircraft or broadcast module to show that it meets the remote identification requirements of the rule. The label must be in English and be legible, be prominently displayed, and permanently affixed to the unmanned aircraft or broadcast module.

For existing unmanned aircraft that are upgraded to have remote identification broadcast module capabilities integrated into the aircraft, the FAA envisions that the label would be affixed to the unmanned aircraft. In those instances, the producer may provide the label to the operator and instructions on how to affix them to the unmanned aircraft. Standard remote identification unmanned aircraft produced under a design or production approval issued under part 21 have to comply with the labeling requirements of part 21, as applicable.

The labeling requirement will assist the FAA in its oversight role because it provides an efficient means for an inspector to evaluate whether an operation is consistent with the remote identification requirements.

Respondents: The FAA website at <https://uasdoc.faa.gov> provides information about how to submit a means of compliance and also provides an online form for the submission of declarations of compliance. The FAA expects persons or organizations who develop standards that the FAA may accept as means of compliance for the production of standard remote identification unmanned aircraft or remote identification broadcast modules to submit those standards for review and acceptance by the FAA at 9-AVS-AIR-UASMOC@faa.gov. Persons responsible for the production of a standard remote identification unmanned aircraft or remote identification broadcast module can submit a declaration of compliance to the FAA using the online form at <https://uasdoc.faa.gov>. Producers of a standard remote identification unmanned aircraft or remote identification broadcast module must

label the unmanned aircraft or broadcast module to show that it meets the Part 89 remote identification requirements.

Frequency: For means of compliance, on occasion. For declarations of compliance, on occasion. For labeling requirements, on occasion.

Estimated Average Burden per Response: For means of compliance, the FAA estimates an hourly burden of 12 hours to develop the means of compliance and 5 minutes to submit the information to the FAA. For declarations of compliance, the FAA estimates an hourly burden of 50 hours to collect the information required by the applicable means of compliance, and 15 minutes to fill out the online declaration of compliance form. For unmanned aircraft labels, the FAA estimates an hourly burden of 2 hours to design a label for a standard remote identification unmanned aircraft or remote identification broadcast module.

Estimated Total Annual Burden: For means of compliance, the FAA estimates a total of one means of compliance submitted per year for an annual burden of 12 hours. For declarations of compliance, the FAA estimates an average of 3 declarations of compliance per year per producer, for a total annual burden of 150.75 hours per producer. The FAA also estimates 433 total declarations of compliance submitted per year for an annual burden of 21,758.25 hours for all producers. For unmanned aircraft labels, the FAA estimates an average of 3 labels designed per year per producer, for a total annual burden of 6 hours per producer. The FAA also estimates 433 total labels developed per year for an annual burden of 866 hours.

Issued in Washington, DC, on November 16, 2023.

Joseph Morra,

Manager, Emerging Technologies Division, AFS-700.

[FR Doc. 2023-25745 Filed 11-20-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Notice of Availability for the Written Re-Evaluation of the Final Programmatic Environmental Assessment for the SpaceX Starship/Super Heavy Launch Vehicle Program at the SpaceX Boca Chica Launch Site in Cameron County, Texas Regarding Deluge System Operation, Addition of a Forward Heat Shield Interstage, and Expansion of the Area of Potential Effects for Cultural Resources**

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

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, Council on Environmental Quality NEPA-implementing regulations, and FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures*, the FAA is announcing the availability of the Written Re-Evaluation for the Final Programmatic Environmental Assessment for the SpaceX Starship/Super Heavy Launch Vehicle Program regarding operation of a deluge system, addition of a forward heat shield interstage to the vehicle, and expansion of the Area of Potential Effects for cultural resources at the SpaceX Boca Chica Launch Site in Cameron County, Texas.

FOR FURTHER INFORMATION CONTACT: Amy Hanson, FAA Environmental Specialist, Federal Aviation Administration, 800 Independence Ave. SW, Suite 325, Washington, DC 20591; phone 847-243-7609; email Amy.Hanson@faa.gov.

SUPPLEMENTARY INFORMATION: The Written Re-Evaluation evaluated whether supplemental environmental analysis was needed to support the FAA Office of Commercial Space Transportation decision to issue a modification to the vehicle operator license to SpaceX for the operation of the Starship/Super Heavy launch vehicle at its existing Boca Chica Launch Site in Cameron County, Texas. The affected environment and environmental impacts of Starship/Super Heavy operations and the construction of launch-related infrastructure at the Boca Chica Launch Site were analyzed in the 2022 *Final Programmatic Environmental Assessment for the SpaceX Starship/Super Heavy Launch Vehicle Program at the SpaceX Boca Chica Launch Site in Cameron County, Texas (2022 PEA)*.

The FAA issued a Mitigated Finding of No Significant Impact and Record of Decision based on the 2022 PEA on June 13, 2022.

SpaceX recently provided the FAA with additional information regarding operation of the deluge system, addition of a forward heat shield interstage to the vehicle, and expansion of the Area of Potential Effects for cultural resources.

Based on the analysis within the Written Re-Evaluation of the additional information, the FAA concluded that the issuance of a modification to the vehicle operator license for Starship/Super Heavy operations conforms to the prior environmental documentation, that the data contained in the 2022 PEA remains substantially valid, that there are no significant environmental changes, and all pertinent conditions and requirements of the prior approval have been met or will be met in the current action.

Therefore, preparation of a supplemental or new environmental document is not necessary to support the Proposed Action.

The Written Re-Evaluation is available at: www.faa.gov/space/stakeholder_engagement/spacex_starship.

Issued in Washington, DC on: November 16, 2023.

Stacey Molinich Zee,

Manager, Operations Support Branch, Office of Commercial Space Transportation.

[FR Doc. 2023-25722 Filed 11-20-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****Agency Information Collection Activities: Revision of an Approved Information Collection; Comment Request; Capital Adequacy Standards**

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is

soliciting comment concerning a revision to its information collection titled, "Capital Adequacy Standards."

DATES: Comments must be received by January 22, 2024.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email:* prainfo@occ.treas.gov.
- *Mail:* Chief Counsel's Office,

Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557-0318, 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

- *Fax:* (571) 293-4835.

Instructions: You must include "OCC" as the agency name and "1557-0318" in your comment. In general, the OCC will publish comments on www.reginfo.gov without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

• **Viewing Comments Electronically:** Go to www.reginfo.gov. Hover over the "Information Collection Review" drop down menu. Click on "Information Collection Review." From the "Currently under Review" drop-down menu, select "Department of Treasury" and then click "submit." This information collection can be located by searching OMB control number "1557-0318" or "Capital Adequacy Standards." Upon finding the appropriate information collection, click on the related "ICR Reference Number." On the next screen, select "View Supporting Statement and Other Documents" and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating www.reginfo.gov, please contact the Regulatory Information Service Center at (202) 482-7340.

FOR FURTHER INFORMATION CONTACT:

Shaquita Merritt, Clearance Officer, (202) 649-5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor.

"Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 generally requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the revision to the collection of information set forth in this document. The OCC asks OMB to approve this revised collection.

Title: Capital Adequacy Standards. *OMB Control No.:* 1557-0318.

Type of Review: Regular.

Abstract: The OCC is seeking renewal with revision of an information collection approval for the recordkeeping, reporting, and disclosure requirements associated with capital adequacy standards applicable to national banks and Federal savings associations. The OCC is proposing revisions in connection with this extension to reflect more granular detail for certain existing reporting and recordkeeping provisions, as well as improving prior estimates regarding the number of respondents and burden associated with these existing provisions. In addition, reporting burden associated with 12 CFR 3.304 is being removed as that portion of the rule is no longer in effect.

Section-by-Section Analysis

Twelve CFR part 3 sets forth the OCC's minimum capital requirements and overall capital adequacy standards for national banks and Federal savings associations.

Minimum Regulatory Capital Ratios*Reporting Requirements*

Section 3.3(c) allows for the recognition of netting across multiple types of transactions or agreements if

the national bank or Federal savings association obtains a written legal opinion verifying the validity and enforceability of the agreement under certain circumstances.

Section 3.22(b)(2)(iv) permits, with prior notice to the OCC, a national bank or Federal savings association resulting from a merger, acquisition, or purchase transaction and that is not an advanced approaches national bank or Federal savings association to change its AOCI opt-out election.

Section 3.22(c)(4) provides that, with the prior written approval of the OCC, a national bank or Federal savings association that underwrites a failed underwriting, is not required to deduct an investment in the capital of an unconsolidated financial institution to the extent the investment is related to the failed underwriting.

Section 3.22(c)(5)(i) provides that, with the prior written approval of the OCC, an advanced approaches national bank or Federal savings association that underwrites a failed underwriting, for the period of time stipulated by the OCC is not required to deduct from capital a non-significant investment in the capital of an unconsolidated financial institution or an investment in a covered debt instrument to the extent the investment is related to the failed underwriting.

Section 3.22(c)(6) provides that, with prior written approval of the OCC and for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association that underwrites a failed underwriting is not required to deduct the significant investment in the capital of an unconsolidated financial institution or an investment in a covered debt instrument if such investment is related to such failed underwriting.

Section 3.22(d)(2)(i)(C) provides that, with the prior written approval of the OCC and for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution in the form of common stock if such investment is related to such failed underwriting.

Section 3.22(d)(2)(iii) permits an advanced approaches national bank or Federal savings association to change its exclusion preference to exclude deferred tax assets (DTAs) and deferred tax liabilities (DTLs) relating to adjustments relating to common equity tier 1 capital after obtaining the prior approval of the OCC.

Section 3.22(h)(2)(iii)(A) permits the use of a conservative estimate of the amount of an institution's investment in its own capital or the capital of unconsolidated financial institutions held through an index security with prior approval by the OCC.

Recordkeeping Requirements

Section 3.3(d) allows for the recognition of an agreement as a qualifying master netting agreement if the national bank or Federal savings association conducts a sufficient legal review and maintains sufficient written documentation of that legal review to ensure that the agreement continues to satisfy the requirements of the definition of qualifying master netting agreement that a relevant court would find to be legal, valid, binding, and enforceable. Section 3.3(d) further requires national banks and Federal savings associations to establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of the definition of qualifying master netting agreement.

Standardized Approach*Reporting Requirements*

Section 3.37(c)(4)(i)(E) requires that a bank or Federal savings association obtain the prior approval of the OCC for and notify the OCC if it makes any material changes to the policies and procedures describing how it determines the period of significant financial stress used to calculate its own internal estimates for haircuts and be able to provide empirical support for the period used.

Recordkeeping Requirements

Section 3.35(b)(3)(i)(A) requires for a cleared transaction with a qualified central counterparty (QCCP), that a client bank apply a risk weight of two percent, provided that the collateral posted by the national bank or Federal savings association to the QCCP is subject to certain arrangements and the client bank has conducted a sufficient legal review (and maintains sufficient written documentation of the legal review) to conclude with a well-founded basis that the arrangements, in the event of a legal challenge, would be found to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions.

Section 3.37(c)(4)(i)(E) requires that a national bank or Federal savings association have policies and procedures in place describing how it determines the period of significant

financial stress used to calculate its own internal estimates for haircuts and be able to provide empirical support for the period used.

Section 3.41(b)(3), which sets forth operational requirements for securitization exposures, allows a national bank or Federal savings association to recognize for risk-based capital purposes, in the case of synthetic securitizations, a credit risk mitigant to hedge underlying exposures if certain conditions are met. Section 3.41(b)(3) includes a requirement that the national bank or Federal savings association obtain a well-reasoned opinion from legal counsel that confirms the enforceability of the credit risk mitigant in all relevant jurisdictions.

Section 3.41(c)(2)(i) requires that a national bank or Federal savings association demonstrate its comprehensive understanding of a securitization exposure by conducting an analysis of the risk characteristics of each securitization exposure prior to its acquisition, taking into account a number of specified considerations and documenting the analysis within three business days after the acquisition.

Section 3.41(c)(2)(ii) requires a national bank or Federal savings association, on an on-going basis (no less frequently than quarterly), to evaluate, review, and update as appropriate the analysis required under § 3.41(c)(1) for each securitization exposure.

Disclosure Requirements

In a case where a national bank or Federal savings association provides non-contractual support (*i.e.*, implicit support) to a securitization, § 3.42(e)(2) requires the national bank or Federal savings association to publicly disclose that it has provided implicit support to the securitization and the risk-based capital impact to the bank or savings association of providing such implicit support.

Section 3.62 sets forth disclosure requirements related to the capital requirements of a national bank or Federal savings association. Section 3.61 provides that these requirements apply to an institution with total consolidated assets of \$50 billion or more that is not a consolidated subsidiary of a bank holding company, savings and loan holding company, or a depository institution subject to the disclosure requirements of § 3.62. For national banks or Federal savings associations subject to the disclosure requirements, § 3.62(a) requires quarterly disclosure of information in the applicable tables in § 3.63 and, if a significant change occurs, such that the

most recent reported amounts are no longer reflective of the institution's capital adequacy and risk profile, § 3.62(a) requires the national bank or Federal savings association to disclose as soon as practicable thereafter a brief discussion of the change and its likely impact. Section 3.62(a) also permits annual disclosure of qualitative information that typically does not change each quarter, provided that any significant changes are disclosed in the interim.

Section 3.62(b) requires that a national bank or Federal savings association have a formal disclosure policy approved by the board of directors that addresses its approach for determining the disclosures it makes. The policy must address the associated internal controls and disclosure controls and procedures. Section 3.62(c) permits a national bank or Federal savings association to disclose more general information about certain subjects if the national bank or Federal savings association concludes that the specific commercial or financial information required to be disclosed under § 3.62 is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) and the national bank or Federal savings association provides the reason the specific items of information have not been disclosed.

Currently, § 3.63 sets forth the specific disclosure requirements for a non-advanced approaches national bank or Federal savings association with total consolidated assets of \$50 billion or more that is not a consolidated subsidiary of a bank holding company, savings and loan holding company, or a depository institution subject to the disclosure requirements of § 3.62. Section 3.63(a) requires those institutions to make the disclosures in Tables 1 through 10 in § 3.63 and in § 3.63(b) for each of the last three years beginning on the effective date of the rule. Section 3.63(b) requires quarterly disclosure of an institution's common equity tier 1 capital, additional tier 1 capital, tier 2 capital, tier 1 and total capital ratios, including the regulatory capital elements and all the regulatory adjustments and deductions needed to calculate the numerator of such ratios; total risk-weighted assets, including the different regulatory adjustments and deductions needed to calculate total risk-weighted assets; regulatory capital ratios during any transition periods, including a description of all the regulatory capital elements and all regulatory adjustments and deductions needed to calculate the numerator and denominator of each capital ratio during any transition period; and a

reconciliation of regulatory capital elements as they relate to its balance sheet in any audited consolidated financial statements. Tables 1 through 10 in § 3.63 set forth qualitative and/or quantitative requirements for scope of application, capital structure, capital adequacy, capital conservation buffer, credit risk, counterparty credit risk-related exposures, credit risk mitigation, securitizations, equities not subject to Subpart F (Market Risk requirements) of the rule, and interest rate risk for non-trading activities.

Advanced Approaches

Reporting Requirements

Section 3.121(b)(2) requires a national bank or Federal savings association to submit an implementation plan, together with a copy of the minutes of the board of director's approval, to the OCC at least 60 days before the national bank or Federal savings association proposes to begin its parallel run, unless the OCC waives prior notice.

Section 3.121(c) requires that during a parallel run, a national bank or Federal savings association report to the OCC on a calendar quarterly basis its risk-based capital ratios.

Section 3.122(d)–(g) requires a national bank or Federal savings association to obtain the prior written approval of the OCC under § 3.132 to use the internal models methodology for counterparty credit risk and the advanced CVA approach for the CVA capital requirement, § 3.135 to use the double default treatment, § 3.153 to use the internal models approach for equity exposures, and § 3.122(g)(3) to generate an estimate of its operational risk exposure using an alternative approach.

Section 3.123 references ongoing qualification requirements that would require an institution to notify the OCC of any material change to an advance system and establish and submit to the OCC a plan for returning to compliance with the qualification requirements.

Section 3.124 requires a national bank or Federal savings association to submit to the OCC, within 90 days of consummating a merger or acquisition, an implementation plan for using its advanced systems for the merged or acquired company.

Section 3.132(b)(2)(iii)(A) addresses counterparty credit risk of repo-style transactions, eligible margin loans, and over-the-counter (OTC) derivative contracts, and internal estimates for haircuts. With the prior written approval of the OCC, a national bank or Federal savings association may calculate haircuts using its own internal estimates of the volatilities of market

prices and foreign exchange rates. The section requires national banks and Federal savings associations to satisfy certain minimum quantitative standards in order to receive OCC approval to use its own internal estimates.

Section 3.132(b)(3) covers counterparty credit risk of repo-style transactions, eligible margin loans, OTC derivative contracts, and simple Value-at-Risk (VaR) methodology. With the prior written approval of the OCC, a national bank or Federal savings association may estimate exposure at default (EAD) for a netting set using a VaR model that meets certain requirements.

Section 3.132(d)(1) permits the use of the internal models methodology (IMM) to determine EAD for counterparty credit risk for derivative contracts with prior written approval from the OCC.

Section 3.132(d)(1)(iii) permits the use of the internal models methodology for derivative contracts, eligible margin loans, and repo-style transactions subject to a qualifying cross-product netting agreement with prior written approval from the OCC.

Section 3.132(d)(2)(iv) addresses counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts, and risk-weighted assets using IMM. Under the IMM, an institution uses an internal model to estimate the expected exposure (EE) for a netting set and then calculates EAD based on that EE. A national bank or Federal savings association must calculate two EEs and two EADs (one stressed and one unstressed) for each netting as outlined in this section. A national bank or Federal savings association may use a conservative measure of EAD subject to prior written approval of the OCC.

Section 3.153(b), outlining the Internal Models Approach (IMA) for calculating risk-weighted assets for equity exposures, specifies that a national bank or Federal savings association must receive prior written approval from the OCC before it can use IMA by demonstrating to the OCC that the national bank or Federal savings association meets certain criteria.

Recordkeeping Requirements

Section 3.121 requires a national bank or Federal savings association subject to the advanced approaches risk-based capital requirements to adopt a written implementation plan to address how it will comply with the advanced capital adequacy framework's qualification requirements and also develop and maintain a comprehensive and sound planning and governance process to oversee the implementation efforts

described in the plan. Section 3.122 further requires these institutions to: develop processes for assessing capital adequacy in relation to an organization's risk profile; establish and maintain internal risk rating and segmentation systems for wholesale and retail risk exposures, including comprehensive risk parameter quantification processes and processes for annual reviews and analyses of reference data to determine their relevance; document their processes for identifying, measuring, monitoring, controlling, and internally reporting operational risk; verify the accurate and timely reporting of risk-based capital requirements; and monitor, validate, and refine their advanced systems.

Section 3.132(d)(3)(vi) addresses counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts. To obtain OCC approval to calculate the distributions of exposures upon which the EAD calculation is based, a national bank or Federal savings association must demonstrate to the satisfaction of the OCC that it has been using for at least one year an internal model that broadly meets the minimum standards with which the national bank or Federal savings association must maintain compliance. The national bank or Federal savings association must have procedures to identify, monitor, and control wrong-way risk throughout the life of an exposure and they must include stress testing and scenario analysis.

Section 3.132(d)(3)(viii) addresses counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts. When estimating model parameters based on a stress period, a national bank or Federal savings association must use at least three years of historical data that include a period of stress to the credit default spread of its counterparties. The national bank or Federal savings association must review the data set and update the data as necessary, particularly for any material changes in its counterparties. The national bank or Federal savings association must demonstrate at least quarterly that the stress period coincides with increased credit default swap (CDS) or other credit spreads of the institution's counterparties. The national bank or Federal savings association must have procedures to evaluate the effectiveness of its stress calibration that include a process for using benchmark portfolios that are vulnerable to the same risk factors as the national bank's or Federal savings association's portfolio. The OCC may require the institution to modify its

stress calibration to better reflect actual historic losses of the portfolio.

Section 3.132(d)(3)(ix), regarding counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts, requires that a national bank or Federal savings association must subject its internal model to an initial validation and annual model review process that includes consideration of whether the inputs and risk factors, as well as the model outputs, are appropriate. The section requires national banks and Federal savings associations to have a backtesting program for its model that includes a process by which unacceptable model performance will be determined and remedied.

Section 3.132(d)(3)(x), regarding counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts, provides that a national bank or Federal savings association must have policies for the measurement, management, and control of collateral and margin amounts.

Section 3.132(d)(3)(xi), concerning counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts, states that a national bank or Federal savings association must have a comprehensive stress testing program that captures all credit exposures to counterparties and incorporates stress testing of principal market risk factors and creditworthiness of counterparties.

Section 3.133(b)(3)(i)(A) permits a national bank or Federal savings association to assign a two percent risk weight to an exposure to a qualifying central counterparty (QCCP), if the institution conducts sufficient legal review, and maintains written documentation of that review.

Section 3.141(b)(3) requires a national bank or Federal savings association to obtain a well-reasoned legal opinion confirming the enforceability of the credit risk mitigant in all relevant jurisdictions in order to recognize the transference of risk in connection with a synthetic securitization.

Sections 3.141(c)(1) and 3.141(c)(2)(i) require a national bank or Federal savings association to demonstrate its comprehensive understanding of a securitization exposure for each securitization exposure by conducting an analysis of the risk characteristics of a securitization exposure prior to acquiring the exposure and document such analysis within three business days after acquiring the exposure.

Section 3.141(c)(2)(ii) requires that institutions, on an on-going basis (at least quarterly), evaluate, review, and update as appropriate the analysis

required under this section for each securitization exposure.

Disclosure Requirements

Section 3.142, which outlines the capital treatment for securitization exposures, requires a national bank or Federal savings association to disclose publicly that it has provided implicit support to a securitization and the regulatory capital impact to the institution of providing such implicit support. Specifically, § 3.124(a) requires a national bank or Federal savings association that merges with or acquires a company that does not calculate its risk-based capital requirements using advanced systems and uses subpart D to determine the risk-weighted asset amounts for the merged or acquired company's exposures, the national bank or Federal savings association must disclose publicly the amounts of risk-weighted assets and qualifying capital calculated under this subpart for the bank or savings association and under subpart D for the acquired company.

Section 3.172 specifies that each national bank or Federal savings association that is an advanced approaches national bank or Federal savings association, that has completed the parallel run process, must publicly disclose its total and tier 1 risk-based capital ratios and their components.

Section 3.173 addresses disclosures by an advanced approaches national bank or Federal savings association that is not a consolidated subsidiary of a bank holding company, savings and loan holding company, or a depository institution subject to the disclosure requirements of § 3.172. An advanced approaches institution that is subject to the disclosure requirements must make the disclosures described in § 3.173, Tables 1 through 12. The national bank or Federal savings association must make these disclosures publicly available for each of the last three years (that is, twelve quarters) or such shorter period beginning on the effective date of this subpart E. The tables in § 3.173 require qualitative and quantitative public disclosures for capital structure, capital adequacy, capital conservation and countercyclical buffers, general disclosures related to credit risk, credit risk disclosures for portfolios subject to IRB risk-based capital formulas, general disclosures related to counterparty credit risk of OTC derivative contracts, repo-style transactions, and eligible margin loans, credit risk mitigation, securitization, operational risk, equities not subject to the market risk capital requirements, and interest rate risk for non-trading activities.

Burden Estimates

Estimated Number of Respondents: 1,014 national banks and Federal savings associations.¹

Estimated Total Annual Burden Hours: 87,087.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2023-25744 Filed 11-20-23; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

United States Mint

Request for Candidates Interested in Appointment to the Citizens Coinage Advisory Committee

ACTION: Request for candidates.

SUMMARY: The United States Mint, pursuant to United States Code, title 31, section 5135(b), is accepting applications for appointment to the Citizens Coinage Advisory Committee (CCAC) as the member specially qualified to serve on the CCAC by virtue of the candidate's education, training, or experience in Medallion Arts or Sculpture.

SUPPLEMENTARY INFORMATION:

The CCAC was established to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals,

and national and other medals produced by the United States Mint.

- Advise the Secretary of the Treasury with regard to the events, persons, or places that the CCAC recommends be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.

- Make recommendations with respect to the mintage level for any commemorative coin recommended.

Total membership consists of 11 voting members appointed by the Secretary of the Treasury:

- One person specially qualified by virtue of their education, training, or experience as nationally or internationally recognized curator in the United States of a numismatic collection;

- One person specially qualified by virtue of their experience in the medallion arts or sculpture;

- One person specially qualified by virtue of their education, training, or experience in American history;

- One person specially qualified by virtue of their education, training, or experience in numismatics;

- Three persons who can represent the interests of the general public in the coinage of the United States; and

- Four persons appointed by the Secretary of the Treasury on the basis of the recommendations by the House and Senate leadership.

Members are appointed for a term of four years. No individual may be appointed to the CCAC while serving as an officer or employee of the Federal Government.

The CCAC is subject to the direction of the Secretary of the Treasury. Meetings of the CCAC are open to the public and are held approximately four to six times per year. The United States Mint is responsible for providing the necessary support, technical services, and advice to the CCAC. CCAC members are not paid for their time or services, but, consistent with Federal Travel Regulations, members are reimbursed for their travel and lodging expenses to attend meetings. Members are Special Government Employees and are subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2653).

The United States Mint will review all submissions and forward its recommendations to the Secretary of the Treasury for appointment consideration. Candidates should include specific skills, abilities, talents, and credentials to support their qualifications. The United States Mint is interested in candidates who, in addition to their

¹ Respondents represent all active national banks and Federal savings associations as of September 30, 2023.

experience in medallic arts or sculpture, have demonstrated interest and a commitment to actively participate in meetings and activities, and a demonstrated understanding of the role of the CCAC and the obligations of a Special Government Employee; possess demonstrated leadership skills in their fields of expertise or discipline; possess a demonstrated desire for public service and have a history of honorable professional and personal conduct, as well as successful standing in their communities; and who are free of

professional, political, or financial interests that could negatively affect their ability to provide impartial advice.

Submission Deadline: 5 p.m. (ET), January 3, 2024.

Receipt of Submission: Any member of the public wishing to be considered for participation on the committee should submit a resume and cover letter describing their qualifications and reasons for seeking appointment as the member specially qualified by virtue of their experience in medallic arts or sculpture, by email to info@ccac.gov,

Attn: Jennifer Warren. Email submissions must be received by no later than 5 p.m. (ET) on January 3, 2024.

FOR FURTHER INFORMATION CONTACT: Jennifer Warren, United States Mint Liaison to the CCAC; jennifer.warren@usmint.treas.gov or 202-354-7208.

Eric Anderson,

Executive Secretary, United States Mint.

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Part II

Department of Homeland Security

Coast Guard

46 CFR Parts 30 and 150

2022 Liquid Chemical Categorization Updates; Final Rule

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****46 CFR Parts 30 and 150**

[Docket No. USCG–2022–0327]

RIN 1625–AC73

2022 Liquid Chemical Categorization Updates**AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

SUMMARY: The Coast Guard is issuing this final rule to align liquid chemical categorization tables in its tank vessels and bulk dangerous cargo regulations with the 2020 Edition of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk. The updated tables provide a list of the liquid hazardous materials, liquefied gases, and compressed gases approved for international and domestic maritime transportation and indicate how each substance is categorized by its pollution potential, safe carriage requirements, chemical flammability, combustibility, and compatibility with other substances. This rule imposes no additional costs to chemical shippers or vessel owners.

DATES: This final rule is effective December 21, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to www.regulations.gov, type USCG–2022–0327 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Dr. Raghunath Halder, U.S. Coast Guard Hazardous Materials Division (CG–ENG–5); telephone 202–372–1422, email Raghunath.Halder@uscg.mil, or Dr. Sandip Chattopadhyay, CG–ENG–5; telephone 202–372–1424, email Sandip.Chattopadhyay@uscg.mil.

SUPPLEMENTARY INFORMATION:**Table of Contents for Preamble**

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I. Abbreviations

CAS RN CAS Registry Number
 CFR Code of Federal Regulations
 CG–ENG–5 U.S. Coast Guard Hazardous Materials Division
 CHRIS Chemical Hazards Response Information System
 DHS Department of Homeland Security
 FR Federal Register
 IBC Code International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk
 IBC Code (2020) 2020 edition of the IBC Code
 LCC Liquid Chemical Categorization
 IMO International Maritime Organization
 MARPOL International Convention for the Prevention of Pollution from Ships
 MEPC International Maritime Organization’s Marine Environment Protection Committee
 MEPC.2/Circ.25 MEPC Resolution number 2, Circular 25, dated December 1, 2019
 NPRM Notice of proposed rulemaking
 OMB Office of Management and Budget § Section
 U.S.C. United States Code

II. Basis and Purpose

The legal basis of this rulemaking is title 46 of the United States Code (U.S.C.), Section 3703, which requires the Secretary of the department in which the Coast Guard is operating to prescribe regulations relating to the operation of vessels that carry liquid bulk dangerous cargoes, and to the types and grades of cargo those vessels carry. Additional regulatory authority is provided by 33 U.S.C. 1903 (Administration and enforcement, regulations to implement the International Convention for the Prevention of Pollution from Ships (MARPOL) Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973), 46 U.S.C. 2103 (Superintendence of the merchant marine, general merchant marine regulatory authority), and 46 U.S.C. 3306 (Regulations, regulations for the safety of individuals and property on inspected vessels). The Secretary’s authority under these statutes is delegated to the Coast Guard in the Department of Homeland Security (DHS) Delegation 00170.1, Revision No. 01.3, paragraphs (II)(77) and (92)(a) and (b).

The purpose of this rulemaking is to provide updates to regulatory tables that list liquid hazardous materials, liquefied gases, and compressed gases that have

been approved for maritime transportation in bulk, and to indicate how each cargo is categorized by its pollution risk and safe carriage requirements.

III. Background

The Coast Guard is tasked by Congress with promulgating regulations to improve the shipping practices in the United States. Since 1983, the Coast Guard has published tables with chemicals that are safe to ship together, and others that are incompatible for shipping, in order to improve their shipping safety.

Each December, the International Maritime Organization’s (IMO) Marine Environment Protection Committee (MEPC) releases an annual circular that lists cargoes which have undergone a multi-year review to determine safe carriage requirements. A cargo is listed in the circular if a tripartite agreement approved it for international bulk maritime transportation and the MEPC validated the approval. The International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) is periodically revised by parties to the IBC Code to include the updated cargoes listed in the MEPC annual circulars.

The Coast Guard, as the administrator of regulations that control liquid chemical shipping practices, has endeavored to update these regulations to keep the Code of Federal Regulations (CFR) aligned with international standards. This rulemaking is one in a planned series of rulemakings that will periodically update the Code of Federal Regulations (CFR) to align with latest updates of the IBC Code (2020). The last time the Coast Guard updated these regulations was in a final rule published April 17, 2020 entitled “2013 Liquid Chemical Categorization Updates” (85 FR 21660).¹ In addition, the Coast Guard corrected minor typographical errors in a correcting amendments document published May 8, 2020 and effective May 18, 2020 and entitled “2013 Liquid Chemical Categorization Updates; Correction” (85 FR 27308).² The Coast Guard corrected additional minor errors in a correcting amendments document published and effective on August 5, 2021 and entitled “2013 Liquid

¹ <https://www.federalregister.gov/documents/2020/04/17/2019-27628/2013-liquid-chemical-categorization-updates>. (Last visited 05/04/2023.)

² <https://www.federalregister.gov/documents/2020/05/08/2020-09958/2013-liquid-chemical-categorization-updates-correction>. (Last visited 05/31/2023.)

Chemical Categorization Updates” (86 FR 42738).³

IV. Discussion of Comments

On September 22, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “2022 Liquid Chemical Categorization Updates” (87 FR 57984) requesting comments on the proposed changes implemented by this final rule.⁴ The comment period for the NPRM ended on December 21, 2022. The Coast Guard received no comments on the proposed rule.

V. Discussion of the Rule

Coast Guard regulations in 46 CFR chapter I subchapters D (Tank vessels, parts 30 through 40) and O (Certain bulk dangerous cargoes, parts 150 through 155) contain requirements for ensuring the safe maritime carriage (transportation) of certain bulk liquid cargoes. Tables in subchapters D and O list the cargoes that have been approved for maritime carriage. The tables also categorize each cargo’s pollution-hazard risk and safe carriage requirements. The categories are developed during the Coast Guard and MEPC’s assessment and review processes, which are described in the following paragraphs. This rule incorporates information from MEPC Resolution number 2, Circular 25, dated December 1, 2019 (MEPC.2/Circ.25)⁵ that vessel owners and operators, and shippers use to transport such cargoes safely and so brings 46 CFR chapter I subchapters D and O into closer conformity with the IBC Code (2020).

The agencies administering international treaties must agree on the new cargo’s assessment before the cargo can be approved for transportation. This is done by a tripartite agreement between the administrations of the exporting country, the importing country, and the country in which the ship that will carry the cargo is registered. The tripartite agreement categorizes the cargo’s pollution-hazard risk, flammability, and combustibility in accordance with the IBC Code. A copy of the tripartite agreement is forwarded to the MEPC and to the administration of every country that is signatory to the IBC Code.

The Coast Guard is unique among IBC Code-signatory administrations because,

in addition to categorizing the cargo in the tripartite agreement, the Coast Guard also assigns each cargo to a compatibility group. The compatibility grouping guides IBC signatories and shippers in determining which cargoes cannot safely be shipped with other cargoes in adjacent tanks, without special precautions. The compatibility grouping is informed by chemical analyses and test data submitted by manufacturers. The MEPC conducts its own multi-year review and assessment of the information contained in the tripartite agreement, and, following that review, either validates or modifies the agreement’s information. Our tables also reflect any modifications resulting from this assessment. Each December, the MEPC releases a circular listing each new cargo for which it has completed its review. The circular lists the countries that have approved each new cargo for international maritime transportation and provides information about each cargo’s pollution-hazard risk, flammability and combustibility. Periodically, the IBC Code is revised to update the cargoes listed in the MEPC’s annual circulars.

This rule brings the following tables in 46 CFR chapter I into closer conformity with the IBC Code (2020) by incorporating information from MEPC.2/Circ.25:

- Table 30.25–1, List of Flammable and Combustible Bulk Liquid Cargoes, in subchapter D;
- Table 1 to Part 150, Alphabetical List of Cargoes, in subchapter O;
- Table 2 to Part 150, Grouping of Cargoes, in subchapter O; and
- Appendix I to Part 150, Exceptions to the Chart, in subchapter O.

Table 30.25–1 lists flammable or combustible cargoes that, when transported in bulk, must be in vessels certificated under subchapter D regulations. We are updating Table 30.25–1 to add flammable or combustible chemicals that are approved for shipping by the IBC Code (2020) and appear in the MEPC.2/Circ.25. The circular is available online at <http://ocn.cl/wp-content/uploads/2021/03/IMO-MEPC-2-CIRC-25-2019.pdf>.

Table 1 to Part 150 is a comprehensive table that includes all cargoes subject to the regulations in subchapter D. Table 1 lists these cargoes alphabetically and lists the chemical compatibility group number assigned to each cargo. We are updating Table 1 to include cargoes that have been approved for shipping by the IBC Code (2020) and MEPC.2/Circ.25.

Table 2 to Part 150 contains the proper shipping names of all the cargoes

listed in Table 1, sorted by chemical compatibility group numbers instead of listed alphabetically. We align Table 2 with Table 1 to Part 150 and so update it to include cargoes that have been approved for shipping by the IBC Code (2020) and MEPC.2/Circ.25.

Appendix I to Part 150 contains cargoes listed in Tables 1 and 2 to Part 150 that have positive chemical compatibility exceptions. To illustrate, consider the following: cargoes in group X and cargoes in group Y are generally incompatible for co-shipping. However, there is one cargo in group X and one cargo in group Y that, for whatever reason, can be shipped together safely. This is an example of a positive chemical compatibility exception, and it would be listed in Appendix I so that stakeholders can maximize the efficiency of their shipping practices. We are updating Appendix I to include cargoes from the updated tables 1 and 2 that have such positive exceptions.

To further illustrate how the chemical categorization tables work together, Section (b) of Appendix I to Part 150 contains cargoes listed in tables 1 and 2 that have negative chemical compatibility exceptions. Even if cargoes from hypothetical group X and group Y are generally compatible for co-shipping, there may be a particular chemical in group X that, when stored with a particular chemical from group Y, can react dangerously. This is an example of a negative chemical compatibility exception and would be listed in Appendix I(b) so that stakeholders can be sure to ship such cargoes safely.

We are including one addition to section (b) of Appendix I to Part 150 that was not included in the proposed rule. On March 2, 2023, the Coast Guard received a report from industry stakeholders detailing testing procedures that demonstrated the incompatibility of Glycol ethers (Group 40) and Acrylonitrile (Group 15). According to the report, which is available in the docket, the chemical reaction that resulted from the reactivity test released gas and increased temperatures. We have decided to include this negative chemical compatibility exception in this final rule in the interest of public safety.

In addition to the introduction of new chemicals into these tables, the Coast Guard is adding a new column to Table 1 to Part 150 that contains a CAS Registry Number (RN). CAS, a division of the non-profit organization American Chemical Society, designed the CAS Registry to prevent the frustration, delays, and safety concerns that can come with a convoluted system of

³ <https://www.federalregister.gov/documents/2021/08/05/2021-15740/2013-liquid-chemical-categorization-updates>. (Last visited 05/31/2023.)

⁴ <https://www.federalregister.gov/documents/2022/09/22/2022-18798/2022-liquid-chemical-categorization-updates>. (Last visited 05/04/2023.)

⁵ This document is available in the docket and accessible online at <https://docs.imo.org/Shared/Download.aspx?did=119893>.

identifying chemicals. A CAS RN is a unique and unambiguous identifier for a specific substance that allows clear communication and links together all available data and research about that substance. Government agencies rely on CAS RNs for substance identification in regulatory applications because they are unique, easily validated, and internationally recognized. The addition of the CAS RNs makes it easier to use the information and leads to safer shipping practices.

The Coast Guard considered proposing the removal of Chemical Hazards Response Information System (CHRIS) codes from the tables. While the Coast Guard decided not to propose such a removal in the proposed rule, we solicited comments from the public on the utility of CHRIS codes. Having received no comments, the Coast Guard will not remove the CHRIS codes in this final rule. However, the next iteration of updates to these tables will most likely propose the removal of the CHRIS codes, which are no longer used in practice.

The rule also revises the authority citation to 46 CFR part 150 so that it no longer cites 44 U.S.C. 3507 in citing DHS Delegation No. 00170.1. This was done because DHS Delegation No. 00170.1 does not address 44 U.S.C. 3507 and that statute dictates the manner in which the Coast Guard may seek approval to collect information, rather

than delegating authority to edit the CFR. The authority citation is further revised to reflect another revision to the citation of DHS Delegation No. 00170.1.

In this final rule, we also add clarifying language to the chemical entries, make conforming edits across the tables, and correct typographical and punctuation errors. We have also edited the Notes and formatting in the tables to make them easier to understand.

VI. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of

quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Executive Order 13610 (Identifying and Reducing Regulatory Burdens) promotes the goals of Executive Order 13563. Executive Order 13610 aims to modernize the regulatory systems and to reduce unjustified regulatory burdens and costs on the public.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed this regulatory action. A regulatory analysis (RA) follows.

The Coast Guard received no comments from the public on the proposed rule. Since there was no feedback from public commenters that would require changes to the regulatory analysis for this final rule, we adopt the regulatory analysis that we presented in the proposed rule.

Summary of Impacts of This Rule

In this rule, the Coast Guard incorporates information from MEPC.2/ Circ.25 into the tables of subchapters D and O to conform the tables with the IBC Code (2020). In subchapter D, we revise table 30.25–1; in subchapter O, we revise tables 1 and 2 and Appendix I to part 150. A summary of the impacts from the rule follows.

Category	Summary
Applicability	Revise Table 30.25–1 in subchapter D, and Tables 1 and 2 and Appendix I to Part 150 in subchapter O to incorporate information from MEPC.2/Circ.25.
Affected Population	All U.S.- and foreign-flagged tank vessels when in U.S. waters.
Costs to Industry	No estimated costs to private industry.
Costs to the Federal Government ..	No estimated costs to the Federal Government.
Qualitative Benefits	Creates consistency with current international standards by incorporating information from MEPC.2/Circ.25. Clarifies regulatory requirements and makes the updated chemical information easier to use.

Affected Population

This rule updates the Liquid Chemical Categorization (LCC) tables that list the names, pollution risk categorization, safe carriage requirements, chemical flammability, combustibility, and chemical compatibility of each liquid hazardous material, liquefied gas, and compressed gas that has been categorized and approved for maritime transportation in bulk by the IMO and the Coast Guard. In this rule, the Coast Guard is making no additional changes about whether any specific liquid bulk dangerous cargo is approved for maritime transportation, about how any specific cargo is categorized, or about carriage requirements that apply to any specific

cargo. The rule provides updated information about cargoes that are currently approved for maritime transportation in bulk, and the cargo’s pollution categorization and minimum transportation safety requirements. The rule also adds a column to Table 1 of part 150 containing the applicable CAS RNs. This rule applies to the carriage of the cargoes by the vessel population described in 46 CFR 30.01–5, 150.110 (with exceptions outlined in 46 U.S.C. 3702), 153.1, and 154.5. All U.S.- and foreign-flagged tank vessels are included, unless exempted by 46 CFR 30.01–5 or 46 CFR 153.1. This rule also applies to U.S.- and foreign-flagged self-propelled bulk cargo-carrying vessels when in U.S. waters, see 46 CFR 153.1. Foreign tank vessels are exempt from

this regulation when on innocent passage through U.S. waters, see 33 CFR 157.01.

Costs

This rule updates the tables to reflect changes already made under MEPC approved tripartite agreements regarding which liquid chemical substances are approved for bulk maritime transportation, and how those substances are categorized with respect to their pollution risk. The Coast Guard already applies these standards when assessing ad hoc domestic carriage requests for liquid chemicals. Vessel owners and chemical shippers will have to comply with these standards to receive Coast Guard approval for carriage. Industry is aware of this

procedure, and we believe that chemical shippers already comply with these standards. Therefore, the Coast Guard does not expect that this rule will change established shipping requirements or current practices among chemical shippers. No additional labor or equipment will be required because of this rule. As a result, we expect that there will be no incremental private sector costs to chemical shippers or vessel owners. Further, we do not anticipate that the rule will impose any additional costs on the Coast Guard. This rule incorporates the Coast Guard's compatibility categorizations, as well as chemical cargoes and categorizations listed in IMO's IBC Code (2020) and MEPC.2/Circ.25.

Benefits

The rule provides qualitative benefits by updating the LCC tables, thereby aligning the domestic shipping requirements for liquid bulk dangerous cargoes with current international standards. The Coast Guard expects this rule to serve the public through greater clarity regarding the regulatory requirements in the LCC tables and through easier use of chemical safety information. This rule codifies existing industry practices which will add clarity about regulatory requirements in the LCC tables.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule has a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

There are no small vessel owners or chemical shippers engaged in the transport of the LCC chemicals. In addition, the rule does not impose economic costs on the regulated public. The Coast Guard does not expect that small entities will incur any incremental costs; therefore, the Coast Guard finds that there is no significant impact on small entities nor are a substantial number of small entities incurring impacts. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–

121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This rule calls for no new or revised collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. This rule simply updates tables that list liquid bulk dangerous cargoes that have been approved and categorized for bulk maritime transportation, which does not involve information collection.

E. Federalism

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

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. This rule would amend existing regulations for inspected tank vessels carrying certain bulk dangerous cargoes. These cargoes fall within the categories in 46 U.S.C. 3703 and within fields in which the

States are foreclosed from regulating. Therefore, because the States may not regulate within these categories, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. Unfunded Mandates

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

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under that order because

it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. It is based on international standards that were developed using consensus standards development processes. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

This rule meets the criteria for categorical exclusions L52 and L54 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.⁶ Paragraph L52 pertains to regulations concerning vessel operation safety

standards, equipment approval, and or equipment carriage requirements; paragraph L54 pertains to promulgation of regulations that are editorial or procedural. This rule updates the LCC tables by incorporating information from MEPC.2/Circ.25 to more closely conform the tables with the IBC Code (2020). These tables provide a list of liquid hazardous material, liquefied gases, and compressed gases that are approved for international and domestic maritime transportation and indicate how each substance is categorized by its pollution potential, safe carriage requirements, chemical flammability, combustibility, and compatibility with other substances. All these changes are consistent with the Coast Guard’s maritime safety and stewardship missions.

List of Subjects

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 150

Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 46 CFR parts 30 and 150 as follows:

PART 30—GENERAL PROVISIONS

- 1. The authority citation for part 30 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; DHS Delegation 00170.1, Revision No. 01.3.

- 2. In § 30.25–1, amend Table 30.25–1 by:

- a. Adding in alphabetical order entries for “Alcohol (C10–C18) poly (7) ethoxylates”, “Alkylbenzenes mixtures (containing naphthalene)”, “Alkyl/cyclo (C4–C5) alcohols”, “Alkylphenols (C10–C18, C12 rich)”, “Alkyl (C10–C15, C12 rich) phenol poly (4–12) ethoxylate”, “Cresol/Phenol/Xylenol mixture”, “Cyclohexane-1, 2-dicarboxylic acid, diisononyl ester”, “1-Dodecene”, “n-Dodecyl mercaptan”, “Ethylene glycol/ (<75%)/Sodium alkyl carboxylates/ borax mixture”, “Ethylene glycol (< 85%)/Sodium alkyl carboxylates mixture”, “Glucitol/Glycerol blend

propoxylated (containing less than 10% amines)”;

- b. Removing the entry for “Glucitol/ glycerol blend propoxylated (containing 10% or more amines)”;

- c. Adding in alphabetic order entries for “Glucitol/Glycerol blend propoxylated (containing 10% or more amines)”, “Hexahydro-1,3,5-trimethyl-1,3,5-triazine solution (45% or less)”, “Long-chain alkylphenol (C14–C18)” and “Long-chain alkylphenol (C18–C30)”;

- d. Removing the entry for “N-Methylglucamine solution (70% or less)”;

- e. Adding in alphabetic order entries for “N-Methylglucamine solution”, “Naphthalene crude (molten)”, “Offshore contaminated bulk liquid P (Pollution-only products)”, “Offshore contaminated bulk liquid S (Safety hazard products)”,

- f. Under the heading “Oil, fuel:” after the entry “No. 6”, adding a heading for “Oil, misc.:", and, in alphanumeric order, adding the entries, “Used cooking oil” and “Used cooking oil (triglycerides, C16–C18 and C18 unsaturated)”;

- g. Adding in alphabetic order entries for “Polyolefinamine (C17+)”, and “Rapeseed acid oil”;

- h. Removing the entry for “Rape seed oil fatty acid methyl esters*”;

- i. After the entry for “Undecylbenzene, *see* Alkyl (C9+) benzenes”, adding a heading for “Vegetable acid oils, n.o.s.:", and an entry for “Vegetable oil mixtures, containing less than 15% free fatty acid”;

- j. Revising the entry for “Vegetable oils, n.o.s.”;

- k. Removing the entry for “Vinyltoluene” and adding in alphabetic order an entry for “Vinyl toluene”;

- l. Under the heading for “Waxes:”, adding, in alphanumeric order, an entry for “Hydrocarbon”; and

- m. In the Notes to Table 30.25–1, in the entry for “ST,” remove the text “2016” and, in its place, add the text “2020”.

The additions read as follows:

§ 30.25–1 Cargoes carried in vessels certificated under the rules of this subchapter

* * * * *

⁶ https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf. (Last visited 05/04/2023.)

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES

[See NOTES at the end of this table for an explanation of symbols and terms used in this table. See Table 2, 46 CFR part 153, for additional cargoes that may be carried by a tank barge.]

Cargo name	IMO Annex II pollution category
Alcohol (C10–C18) poly (7) ethoxylates	Y
Alkylbenzenes mixtures (containing naphthalene)	X
Alkyl/cyclo (C4–C5) alcohols	Y
Alkylphenols (C10–C18, C12 rich)	Y
Alkyl (C10–C15, C12 rich) phenol poly (4–12) ethoxylate	Y
Cresol/Phenol/Xylenol mixture	Y
Cyclohexane-1,2-dicarboxylic acid, diisononyl ester	Y
1-Dodecene	Y
n-Dodecyl mercaptan	X
Ethylene glycol (≤75%)/Sodium alkyl carboxylates/borax mixture	Y
Ethylene glycol (≤85%)/Sodium alkyl carboxylates mixture	Z
Glucitol/Glycerol blend propoxylated (containing less than 10% amines)	Y
Glucitol/Glycerol blend propoxylated (containing 10% or more amines)	Z
Hexahydro-1,3,5-trimethyl-1,3,5-triazine solution (45% or less)	Y
Long-chain alkylphenol (C14–C18)	Y
Long-chain alkylphenol (C18–C30) https://fedimpact.com/request-to-meet/	Y
N-Methylglucamine solution	Z
Naphthalene crude (molten)	Y
Offshore contaminated bulk liquid P (Pollution-only products)	X
Offshore contaminated bulk liquid S (Safety hazard products)	X
Oil, misc.: Used cooking oil	X
Used cooking oil (triglycerides, C16–C18 and C18 unsaturated)	Y
Polyolefinamine (C17+)	Y
Rapeseed acid oil	#
Vegetable acid oils, n.o.s.: Vegetable oil mixtures, containing less than 15% free fatty acid (m)	Y
Vegetable oils, n.o.s.	
Vinyl toluene	Y
Waxes:	

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

[See NOTES at the end of this table for an explanation of symbols and terms used in this table. See Table 2, 46 CFR part 153, for additional cargoes that may be carried by a tank barge.]

Cargo name	IMO Annex II pollution category
Hydrocarbon	Y
.....	
.....	

Notes:

“#” = The noxious liquid substance status is undetermined—see 46 CFR 153.900(c) for shipping on an oceangoing vessel.

“+” = Marine occupational safety and health regulations for benzene, 46 CFR part 197, subpart C, may apply to this cargo.

“[]” = Provisional categorization to which the United States is party.

“@” = The noxious liquid substance category has been assigned by the Coast Guard, in the absence of one assigned by the IMO. The category is based on a GESAMP Hazard Profile or, by analogy, to a closely related product having a noxious liquid substance assigned.

Bolded entries were added from the March 2012 Annex to the 2007 edition of the IBC Code (MEPC 63/23/Add.1), the December 2012 IMO Marine Environmental Protection Committee Circular (MEPC.2/Circ.18), or the December 2013 IMO Marine Environmental Protection Committee Circular (MEPC.2/Circ.19).

“Cat” = Pollution category.

“F” = Flammable (flash point less than or equal to 60 °C (140 °F).

“I” = An “oil” under MARPOL Annex I.

Italicized words are not part of the cargo name, but may be used in addition to the cargo name.

“LFG” = Liquid flammable gas.

“n.o.s.” = Not otherwise specified.

“OS” = An “other substance” considered at present to pose no harm to marine resources, human health, amenities, or other legitimate uses of the sea when discharged into the sea from tank cleaning or deballasting operations.

“see” = A redirection to the preferred, alternative cargo name—for example, in “*Diethyl ether*, see Ethyl ether,” the pollution category for “diethyl ether” will be found under the preferred, alternative cargo name “ethyl ether.”

“ST” = Ship type, as defined in Chapter 2 of the IBC Code (2020).

“X,” “Y,” and “Z” = Noxious liquid substance categories under MARPOL Annex II.

PART 150—COMPATIBILITY OF CARGOES

Authority: 46 U.S.C. 3306, 3703; DHS
Delegation No. 00170.1, Revision No. 01.3.

■ 3. The authority citation for Part 150 is revised to read as follows:

■ 4. Revise Table 1 to Part 150 to read as follows:

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Acetaldehyde	19	.....	75–07–0	AAD.	
Acetic acid	4	2	64–19–7	AAC.	
Acetic anhydride	11	2	108–24–7	ACA.	
Acetochlor	10	.....	34256–82–1	ACG.	
Acetone	18	2	67–64–1	ACT.	
Acetone cyanohydrin	0	1, 2	75–86–5	ACY.	
Acetonitrile	37	.....	75–05–8	ATN.	
Acetonitrile (low purity grade)	37	3	75–05–8	AIL.	
Acetophenone	18	.....	98–86–2	ACP.	
<i>Acid oil mixture from soyabean, corn (maize) and sunflower oil refining, see</i> <i>Oil, misc.: Acid mixture from soyabean, corn (maize), and sunflower oil re-</i> <i>fining.</i>	.....	3	.....	.....	AOM
Acrolein	19	2	107–02–8	ARL.	
Acrylamide solution (50% or less)	10	3	79–06–1	AAM	AAO
Acrylic acid	4	2	79–10–7	ACR.	
Acrylic acid/ethenesulfonic (alternately ethenesulphonic) acid copolymer with phosphonate groups, sodium salt solution.	30	3	.....	APG.	
Acrylonitrile	15	2	107–13–1	ACN.	
Acrylonitrile-Styrene copolymer dispersion in Polyether polyol	20	.....	9003–54–7	ALE.	
Adiponitrile	37	.....	111–69–3	ADN.	
Alachlor technical (90% or more)	33	3	15972–60–8	ALH	ALI
Alcohol (C12–C13, branched and linear) poly (4–8) propoxy sulfates (alter- nately sulphates), sodium salt 25–30% solution.	41	3	.....	ABL.	
Alcohol (C9–C11) poly (2.5–9) ethoxylates	20	3	* 68439–46–3	AET	ALY/APV/APW
Alcohol (C10–C18) poly (7) ethoxylates	20	.....	85422–93–1	ALE	ALY/APV/APW
Alcohol (C6–C17) (secondary) poly (3–6) ethoxylates	20	3	* 84133–50–6	AEA	AEB
Alcohol (C6–C17) (secondary) poly (7–12) ethoxylates	20	3	* 84133–50–6	AEB	AEA
Alcohol (C12–C16) poly (1–6) ethoxylates	20	3	* 68551–12–2	AED	AET/ALY/APW
Alcohol (C12–C16) poly (7–19) ethoxylates	20	3	* 68551–12–2	APV	AET/ALY/APV
Alcohol (C12–C16) poly (20+) ethoxylates	20	3	* 68551–12–2	APW	AET/ALY
<i>Alcohol (C12–C15) poly (. . .) ethoxylate, see Alcohol (C12–C16) poly</i> <i>(. . .) ethoxylate.</i>	.....	.....	* 68131–39–2	.....	
Alcohol polyethoxylates	20	.....	* 68439–50–9	.....	AEA/AEB/AED/AET/APV/ APW

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Alcohol polyethoxylates, secondary	20	.....	* 84133–50–6	.....	AEA/AEB
Alcoholic beverages, n.o.s	20	3	64–17–5	ABV.	.....
Alcohols (C12+), primary, linear	20	3	* 112–53–8	ASY	ALR/AYK/AYL
Alcohols (C8–C11), primary, linear, and essentially linear	20	.....	* 111–87–5	ALR	AYK/AYL
Alcohols (C12–C13), primary, linear, and essentially linear	20	3	* 112–53–8	AYK	ALR/ASY/AYL
Alcohols (C14–C18), primary, linear, and essentially linear	20	3	* 112–72–1	AYL	ALR/ASY/AYK
Alcohols (C13+)	20	.....	* 112–70–9	ALY	ASY/AYK
Including:					
Cetyl alcohol (Hexadecanol)	20	.....	36653–82–4	.....	.....
Oleyl alcohol (Octadecanol)	20	.....	112–92–5	.....	.....
Pentadecanol	20	.....	629–76–5	.....	.....
Tallow alcohol	20	.....	99561–04–3	.....	.....
Tetradecanol	20	.....	112–72–1	.....	.....
Tridecanol	20	.....	112–70–9	.....	.....
Alkanes (C10–C26), linear and branched (flash point >60 °C)	31	3	* 124–18–5	ABD.	.....
Alkanes (C10–C26), linear and branched (flash point ≤ 60 °C)	31	3	* 124–18–5	ABE.	.....
Alkanes (C6–C9)	31	.....	* 110–54–3	ALK.	.....
Including:					
Heptanes	31	.....	142–82–5	.....	.....
Hexanes	31	.....	110–54–3	.....	.....
Nonanes	31	.....	111–84–2	.....	.....
Octanes	31	.....	111–65–9	.....	.....
iso- & cyclo-Alkanes (C10–C11)	31	.....	* 34464–38–5	AKI.	.....
iso- & cyclo-Alkanes (C12+)	31	.....	* 31807–55–3	AKJ.	.....
n-Alkanes (C9–C11)	31	3	* 111–84–2	.....	.....
n-Alkanes (C10+) (all isomers)	31	.....	* 124–18–5	ALV	ALJ
Including:					
Decanes	31	.....	124–18–5	.....	.....
Dodecanes	31	.....	112–40–3	.....	.....
Heptadecanes	31	.....	629–78–7	.....	.....
n-Paraffins (C10–C20)	31	.....	* 124–18–5	PFN	ALJ
Tridecanes	31	.....	629–50–5	.....	.....
Undecanes	31	.....	1120–21–4	.....	.....
Alkane (C14–C17) sulfonic (alternately sulphonic) acid, sodium salt solutions, see Sodium alkyl (C14–C17) sulfonates (alternately sulphonates) (60–65% solution).	.....	.....	85711–69–9	AKA	SAA (AKE/SSU)
Alkaryl polyethers (C9–C20)	41	.....	.....	AKP.	.....
Alkenoic acid, polyhydroxy ester borated	0	1, 3	.....	AAY.	.....
Alkenyl (C11+) amide	10	.....	.....	AKM.	.....
Alkenyl (C8+) amine, Alkenyl (C12+) acid ester mixture	34	.....	.....	AAA.	.....
Alkenyl (C16–C20) succinic anhydride	11	.....	* 32072–96–1	AAH.	.....
Alkyl acrylate-Vinyl pyridine copolymer in Toluene	32	.....	.....	AAP.	.....
Alkyl amine (C17+)	7	.....	* 4200–95–7	AKY.	.....
Alkylaryl phosphate mixtures (more than 40% Diphenyl tolyl phosphate, less than 0.02% ortho-isomers).	34	.....	78–31–9	ADP.	.....
Alkylated (C4–C9) hindered phenols	21	3	* 98–54–4	AYO.	.....
Alkyl (C3–C4) benzenes	32	.....	* 103–65–1	AKC.	.....
Including:					
Butylbenzenes	32	3	104–51–8	.....	.....
Cumene	32	.....	98–82–8	.....	.....
Propylbenzenes	32	.....	103–65–1	.....	.....
Alkyl (C5–C8) benzenes	32	.....	* 538–68–1	AKD.	.....
Including:					
Amylbenzenes	32	.....	538–68–1	.....	.....
Heptylbenzenes	32	.....	2132–85–6	.....	.....
Hexylbenzenes	32	.....	1077–16–3	.....	.....
Octylbenzenes	32	.....	2189–60–8	.....	.....
Alkyl (C9+) benzenes	32	.....	* 1081–77–2	AKB.	.....
Including:					
Decylbenzenes	32	.....	104–72–3	.....	.....
Dodecylbenzenes	32	.....	29986–57–0	.....	.....
Nonylbenzenes	32	.....	1081–77–2	.....	.....
Tetradecylbenzenes	32	.....	1459–10–5	.....	.....
Tetrapropylbenzenes	32	.....	635–11–0	.....	.....
Tridecylbenzenes	32	.....	123–02–4	.....	.....
Undecylbenzenes	32	.....	6742–54–7	.....	.....
Alkyl benzene distillation bottoms	0	1, 3	.....	ABB.	.....
Alkylbenzene mixtures (containing at least 50% of Toluene)	32	3	* 108–88–3	AZT.	.....
Alkylbenzenes mixtures (containing naphthalene)	20	.....	.....	ALB	AZT
Alkylbenzene, Alkylindane, Alkylindene mixture (each C12–C17)	32	.....	.....	AIH.	.....
Alkyl (C11–C17) benzene sulfonic (alternately sulphonic) acid	0	1, 3	* 50854–94–9	ABN	ABS/ABQ
Alkylbenzene sulfonic (alternately sulphonic) acid (less than 4%)	0	1, 2	* 104–15–4	ABQ	ABS/ABN
Alkylbenzene sulfonic (alternately sulphonic) acid, sodium salt solution	33	.....	* 657–84–1	ABT.	.....
Alkyl/cyclo (C4–C5) alcohols	20	.....	.....	AAL.	.....
Alkyl (C12+) dimethylamine	7	3	* 112–18–5	ADM.	.....
Alkyl dithiocarbamate (C19–C35)	34	3	.....	ADB.	.....
Alkyl dithiothiadiazole (C6–C24)	33	.....	.....	ADT.	.....
Alkyl ester copolymer (C4–C20)	34	.....	.....	AES	AEQ
Alkyl ester copolymer in mineral oil	34	.....	.....	AEQ	AES
Alkyl (C7–C9) nitrates	34	2	* 20633–12–9	AKN	ONE

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Alkyl (C7–C11) phenol poly (4–12) ethoxylate	40	.....	.....	APN	NPE
Alkyl (C10–C15, C12 rich) phenol poly (4–12) ethoxylate	40	.....	.....	APX	APN
Alkyl (C4–C9) phenols	21	.....	*1638–22–8	AYI	BLT/BTP/NNP/OPH
Alkylphenols (C10–C18, C12 rich)	21	.....	.....	ALP	AYI/DOL
Alkyl phenol sulfide (alternately sulphide) (C8–C40), see Alkyl (C8–C40) phenol sulfide (alternately sulphide).	.....	.....	.....	.....	AKS
Alkyl (C8–C40) phenol sulfide (alternately sulphide)	34	.....	.....	AKS.	.....
Alkyl (C9–C15) phenyl propoxylate	40	.....	*9064–15–7	AXL.	.....
Alkyl (C8–C9) phenylamine in aromatic solvents	9	.....	.....	ALP.	.....
<i>n</i> -Alkyl phthalates, see individual phthalates .....	.....	.....	.....	AYS.	.....
Alkyl polyglucoside solution, see individual polyglucoside solutions .....	.....	.....	.....	AGD	AGL/AGM/AGN/AGO/AGP
Alkyl (C8–C10) polyglucoside solution (65% or less)	43	3	*29836–26–8	AGL	AGD/AGM/AGN/AGO/AGP
Alkyl (C8–C10)/(C12–C14): (40% or less/60% or more) polyglucoside solution (55% or less).	43	3	*29836–26–8	AGN	AGD/AGL/AGM/AGN/AGO
Alkyl (C8–C10)/(C12–C14): (50%/50%) polyglucoside solution (55% or less)	43	3	*29836–26–8	AGO	AGD/AGL/AGN/AGP
Alkyl (C8–C10)/(C12–C14): (60% or more/40% or less) polyglucoside solution (55% or less).	43	3	*29836–26–8	AGP	AGD/AGL/AGM/AGN/AGO
Alkyl (C12–C14) polyglucoside solution (55% or less)	43	3	*59122–55–3	AGM	AGD/AGL/AGN/AGO/AGP
Alkyl (C12–C16) propoxyamine ethoxylates	8	3	.....	AXE	LPE
Alkyl (C10–C20), saturated and unsaturated phosphite	34	.....	.....	AKL.	.....
Alkyl succinic anhydride	11	.....	*4100–80–5	AUA.	.....
Alkyl sulfonic (alternately sulphononic) acid ester of phenol	34	.....	91082–17–6	AKH.	.....
Alkyl toluene	32	.....	*95–47–6	AYL	AUS
Alkyl (C18+) toluenes	32	3	*94135–42–9	AUS	AYL
Alkyl (C18–C28) toluenesulfonic (alternately toluenesulphonic) acid	0	1, 3	*3386–32–1	AUU.	.....
Alkyl (C18–C28) toluenesulfonic (alternately toluenesulphonic) acid, Calcium salts, borated.	34	3	.....	AUB.	.....
Alkyl (C18–C28) toluenesulfonic (alternately toluenesulphonic) acid, Calcium salts, high overbase.	33	3	.....	AUC.	.....
Alkyl (C18–C28) toluenesulfonic (alternately toluenesulphonic) acid, Calcium salts, low overbase.	33	3	.....	AUL.	.....
Allyl alcohol	15	2	107–18–6	ALA.	.....
Allyl chloride	15	.....	107–05–1	ALC.	.....
Aluminum (alternately, Aluminium) chloride/Hydrochloric acid solution, see “Aluminum (alternately, Aluminium) chloride/Hydrogen chloride solution”.	.....	1	.....	AHS	AHG
Aluminum (alternately Aluminium) chloride/Hydrogen chloride solution	0	1, 3	.....	AHG	AHS
Aluminum (alternately Aluminium) hydroxide/sodium hydroxide/sodium carbonate solution (40% or less).	5	3	.....	AHN.	.....
Aluminum sulfate (alternately Aluminium sulphate) solution	43	2	10043–01–3	ASX	ALM
Amine C–6, morpholine process residue	9	.....	.....	AOI.	.....
Aminoethyldiethanolamine/Aminoethylethanolamine solution	8	.....	.....	ADY.	.....
2-(2-Aminoethoxy) ethanol	8	.....	929–06–6	AEX.	.....
Aminoethylethanolamine	8	.....	111–41–1	AEE.	.....
N-Aminoethylpiperazine	7	.....	140–31–8	AEP.	.....
2-Amino-2-hydroxymethyl-1,3-propanediol solution	43	.....	77–86–1	AHL.	.....
2-Amino-2-methyl-1-propanol	8	.....	124–68–5	APZ	APQ/APR
Ammonia, anhydrous	6	.....	7664–41–7	AMA.	.....
Ammonia, aqueous (28% or less Ammonia), see Ammonium hydroxide .....	.....	.....	1336–21–6	.....	AMH
Ammonium bisulfite (alternately bisulphite) solution (70% or less)	43	2	10192–30–0	ABX	ASU
Ammonium chloride solution (less than 25%)	43	3	12125–02–9	AIS	AMC
Ammonium hydrogen phosphate solution	0	1	7783–28–0	AMI.	.....
Ammonium hydroxide (28% or less Ammonia)	6	.....	1336–21–6	AMH.	.....
Ammonium lignosulfonate (alternately lignosulphonate) solution, see also Lignin liquor.	.....	.....	8061–53–8	ALG	LNL
Ammonium nitrate solution (45% or less)	0	1	6484–52–2	AND	AMN/ANR/ANW
Ammonium nitrate solution (93% or less)	0	1	6484–52–2	ANW	AMN/AND/ANR
Ammonium nitrate/Urea solution (containing Ammonia), see Urea/Ammonium nitrate solution (containing 1% or more Ammonia).	.....	.....	.....	.....	UAS (ANU/UAT/UAV/UAV)
Ammonium nitrate/Urea solution (not containing Ammonia), see Urea/Ammonium nitrate solution (containing less than 1% Ammonia).	.....	.....	.....	.....	UAV (ANU/UAS/UAT/UAV)
Ammonium phosphate/Urea solution, see Urea/Ammonium phosphate solution.	.....	.....	.....	.....	UAP (APP/URE)
Ammonium polyphosphate solution	43	.....	68333–79–9	AMO.	.....
Ammonium sulfate (alternately sulphate) solution	43	.....	7783–20–2	ASW	AME/AMS
Ammonium sulfate (alternately sulphate) solution (20% or less)	43	.....	7783–20–2	AME	AMS/ASW
Ammonium sulfide (alternately sulphide) solution (45% or less)	5	3	12135–76–1	ASS	ASF
Ammonium thiocyanate/Ammonium thiosulfate (alternately thiosulphate) solution.	0	1	.....	ACV	ACS
Ammonium thiosulfate (alternately thiosulphate) solution (60% or less)	43	3	7783–18–8	ATV	ATF
Amyl acetate (all isomers)	34	3	628–63–7	AEC	IAT/AML/AAS/AYA
Amyl acid phosphate	34	.....	12789–46–7	AIA.	.....
Amyl alcohol, primary	20	3	71–41–0	APM	AAI/AAL/AAN/APM/IAA
<i>n</i> -Amyl alcohol	20	3	71–41–0	AAN	AAI/AAL/APM/ASE/IAA
sec-Amyl alcohol	20	3	584–02–1	ASE	AAI/AAL/AAN/APM/IAA
tert-Amyl alcohol	20	3	75–85–4	AAL	AAI/APM/ASE/IAA
tert-Amyl ethyl ether	41	.....	919–94–8	AER.	.....
tert-Amyl methyl ether	41	.....	994–05–8	AYE.	.....
Amyl methyl ketone, see Methyl amyl ketone .....	.....	.....	110–43–0	AMJ	MAK (AMK)
Amylene, see Pentene (all isomers) .....	.....	.....	109–67–1	AMW	PTX (AMX/AMZ/PTE)
tert-Amylenes, see Pentene (all isomers) .....	.....	.....	513–35–9	AMZ	PTX (AMW)

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Aniline	9	.....	62–53–3	ANL.	
Animal and Fish oils, n.o.s	34	.....	.....	AFN.	
Including:					
<i>Cod liver oil</i>	34	.....	8001–69–2		
<i>Lanolin</i>	34	.....	8006–54–0		
<i>Neatsfoot oil</i>	34	.....	8002–64–0		
<i>Pilchard oil</i>	34	.....	.....		
<i>Sperm oil</i>	34	.....	8002–24–2		
Animal and Fish acid oils and distillates, n.o.s	34	.....	.....	AFA.	
Including:					
<i>Animal acid oil</i>	34	.....	.....		
<i>Fish acid oil</i>	34	.....	.....		
<i>Lard acid oil</i>	34	.....	.....		
<i>Mixed acid oil</i>	34	.....	.....		
<i>Mixed general acid oil</i>	34	.....	.....		
<i>Mixed hard acid oil</i>	34	.....	.....		
<i>Mixed soft acid oil</i>	34	.....	.....		
<i>Anthracene oil (Coal tar fraction), see Coal tar</i> .....	.....	.....	65996–91–0	AHO	COR
Apple juice	43	.....	.....	APJ.	
Argon, liquefied	0	1	7440–37–1	ARG.	
Aryl polyolefin (C11–C50)	30	.....	.....	AYF.	
Asphalt	33	.....	8052–42–4	ASP	ACU
Asphalt blending stocks, roofers flux	33	.....	.....	ARF.	
Asphalt blending stocks, straight run residue	33	.....	.....	ASR.	
Asphalt emulsion	33	.....	.....	ASQ.	
Asphalt, Kerosene, and other components	33	.....	.....	AKO.	
Aviation alkylates (C8 paraffins and isoparaffins BPT 95–120 °C)	33	3	111–65–9	AVA	GAK/GAV
Barium long-chain (C11–C50) alkaryl sulfonate (alternately sulphonate)	34	.....	.....	BCA.	
Barium long-chain alkyl (C8–C14) phenate sulfide (alternately sulphide)	34	.....	.....	BCH.	
Behenyl alcohol	20	.....	661–19–8	BHY.	
Benzene	32	2	71–43–2	BNZ	BHA/BHB/PYG
Benzene and mixtures having 10% Benzene or more	32	.....	.....	BHB	BHA/BNZ/PYG
Benzene hydrocarbon mixtures (containing Acetylenes) (having 10% Benzene or more).	32	.....	.....	BHA	BHB/BNZ/PYG
Benzene/Toluene/Xylene mixtures (having 10% Benzene or more)	32	.....	.....	BTX	BHB/BNZ/PYG/TOL/XLX/XLM/XLO/XLP
Benzenesulfonyl (alternately Benzenesulphonyl) chloride	0	1, 2	98–09–9	BSC.	
Benzenetricarboxylic acid, trioctyl ester	34	.....	89–04–3	BCE.	
Benzyl acetate	34	.....	140–11–4	BZE.	
Benzyl alcohol	21	.....	100–51–6	BAL.	
Benzyl chloride	36	.....	100–44–7	BCL.	
Bio-fuel blends of Diesel/gas oil and Alkanes (C10–C26), linear and branched with a flash point >60 °C (>25% but <99% by volume).	33	3	.....	BIF	BIG/BIH/BII/BIJ/BIK
Bio-fuel blends of Diesel/gas oil and Alkanes (C10–C26), linear and branched with a flash point ≤60 °C (>25% but <99% by volume).	33	3	.....	BIG	BIF/BIH/BII/BIJ/BIK
Bio-fuel blends of Diesel/gas oil and FAME (>25% but <99% by volume)	34	3	.....	BIH	BIF/BIG/BII/BIJ/BIK
Bio-fuel blends of Diesel/gas oil and vegetable oil (>25% but <99% by volume).	34	3	.....	BII	BIF/BIG/BIH/BIJ/BIK
Bio-fuel blends of Gasoline and Ethyl alcohol (>25% but <99% by volume) ..	20	2, 3	.....	BIJ	BIF/BIG/BIH/BII/BIK
Bis (2-ethylhexyl) terephthalate	34	.....	6422–86–2	DHH.	
Boronated Calcium sulfonate (alternately sulphonate)	34	.....	.....	BCU.	
Brake fluid base mix: Poly (2–8) alkylene (C2–C3) glycols/Polyalkylene (C2–C10) glycols monoalkyl (C1–C4) ethers and their borate esters.	20	3	.....	BFY.	
Brominated Epoxy Resin in Acetone	16	.....	.....	BER.	
Bromochloromethane	36	.....	74–97–5	BCM.	
Butadiene (all isomers)	30	.....	106–99–0	BDI.	
Butadiene/Butylene mixtures (containing Acetylenes)	30	.....	.....	BBM	BBX/BDI/BTN/IBL
Butane (all isomers)	31	.....	106–97–8	BMX	IBT/BUT
Butane/Propane mixture	31	.....	.....	BUP	LPG
1,4-Butanediol, see Butylene glycol .....	.....	.....	110–63–4	BDO	BUG
2-Butanone, see Methyl ethyl ketone .....	.....	2	78–93–3	.....	MEK
Butene oligomer	30	.....	.....	BOL.	
Butene, see Butylenes (all isomers) .....	.....	.....	106–98–9	.....	BUT/IBL
2-Butoxyethanol (58%)/Hyperbranched polyesteramide (42%) (mixture)	20	.....	.....	.....	
Butyl acetate (all isomers)	34	3	123–86–4	BAX	BCN/BTA/BYA/IBA
Butyl acrylate (all isomers)	14	3	141–32–2	BAR	BAI/BTC
Butyl alcohol (all isomers)	20	2, 3	71–36–3	BAY	BAN/BAS/BAT/IAL
Butyl alcohol (iso-, n-, sec-, tert-), see Butyl alcohol (all isomers) .....	.....	2	71–36–3	.....	BAN/BAS/BAT/BAY/IAL
Butylamine (all isomers)	7	3	109–73–9	BTY	BAM/BTL/BUA/IAM
Butylbenzene (all isomers), see Alkyl (C3–C4) benzenes .....	.....	3	104–51–8	BBE	AKC
Butyl benzyl phthalate	34	.....	85–68–7	BPH.	
Butyl butyrate (all isomers)	34	3	109–21–7	BBA	BIB/BUB
Butylene glycol	20	2	107–88–0	BUG	BDO
1,2-Butylene oxide	16	.....	106–88–7	BTO.	
Butylenes (all isomers)	30	.....	106–98–9	BTN	IBL
n-Butyl ether	41	3	142–96–1	BTE.	
n*-Butyl ether	41	.....	142–96–1	BTE.	
iso-Butyl formate, see Isobutyl formate .....	.....	3	542–55–2	BFI	BFN/BFO
n-Butyl formate	34	.....	592–84–7	BFN	BFI/BFO
Butyl heptyl ketone	18	.....	19780–10–0	BHK.	

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Butyl methacrylate	14	.....	97–88–1	BMH	BMI/BMN
<i>Butyl methacrylate, Decyl methacrylate, Cetyl-Eicosyl methacrylate mixture, see Butyl/Decyl/Cetyl/Eicosyl methacrylate mixture.</i>	.....	3	.....	.....	DER (BMH/BMI/BMN/CEM)
Butyl/Decyl/Cetyl/Eicosyl methacrylate mixture	14	3	.....	DER	BMH/BMI/BMN/CEM
<i>Butyl methyl ketone, see Methyl butyl ketone</i> .....	.....	2	591–78–6	.....	MBJ (MBK/MIK)
Butyl phenol, Formaldehyde resin in Xylene	32	.....	.....	.....	.....
n-Butyl propionate	34	.....	209–669–5	BPN.	.....
Butyl stearate	34	.....	123–95–5	BST.	.....
Butyl toluene	32	.....	1595–05–7	BUE.	.....
Butyraldehyde (all isomers)	19	3	123–72–8	BAE	BAD/BTR
Butyric acid	4	.....	107–92–6	BRA	IBR
gamma-Butyrolactone	0	1, 2	96–48–0	BLA.	.....
C9 Resinfeed (DSM)	32	2	.....	CNR.	.....
<i>Calcium alkaryl sulfonate (alternately sulphonate) (C11–C50), see Calcium long-chain alkaryl sulfonate (alternately sulphonate) (C11–C50).</i>	.....	3	.....	CAE	CAY
Calcium alkyl (C9) phenol sulfide (alternately sulphide), polyolefin phosphorosulfide (alternately phosphorosulphide) mixture.	34	.....	.....	CPX.	.....
Calcium alkyl (C10–C28) salicylate	34	3	.....	CAJ.	.....
<i>Calcium bromide solution, see Drilling brines</i> .....	.....	.....	7789–41–5	CBI	DRB
<i>Calcium alkyl salicylate, see Calcium long-chain alkyl salicylate (C13+), Calcium long-chain alkyl (C18–C28) salicylate, or Calcium alkyl (C10–C28) salicylate.</i>	34	.....	.....	.....	CAJ/CAK/CAZ
<i>Calcium bromide solution, see Drilling brines</i> .....	.....	.....	7789–41–5	CBI	DRB
<i>Calcium bromide/Zinc bromide solution, see Drilling brine (containing Zinc salts).</i>	.....	.....	.....	.....	DZB
Calcium carbonate slurry	34	.....	471–34–1	CSR.	.....
<i>Calcium chloride solution, see Drilling brines</i> .....	.....	.....	10043–52–4	CCS	CLC
Calcium hydroxide slurry	5	.....	1305–62–0	COH	CAH
Calcium hypochlorite solution (15% or less)	5	3	7778–54–3	CHU	CHY/CHZ
Calcium hypochlorite solution (more than 15%)	5	3	7778–54–3	CHZ	CHU/CHY
<i>Calcium lignosulfonate (alternately lignosulphonate) solution, see also Lignin liquor.</i>	.....	.....	8061–52–7	CLL	LNL
Calcium long-chain alkaryl sulfonate (alternately sulphonate) (C11–C50)	34	.....	722503–69–7	CAY.	.....
<i>Calcium long-chain alkyl (C8–C40) phenate, see Calcium long-chain alkyl (C5–C10) phenate or Calcium long-chain alkyl (C11–C40) phenate.</i>	.....	.....	.....	CAQ	CAU/CAV (CAN/CAW)
Calcium long-chain alkyl (C5–C10) phenate	34	3	.....	CAU	CAN/CAQ/CAV/CAW
Calcium long-chain alkyl (C5–C20) phenate	34	.....	.....	CAV	CAN/CAQ/CAU/CAW
Calcium long-chain alkyl (C11–C40) phenate	34	3	.....	CAW	CAN/CAQ/CAU/CAV
Calcium long-chain alkyl phenate sulfide (alternately sulphide) (C8–C40)	34	.....	.....	CPI.	.....
Calcium long-chain alkyl phenolic amine (C8–C40)	9	.....	.....	CPQ.	.....
Calcium long-chain alkyl (C18–C28) salicylate	34	3	.....	CAJ.	.....
Calcium long-chain alkyl salicylate (C13+)	34	.....	.....	CAK	CAJ/CAZ
Calcium nitrate solutions (50% or less)	34	3	10124–37–5	CNU	CNT
Calcium nitrate/Magnesium nitrate/Potassium chloride solution	34	.....	.....	CLM	CNT/CNU/MGN/MGO/PCS/PCU/PSD
Calcium salts of fatty acids	34	.....	85251–71–4	CFF.	.....
Calcium stearate	34	.....	1592–23–0	CSE.	.....
Calcium sulfonate (alternately sulphonate)/Calcium carbonate/Hydrocarbon solvent mixture.	33	.....	.....	CSH.	.....
<i>Camelina oil, see Oil, misc.: Camelina</i> .....	.....	3	68956–68–3	CEL.	.....
Camphor oil (light)	18	.....	8008–51–3	CPO.	.....
<i>Canola oil, see Oil, edible: Rapeseed (low erucic acid containing less than 4% free fatty acids).</i>	.....	.....	120962–03–0	.....	ORO (ORP)
<i>Caprolactam solution, see epsilon-Caprolactam (molten or aqueous solutions).</i>	.....	.....	105–60–2	CLS.	.....
epsilon-Caprolactam (molten or aqueous solutions)	22	3	105–60–2	CLU	CLS
Caramel solutions	43	.....	8028–89–5	CML.	.....
Carbolic oil	21	.....	108–95–2	CBO.	.....
Carbon dioxide (high purity)	0	1	124–38–9	CDH	CDO/CDQ
Carbon dioxide (reclaimed quality)	0	1	124–38–9	CDQ	CDH/CDO
Carbon dioxide, liquefied	0	1	124–38–9	CDO	CDH/CDQ
Carbon disulfide (alternately disulphide)	38	.....	75–15–0	CBB.	.....
Carbon tetrachloride	36	2	56–23–5	CBT	CBU
<i>Cashew nut shell oil (untreated), see Oil, misc.: Cashew nut shell (untreated).</i>	.....	.....	8007–24–7	.....	OCN
<i>Castor oil, see Oil, edible: Castor</i>	34	.....	8001–79–4	.....	OCA (VEO).
Catoxid feedstock	36	2	.....	CXF.	.....
Caustic potash solution	5	2	1310–58–3	CPS.	.....
Caustic soda solution	5	2	1310–73–2	CSS.	.....
Cesium formate solution	43	3	3495–36–1	CSM.	.....
<i>Cetyl alcohol (Hexadecanol), see Alcohols (C13+)</i> .....	.....	.....	36653–82–4	.....	ALY (ASY/AYL)
<i>Cetyl alcohol, see Alcohols (C13+)</i>	20	.....	36653–82–4	.....	ALY (ASY/AYL)
Cetyl/Eicosyl methacrylate mixture	14	1	.....	CEM.	.....
<i>Cetyl/Stearyl alcohol, see Alcohols (C13+)</i> .....	.....	.....	.....	.....	ALY (ASY/AYL)
Chlorinated paraffins (C10–C13)	36	.....	* 1002–69–3	CLH	CLG/CLJ/CLQ
Chlorinated paraffins (C14–C17) (with 50% Chlorine or more, and less than 1% C13 or shorter chains).	36	3	.....	CLJ	CLG/CLH/CLQ
Chlorinated paraffins (C14–C17) (with 52% Chlorine)	36	.....	.....	CLQ	CLG/CLH/CLJ
Chlorinated paraffins (C18+) with any level of chlorine	36	.....	* 3386–33–2	CLG	CLH/CLJ
Chlorine	0	1	7782–50–5	CLX.	.....

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Chloroacetic acid (80% or less)	4	3	79-11-8	CHM	CHL/MCA
Chlorobenzene	36	2	108-90-7	CRB.	
<i>Chlorodifluoromethane</i> , see Monochlorodifluoromethane			75-45-6	MCF.	
2-Chloro-4-ethylamino-6-isopropylamino-5-triazine solution	0	1	287476-17-9	CET.	
1-(4-Chlorophenyl)-4,4-dimethyl pentan-3-one	18	2	66346-01-8	CDP.	
2- or 3-Chloropropionic acid	4		29617-66-1 or 107-94-8	CPM	CLA/CLP
Chloroform	36		67-66-3	CRF.	
Chlorohydrins (crude)	17	3	* 107-07-3	CHD.	
4-Chloro-2-methylphenoxyacetic acid, dimethylamine salt solution	9			CDM.	
<i>o</i> -Chloronitrobenzene	42		88-73-3	CNO	CNP
Chlorosulfonic (alternately Chlorosulphonic) acid	0	1	7790-94-5	CSA.	
<i>m</i> -Chlorotoluene	36	3	108-41-8	CTM	CHI/CRN/CTO
<i>o</i> -Chlorotoluene	36	3	95-49-8	CTO	CHI/CRN/CTM
<i>p</i> -Chlorotoluene	36	3	106-43-4	CRN	CHI/CTM/CTO
Chlorotoluenes (mixed isomers)	36	3	25168-05-2	CHI	CRN/CTM/CTO
Choline chloride solutions	20		67-48-1	CCO.	
Citric acid (70% or less)	4	3	77-92-9	CIS	CIT
Clay slurry	43		1332-58-7	CLY.	
Coal slurry	43		125612-26-2	COG	COA
Coal tar	33		8007-45-2	COR	OCT
Coal tar crude bases	33		65996-84-1	CTB.	
<i>Coal tar distillate</i> , see Naphtha: Coal tar solvent			65996-91-0	CDL	NCT (CTU)
<i>Coal tar naphtha solvent</i> , see Naphtha: Coal tar solvent			65996-91-0		NCT (CDL/CTU)
Coal tar pitch (molten)	33	3	65996-93-2	CTP.	
Coal tar, high temperature	33		65996-89-6	CHH.	
Cobalt naphthenate in solvent naphtha	34		61789-51-3	CNS.	
<i>Cocoa butter</i> , see Oil, edible: Cocoa butter			8002-31-1		OCB (VEO)
<i>Coconut oil</i> , see Oil, edible: Coconut		2	8001-31-8		OCC (VEO)
<i>Coconut oil, fatty acid</i> , see Oil, misc.: Coconut fatty acid		2	61788-47-4		CFA
<i>Coconut oil, fatty acid methyl ester</i> , see Oil, misc.: Coconut fatty acid methyl ester.		3	61788-59-8		OCM
Copper salt of long-chain (C17+) alkanolic acid	34			CUS	CFT
Copper salt of long-chain (C3-C16) fatty acid	34		* 3112-74-1	CFT	CUS
<i>Corn oil</i> , see Oil, edible: Corn			8001-30-7		OCO (VEO)
Corn syrup	43		8029-43-4	CSY.	
<i>Cottonseed oil</i> , see Oil, edible: Cottonseed			8001-29-4		OCS (VEO)
<i>Cottonseed oil, fatty acid</i> , see Oil, misc.: Cottonseed oil, fatty acid			68308-51-0	CFY.	
Creosote	21	2		CCW	CCT/CWD
Creosote (coal tar)	21	2, 3	8001-58-9	CCT	CCW
Creosote (wood tar)	21	2, 3	8021-39-4	CWD	CCT/CCW
Cresol/Phenol/Xylenol mixture	21			CXX.	
Cresols (all isomers)	21	3	1319-77-3	CRS	CFO/CFP/CRL/CRO/CSO/CSO
<i>Cresols with 5% or more Phenol</i> , see Phenol				CFP	PHN (CFO/CRL/CRO/CRS/CSO)
<i>Cresols with less than 5% Phenol</i> , see Cresols (all isomers)				CFO	CRS (CFP/CRL/CRO/CSO)
<i>Cresylate spent caustic</i> , see Cresylic acid, sodium salt solution		2		CSC	CYD
Cresylic acid	21		1319-77-3	CRY.	
Cresylic acid, dephenolized	21		1319-77-3	CAD	CRY/CYN
Cresylic acid tar	21			CRX.	
Cresylic acid with 5% or more phenol	21			CYN	CAD/CRY
Cresylic acid, sodium salt solution	5	2	34689-46-8	CYD	CSC
Crotonaldehyde	19	2	123-73-9	CTA.	
<i>Crude Isononylaldehyde</i> , see Isononylaldehyde (crude)			5435-64-3		INC
Crude Isopropanol	20		67-63-0		IPB (IPA/PAL)
<i>Crude Piperazine</i> , see Piperazine (crude)			110-85-0		PZC (PPZ/PIZ)
<i>Cumene</i> , see Alkyl (C3-C4) benzenes			98-82-8	CUM	AKD (PBZ/PBZ)
1,5,9-Cyclododecatriene	30		4904-61-4	CYT.	
Cycloheptane	31		291-64-5	CYE.	
Cyclohexane	31		110-82-7	CHX.	
Cyclohexane-1,2-dicarboxylic acid, diisononyl ester	34		166412-78-8	CDE.	
Cyclohexane oxidation products, sodium salts solution	43			CYS.	
Cyclohexanol	20		108-93-0	CHN.	
Cyclohexanone	18	2	108-94-1	CCH.	
Cyclohexanone/Cyclohexanol mixtures	18	2		CYX.	
Cyclohexyl acetate	34		622-45-7	CYC.	
Cyclopentadiene/Styrene/Benzene mixture	30			CSB.	
1,3-Cyclopentadiene dimer (molten)	30	3	7313-32-8	CPD	DPT/DPV
Cyclopentane	31		287-92-3	CYP.	
Cyclopentene	30		142-29-0	CPE.	
<i>p</i> -Cymene	32		99-87-6	CMP.	
Decahydronaphthalene	33		91-17-8	DHN.	
Decaldehyde	19		112-31-2	DAY	IDA/DAL
<i>iso-Decaldehyde</i> , see Isodecaldehyde			3085-26-5		
<i>n</i> -Decaldehyde	19		3085-26-5		
<i>Decane</i> (all isomers), see <i>n</i> -Alkanes (C10+) (all isomers)			124-18-5	DCC	ALV (ALJ)
Decanoic acid	4		334-48-5	DCO	NEA
Decene	30		872-05-9	DCE.	

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Decyl acetate	34	.....	112–17–4	DYA.	
Decyl acrylate	14	.....	2156–96–9	DAT	IAI/DAR
Decyl alcohol (all isomers)	20	2, 3	85566–12–7	DAX	ISA/DAN
Decyl/Dodecyl/Tetradecyl alcohol mixture	20	3	* 112–30–1	DYO	DAN/DAX/DDN/ISA
Decylbenzene, <i>see</i> Alkyl (C9+) benzenes .....	.....	.....	104–72–3	DBZ	AKB
Decyloxytetrahydrothiophene dioxide	0	1	18760–44–6	DHT.	
Detergent alkylate	32	.....	68442–97–7	DKY	AKB/DBZ/DDB/TDB/TRB/ UDB
<i>Dextrose solution, see</i> Glucose solution .....	.....	.....	50–99–7	DTS	GLU
Diacetone alcohol	20	2	123–42–2	DAA.	
Dialkyl (C10–C14) benzenes, <i>see</i> Alkyl (C9+) benzenes .....	.....	.....	* 55191–38–3	DAB	AKB
Dialkyl (C8–C9) diphenylamines	9	.....	* 101–67–7	DAQ.	
Dialkyl (C7–C13) phthalates	34	.....	* 3648–21–3	DAH.	
Including:					
Di-(2-ethylhexyl) phthalate	34	.....	117–81–7		
Diheptyl phthalate	34	.....	3648–21–3		
Dihexyl phthalate	34	.....	84–75–3		
Diisooctyl phthalate	34	.....	131–20–4		
Diisodecyl phthalate	34	.....	89–16–7		
Diisononyl phthalate	34	.....	28553–12–0		
Dinonyl phthalate	34	.....	84–76–4		
Dioctyl phthalate	34	.....	117–84–0		
Ditridecyl phthalate	34	.....	119–06–2		
Diundecyl phthalate	34	.....	3648–20–2		
Dialkyl (C9–C10) phthalates, <i>see</i> Dialkyl (C7–C13) phthalates .....	.....	.....	* 84–76–4	DLK	DLH (DAP/DHL/DHP/DID/ DIE/DIF/DIN/DIO/DIT/ DOP/DPA/DTP/DUP)
Dialkyl thiophosphates sodium salts solution	34	3	* 26377–29–7	DYH.	
2,6-Diaminohexanoic acid phosphonate mixed salts solution	21	.....	.....	DBT.	
Dibromomethane	36	.....	74–95–3	DBH.	
Dibutyl carbinol, <i>see</i> Nonyl alcohol (all isomers) .....	.....	.....	623–93–8	.....	NNS (DBC/NNI/NNN)
Dibutyl hydrogen phosphonate	34	.....	107–66–4	DHD.	
Dibutyl phthalate	34	.....	84–74–2	DPA	DIT
Dibutyl terephthalate	34	3	1962–75–0	DYE.	
Dibutylamine	7	.....	111–92–2	DBA.	
Dibutylphenol (all isomers)	21	.....	.....	DBT.	
Dibutylphenols	21	.....	26967–68–0	DBT.	
Di-tert-butylphenol	21	.....	128–39–2	DBF	DBT/DBV/DBW
2,4-Di-tert-butylphenol	21	.....	96–76–4	DBV	DBF/DBT/DBW
2,6-Di-tert-butylphenol	21	3	128–39–2	DBW	DBF/DBT/DBV
Dichlorobenzene (all isomers)	36	3	25321–22–6	DBX	DBM/DBO/DBP
3,4-Dichloro-1-butene	36	.....	760–23–6	DCD	DCB
Dichlorodifluoromethane	36	.....	75–71–8	DCF.	
1,1-Dichloroethane	36	.....	75–34–3	DCH.	
Dichloroethyl ether	41	3	111–44–4	DYR	DEE
1,6-Dichlorohexane	36	.....	2163–00–0	DHX.	
2,2'-Dichloroisopropyl ether	41	.....	63283–80–7	DCI.	
Dichloromethane	36	2	75–09–2	DCM.	
2,4-Dichlorophenol	21	.....	120–83–2	DCP.	
2,4-Dichlorophenoxyacetic acid/Diethanolamine salt solution	43	.....	5742–19–8	DDE.	
2,4-Dichlorophenoxyacetic acid/Dimethylamine salt solution (70% or less)	0	1, 2, 3	2008–39–1	DDA	DAD/DSX
2,4-Dichlorophenoxyacetic acid/Trisopropanolamine salt solution	43	2	34075–45–1	DTI.	
1,1-Dichloropropane	36	.....	78–99–9	DPB	DPC/DPL/DPP/DPX
1,2-Dichloropropane	36	2, 3	78–87–5	DPP	DPB/DPC/DPL/DPX
1,3-Dichloropropane	36	.....	142–28–9	DPC	DPB/DPL/DPP/DPX
Dichloropropene (all isomers)	15	.....	26952–23–8	DCW	DPF/DPU
1,3-Dichloropropene	15	.....	542–75–6	.....	DCW/DPF
Dichloropropene/Dichloropropane mixtures	15	.....	8003–19–8	DMX	DCW/DPB/DPC/DPL/DPP/ DPU/DPX
2,2-Dichloropropionic acid	4	.....	75–99–0	DCN.	
Dicyclopentadiene, Resin Grade, 81–89%	30	3	77–73–6	DPV	CPD/DPT
<i>Dicyclopentadiene, see</i> 1,3-Cyclopentadiene dimer (molten) .....	.....	.....	77–73–6	DPT	CPD (DPV)
Diethanolamine	8	2	111–42–2	DEA.	
<i>Diethanolamine salt of 2,4-Dichlorophenoxyacetic acid solution, see</i> 2,4-Dichlorophenoxyacetic acid, Diethanolamine salt solution.	.....	.....	5742–19–8	DZZ	DDE
Diethylamine	7	.....	109–89–7	DEN.	
Diethylaminoethanol	8	.....	100–37–8	DAE.	
2,6-Diethylaniline	9	.....	579–66–8	DMN	DIY
Diethylbenzene	32	.....	25340–17–4	DEB.	
Diethylene glycol	40	2	111–46–6	DEG.	
<i>Diethylene glycol butyl ether, see</i> Poly (2–8)alkylene glycol monoalkyl (C1–C6) ether.	.....	.....	112–34–5	DME	PAG
<i>Diethylene glycol butyl ether acetate, see</i> Poly (2–8)alkylene glycol monoalkyl (C1–C6) ether acetate.	.....	.....	124–17–4	DEM	PAF
Diethylene glycol dibenzoate	34	.....	120–55–8	DGZ.	
Diethylene glycol dibutyl ether	40	.....	112–73–2	DIG.	
Diethylene glycol diethyl ether	40	.....	112–36–7	DGS.	
<i>Diethylene glycol ethyl ether, see</i> Poly (2–8) alkylene glycol monoalkyl (C1–C6) ether.	.....	.....	111–90–0	DGE	PAG
<i>Diethylene glycol ethyl ether acetate, see</i> Poly (2–8)alkylene glycol monoalkyl (C1–C6) ether acetate.	.....	.....	112–15–2	DGA	PAF

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
<i>Diethylene glycol n-hexyl ether, see Poly (2–8) alkylene glycol monoalkyl (C1–C6) ether.</i>			112–59–4	DHE	PAG
<i>Diethylene glycol methyl ether, see Poly (2–8) alkylene glycol monoalkyl (C1–C6) ether.</i>			111–77–3	DGM	PAG
<i>Diethylene glycol methyl ether acetate, see Poly (2–8) alkylene glycol monoalkyl (C1–C6) ether acetate.</i>			629–38–9	DGR	PAF
<i>Diethylene glycol phenyl ether</i>	40		104–68–7	DGP.	
<i>Diethylene glycol phthalate</i>	34		2202–98–4	DGL.	
<i>Diethylene glycol propyl ether, see Poly (2–8)alkylene glycol monoalkyl (C1–C6) ether.</i>			6881–94–3	DGO	PAG
<i>Diethylenetriamine</i>	7	2	111–40–0	DET.	
<i>Diethylenetriaminepentaacetic acid, pentasodium salt solution</i>	43		140–01–2	DYS.	
<i>Diethylethanamine, see Diethylaminoethanol</i>			100–37–8		DAE
<i>Diethyl ether</i>	8		60–29–7	EET.	
<i>Diethyl hexanol, see Decyl alcohol (all isomers)</i>			19398–78–8		DAX
<i>Di-(2-ethylhexyl) adipate</i>	34		103–23–1	DEH.	
<i>Di-(2-ethylhexyl) phosphoric acid</i>	1		298–07–7	DEP.	
<i>Di-(2-ethylhexyl) phthalate, see Dialkyl (C7–C13) phthalate</i>			117–81–7	DIE	DAH
<i>Di-(2-ethylhexyl) terephthalate</i>	34		6422–86–2	DHH.	
<i>Diethyl phthalate</i>	34		84–66–2	DPH.	
<i>Diethyl sulfate (alternately sulphate)</i>	34		64–67–5	DSU.	
<i>Diglycidyl ether of Bisphenol A</i>	16		1675–54–3	BDE.	
<i>Diglycidyl ether of Bisphenol F</i>	16		2095–03–6	DGF.	
<i>Diheptyl phthalate, see Dialkyl (C7–C13) phthalate</i>			3648–21–3	DHP	DAH
<i>Di-n-hexyl adipate</i>	34		110–33–8	DHA.	
<i>Diheptyl phthalate, see Dialkyl (C7–C13) phthalate</i>			84–75–3	DHL.	
<i>Diisobutyl carbinol, see Nonyl alcohol (all isomers)</i>			108–82–7	DBC	NNS
<i>Diisobutyl ketone</i>	18		108–83–8	DIK.	
<i>Diisobutyl phthalate</i>	34		84–69–5	DIT	DPA
<i>Diisobutylamine</i>	7		110–96–3	DBU.	
<i>Diisobutylene</i>	30		25167–70–8	DBL.	
<i>Diisodecyl phthalate, see Dialkyl (C7–C13) phthalates</i>			26761–40–0	DID	DAH
<i>1,4-Dihydro-9,10-dihydroxy anthracene, disodium salt solution</i>	5		73347–80–5	DDH.	
<i>Diisononyl adipate</i>	34		33703–08–1	DNY.	
<i>Diisononyl phthalate, see Dialkyl (C7–C13) phthalates</i>		2	28553–12–0	DIN	DAH
<i>Diisooctyl phthalate, see Dialkyl (C7–C13) phthalate</i>			27554–26–3	DIO	DAH/(DIE/DOP)
<i>Diisopropanolamine</i>	8		110–97–4	DIP.	
<i>Diisopropylamine</i>	7		108–18–9	DIA	DNA
<i>Diisopropylbenzene (all isomers)</i>	32		25321–09–9	DIX.	
<i>Diisopropylisobutylamine</i>	32		24157–81–1	DII.	
<i>1,4-Dihydro-9,10-dihydroxy anthracene, disodium salt solution</i>	5		73347–80–5	DDH.	
<i>N,N-Dimethylacetamide</i>	10		127–19–5	DAC	DLS
<i>N,N-Dimethylacetamide solution (40% or less)</i>	10	3	127–19–5	DLS	DAL
<i>Dimethyl adipate</i>	34		627–93–0	DLA.	
<i>Dimethylamine</i>	7		124–40–3	DMA	DMC/DMG/DMY
<i>Dimethylamine salt of 4-Chloro-2-methylphenoxyacetic acid solution, see 4-Chloro-2-methylphenoxyacetic acid, Dimethylamine salt solution.</i>			2039–46–5		CDM
<i>Dimethylamine salt of 2,4-Dichlorophenoxyacetic acid solution, see 2,4-Dichlorophenoxyacetic acid, Dimethylamine salt solution (70% or less).</i>			2008–39–1	DAD	DDA (DSX)
<i>Dimethylamine solution (45% or less)</i>	7	3	124–40–3	DMG	DMA/DMC/DMY
<i>Dimethylamine solution (greater than 45% but not greater than 55%)</i>	7	3	124–40–3	DMY	DMA/DMC/DMG
<i>Dimethylamine solution (greater than 55% but not greater than 65%)</i>	7	3	124–40–3	DMC	DMA/DMG/DMY
<i>2,6-Dimethylaniline</i>	9		87–62–7	DMM	DDL
<i>Dimethylbenzene, see Xylenes</i>		2	1330–20–7		XLX/XLM/XLO/XLP
<i>Dimethylcyclosiloxane hydrolyzate</i>	34		* 541–05–9	DXZ.	
<i>N,N-Dimethylcyclohexylamine</i>	7		98–94–2	DXN.	
<i>Dimethyl disulfide (alternately disulphide)</i>	0	1, 2, 3	624–92–0	DSK.	
<i>Dimethyldodecylamine, see N,N-Dimethyldodecylamine</i>	7		112–18–5		DDY
<i>N,N-Dimethyldodecylamine</i>	7		112–18–5	DDY.	
<i>Dimethylethanamine</i>	8		108–01–0	DMB.	
<i>Dimethyl ether</i>	41		115–10–6	DIM.	
<i>Dimethylformamide</i>	10	2	68–12–2	DMF.	
<i>Dimethyl furan</i>	41		625–86–5	DFU.	
<i>Dimethyl glutarate</i>	34		1119–40–0	DGT.	
<i>Dimethyl hydrogen phosphite</i>	34	2	868–85–9	DPI.	
<i>Dimethyl naphthalene sulfonic (alternately sulphonic) acid, sodium salt solution.</i>	34	2	27178–87–6	DNS.	
<i>Dimethyl octanoic acid</i>	4		29662–90–6	DMO.	
<i>Dimethyl phthalate</i>	34		131–11–3	DTL.	
<i>Dimethylpolysiloxane, see Polydimethylsiloxane</i>			9016–00–6	DMP.	
<i>2,2-Dimethylpropane-1,3-diol (molten or solution)</i>	20	3	126–30–7	DDI.	
<i>Dimethyl succinate</i>	34		106–65–0	DSE.	
<i>Dinitrotoluene (molten)</i>	42	3	121–14–2	DNM	DNL/DNU/DTT
<i>Dinonyl phthalate, see Dialkyl (C7–C13) phthalates</i>			84–76–4	DIF	DAH
<i>Diocetyl phthalate, see Dialkyl (C7–C13) phthalates</i>			117–84–0	DOP	DAH (DIE/DIO)
<i>1,4-Dioxane</i>	41		123–91–1	DOX.	
<i>Dipentene</i>	30		138–86–3	DPN.	
<i>Diphenyl</i>	32		92–52–4	DIL.	
<i>Diphenylamine (molten)</i>	9		122–39–4	DAG	DAM
<i>Diphenylamine, reaction product with 2,2,4-trimethylpentene</i>	9		68921–45–9	DAK.	

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Diphenylamines, alkylated	9	.....	68921-45-9	DAJ.	
Diphenyl/Diphenyl ether mixtures	33	.....	8004-13-5	DDO.	
Diphenyl ether	41	.....	101-84-8	DPE.	
<i>Diphenyl ether/Biphenyl ether mixture, see</i> Diphenyl/Diphenyl ether mixture .....	.....	.....	8004-13-5	.....	DDO
Diphenyl ether/Diphenyl phenyl ether mixture	41	.....	8004-13-5	DOB.	
Diphenylmethane diisocyanate	12	2	101-68-8	DPM.	
<i>Diphenyl oxide, see</i> Diphenyl ether .....	.....	.....	101-84-8	.....	DPE
Diphenylol propane-Epichlorohydrin resins	0	1	25068-38-6	DPR.	
Di-n-propylamine	7	.....	142-84-7	DNA	DIA
Dipropylene glycol	40	.....	25265-71-8	DPG.	
<i>Dipropylene glycol butyl ether, see</i> Poly (2-8)alkylene glycol monoalkyl (C1-C6) ether.	.....	.....	29911-28-2	DBG	PAG
Dipropylene glycol dibenzoate	34	.....	94-51-9	DGY.	
<i>Dipropylene glycol methyl ether, see</i> Poly(2-8)alkylene glycol monoalkyl (C1-C6) ether.	.....	.....	34590-94-8	DPY	PAG
Distillates, flashed feed stocks	33	.....	8002-05-9	DFF.	
Distillates, straight run	33	.....	68814-87-9	DSR.	
Di-tert-butyl phenol	21	.....	.....	DBF	DBT/DBV/DBW
2,4-Di-tert-butyl phenol	21	.....	96-76-4	DBV	DBF/DBT/DBW
2,6-Di-tert-butyl phenol	21	.....	128-39-2	DBW	DBF/DBT/DBV
Dithiocarbamate ester (C7-C35)	34	.....	.....	DHO.	
Ditridecyl adipate	34	.....	16958-92-2	DTY.	
<i>Ditridecyl phthalate, see</i> Dialkyl (C7-C13) phthalate .....	.....	.....	119-06-2	DTP	DAH
<i>Diundecyl phthalate, see</i> Dialkyl (C7-C13) phthalates .....	.....	.....	3648-20-2	DUP	DAH
<i>Dodecane (all isomers), see</i> n-Alkanes (C10+) (all isomers) .....	.....	.....	13475-82-6	DOF	ALV (ALJ/DOC)
tert-Dodecanethiol	20	2	25103-58-6	DDL	LRM
Dodecene (all isomers)	30	3	25378-22-7	DOZ	DDC/DOD
1-Dodecene, see Dodecene (all isomers)	30	.....	.....	DDC	DOZ
<i>Dodecanol (all isomers), see</i> Dodecyl alcohol (all isomers) .....	.....	2	112-53-8	DDN	LAL
2-Dodecenylsuccinic acid, dipotassium salt solution	34	.....	57195-28-5	DSP.	
Dodecyl alcohol (all isomers)	20	2	112-53-8	DDN	ASK/ASY/LAL
Dodecylamine/Tetradecylamine mixture	7	2	* 124-22-1	DTA.	
<i>Dodecylbenzene, see</i> Alkyl (C9+) benzenes .....	.....	.....	123-01-3	DDB	AKB
Dodecylbenzenesulfonic (alternately Dedecylbenzenesulphonic) acid	0	1, 2	27176-87-0	DSA.	
Dodecyltrimethylamine/Tetradecyltrimethylamine mixture	7	.....	* 112-18-5	DOT.	
Dodecyl diphenyl ether disulfonate (alternately disulphonate) solution	43	.....	25167-32-2	DTA.	
Dodecyl hydroxypropyl sulfide (alternately sulphide)	0	1	67124-09-8	DOH.	
n-Dodecyl mercaptan	21	.....	112-55-0	DBT.	
Dodecyl methacrylate	14	.....	142-90-5	DDM.	
Dodecyl/Octadecyl methacrylate mixture	14	.....	* 142-90-5	DOM	DDM
Dodecyl/Pentadecyl methacrylate mixture	14	.....	* 142-90-5	DDP.	
Dodecyl phenol	21	.....	27193-86-8	DOL.	
Dodecyl xylene	32	.....	66697-27-6	DXY.	
Drilling brines (containing Calcium, Potassium or Sodium salts)	43	.....	.....	DRL	DRB/DRS
Drilling brines (containing Zinc salts)	43	.....	.....	DZB	DRB
Drilling brines, including: Calcium bromide solution, Calcium chloride solution and Sodium chloride solution.	43	3	.....	.....	DRS/DRL
Drilling mud (low toxicity) (if flammable or combustible)	33	.....	.....	DRO	DRM/DRN/DRP
Drilling mud (low toxicity) (if non-flammable or non-combustible)	43	.....	.....	DRP	DRM/DRN/DRO
Epichlorohydrin	17	.....	106-89-8	EPC.	
Epoxy resin	16	.....	.....	EPN.	
<i>ETBE, see</i> Ethyl tert-butyl ether .....	.....	.....	637-92-3	.....	EBE
Ethane	31	.....	74-84-0	ETH.	
Ethanolamine	8	.....	141-43-5	MEA.	
<i>2-Ethoxyethanol, see</i> Ethylene glycol monoalkyl ethers .....	.....	.....	110-80-5	EEO	EGC (EGE)
2-Ethoxyethyl acetate	34	2	111-15-9	EEA	EGA
Ethoxylated alkoxy alkyl amine	8	.....	68155-39-5	ELM.	
<i>Ethoxylated alcohols, C11-C15, see</i> alcohol polyethoxylates .....	.....	.....	9002-92-0	.....	AEA/AEB/AED/AET/APV/APW/APX
Ethoxylated long-chain (C16+) alkoxyalkylamine	8	.....	.....	ELA.	
Ethoxylated tallow alkyl amine	7	.....	61791-26-2	TAY	TAG/TAR
Ethoxylated tallow alkyl amine, glycol mixture	7	.....	.....	TAG	TAR/TAY
Ethoxylated tallow amine (≤ 95%)	7	3	61791-26-2	TAR	TAG/TAY
<i>Ethoxy triglycol, see</i> Poly (2-8)alkylene glycol monoalkyl (C1-C6) ether .....	.....	.....	112-50-5	ETG	PAG (ETR/TGE)
Ethoxy triglycol (crude)	40	.....	112-50-5	ETR.	
Ethyl acetate	34	2	141-78-6	ETA.	
Ethyl acetoacetate	34	.....	141-97-9	EAA.	
Ethyl acrylate	14	2	140-88-5	EAC.	
Ethyl alcohol	20	2	64-17-5	EAL.	
Ethylamine	7	2	75-04-7	EAM	EAN/EO
Ethylamine solution (72% or less)	7	3	75-04-7	EAN	EAM/EO
Ethyl amyl ketone	18	.....	106-68-3	EAK	ELK
Ethylbenzene	32	.....	100-41-4	ETB.	
Ethyl butanol	20	.....	97-95-0	EBT.	
N-Ethylbutylamine	7	.....	13360-63-9	EBA.	
Ethyl tert-butyl ether	41	2	637-92-3	EBE.	
Ethyl butyrate	34	.....	105-54-4	EBR.	
Ethyl chloride	36	.....	75-00-3	ECL.	
Ethyl cyclohexane	31	.....	1678-91-7	ECY.	
N-Ethylcyclohexylamine	7	.....	5459-93-8	ECC.	

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
2-Ethyl-2-(2,4-dichlorophenoxy) acetate	34		533-23-3	EDY.	
2-Ethyl-2-(2,4-dichlorophenoxy) propionate	34		58048-39-8	EDP.	
S-Ethyl dipropylthiocarbamate	34	3	759-94-4	ECB.	
Ethylene	30		74-85-1	ETL.	
Ethyleneamine EA 1302	7	2	593-67-9	EMX.	
Ethylene carbonate	34		96-49-1	ECR.	
Ethylene chlorohydrin	20		107-07-3	ECH.	
Ethylene cyanohydrin	20	2	109-78-4	ETC.	
Ethylenediamine	7	2	107-15-3	EDA	EMX
Ethylenediaminetetraacetic acid/tetrasodium salt solution	43		64-02-8	EDS.	
Ethylene dibromide	36		106-93-4	EDB.	
Ethylene dichloride	36	2	107-06-2	EDC.	
Ethylene glycol	20	2	107-21-1	EGL	EAG
Ethylene glycol acetate	34		542-59-6	EGO.	
Ethylene glycol butyl ether, see Ethylene glycol monoalkyl ethers			111-76-2	EGM	EGC
Ethylene glycol tert-butyl ether, see Ethylene glycol monoalkyl ethers			7580-85-0	EGG	EGC
Ethylene glycol butyl ether acetate	34		112-07-2	EMA.	
Ethylene glycol diacetate	34		111-55-7	EGY.	
Ethylene glycol dibutyl ether	40		112-48-1	EGB.	
Ethylene glycol ethyl ether, see Ethyl glycol monoalkyl ethers			110-80-5	EGE	EGC/EEO
Ethylene glycol ethyl ether acetate, see 2-Ethoxyethyl acetate		2	111-15-9	EGA	EEA
Ethylene glycol hexyl ether, see Ethylene glycol monoalkyl ethers			112-25-4	EGH	EGC
Ethylene glycol isobutyl ether, see Ethylene glycol monoalkyl ethers			224-658-5		EGC (EGG/EGM)
Ethylene glycol isopropyl ether, see Ethylene glycol monoalkyl ethers			109-59-1	EGI	EGC
Ethylene glycol methyl butyl ether, see Ethylene glycol monoalkyl ethers			13343-98-1	EMB	EGC
Ethylene glycol methyl ether, see Ethylene glycol monoalkyl ethers			109-86-4	EME	EGC
Ethylene glycol methyl ether acetate	34		110-49-6	EGT.	
Ethylene glycol monoalkyl ethers	40	2		EGC.	
Including:					
Ethylene glycol butyl ether	40		111-76-2		
Ethylene glycol tert-butyl ether	40		7580-85-0		
Ethylene glycol ethyl ether	40		111-15-9		
Ethylene glycol hexyl ether	40		112-25-4		
Ethylene glycol isobutyl ether	40		224-658-5		
Ethylene glycol isopropyl ether	40		109-59-1		
Ethylene glycol methyl ether	40		109-86-4		
Ethylene glycol methyl butyl ether	40		13343-98-1		
Ethylene glycol propyl ether	40		2807-30-9		
Ethylene glycol phenyl ether	40		122-99-6	EPE.	
Ethylene glycol phenyl ether/Diethylene glycol phenyl ether mixture	40		122-99-6/104 68 7	EDX.	
Ethylene glycol propyl ether, see Ethylene glycol monoalkyl ethers			2807-30-9	EGP	EGC/EGI/EGN
Ethylene glycol n-propyl ether, see Ethylene glycol monoalkyl ethers			2807-30-9	EGN	EGC (EGI/EGP)
Ethylene glycol (>75%)/Sodium alkyl carboxylates/borax mixture	20			EBX.	
Ethylene glycol (>85%)/Sodium alkyl carboxylates mixture	20			ESX.	
Ethylene oxide	0	1	75-21-8	EOX.	
Ethylene oxide/Propylene oxide mixture	16		75-21-8/75-56-9	EPF	EPM
Ethylene oxide/Propylene oxide mixture with an Ethylene oxide content not more than 30% by mass.	16	3	75-21-8/75-56-9	EPM	EPF
Ethylene-Propylene copolymer (in liquid mixtures)	31		9010-79-1	EPY.	
Ethylene-Vinyl acetate copolymer (emulsion)	43		24937-78-8	ECV.	
Ethyl ether, see Diethyl ether			60-29-7		EET
Ethyl-3-ethoxypropionate	34		763-69-9	EET.	
2-Ethylhexaldehyde, see Octyl aldehydes			123-05-7	EHA	OAL (OLX)
2-Ethylhexanoic acid, see Octanoic acid (all isomers)			149-57-5	EHO	OAY (OAA)
2-Ethylhexanol, see Octanol			104-76-7	EHX	OCA (OTA)
2-Ethylhexyl acrylate	14		103-11-7	EAI.	
2-Ethylhexylamine	7		104-75-6	EHM.	
Ethyl hexyl phthalate	34		117-81-7	EHE.	
Ethyl hexyl tallate	34		68334-13-4	EHT.	
2-Ethyl-2-(hydroxymethyl) propane-1,3-diol (C8-C10) ester	34		77-99-6	EHD.	
Ethyl lactate	34		97-64-3	ELT.	
Ethylidene norbornene	30	2	16219-75-3	ENB.	
Ethyl methacrylate	14		97-63-2	ETM.	
N-Ethylmethylallylamine	7		18328-90-0	EML.	
Ethyl propionate	34		105-37-3	EPR.	
2-Ethyl-3-propylacrolein	19	2	645-62-5	EPA.	
2-Ethyl-6-methyl-N-(1'-methyl-2-methoxyethyl)aniline	9		51219-00-2	EEM.	
o-Ethyl phenol	21		90-00-6	EPL.	
Ethyl toluene	32		25550-14-5	ETE.	
Fatty acid methyl esters	34	3	67762-38-3	FME.	
Fatty acids (C8-C10)	34	3	* 124-07-2	FDS.	
Fatty acids (C12+)	34	3	* 143-07-7	FDT	FAB/FAD/FAI/FDI
Fatty acids (saturated, C13+)	34		700041-79-8	FAB	FAD
Fatty acids (saturated, C14+), see Fatty acids (saturated, C13+)			700041-79-8	FAD	FAB
Fatty acids (C16+)	34	3	* 57-10-3	FDI.	
Fatty acids, essentially linear (C6-C18) 2-ethylhexyl ester	34	2, 3		FAE.	
Ferric chloride solution	1		7705-08-0	FCS	FCL
Ferric hydroxyethylethylenediaminetriacetic acid, trisodium salt solution	43	2		FHX	STA
Ferric nitrate/Nitric acid solution	3	2	7782-61-8	FNN.	
Fish oil, see Oil, edible: Fish		2	8016-13-5		OFS (AFN)

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Fish protein concentrate (containing 4% or less formic acid)	4	.....	.....	FPC.	
Fish silage protein concentrate (containing 4% or less formic acid)	4	.....	.....	FSC.	
Fish solubles (<i>water based fish meal extracts</i>)	43	.....	.....	FSO.	
Fluorosilicic acid (20–30%) in water solution	1	3	16961–83–4	FSK	FSJ/FSL/HFS
Fluorosilicic acid (30% or less)	1	.....	16961–83–4	FSJ	FSK/FSL/HFS
Formaldehyde (50% or more), Methanol mixtures	19	2	50–00–0	MTM.	
Formaldehyde solutions (37%–50%)	19	2	50–00–0	FMS	FMG/FMR
Formaldehyde solutions (45% or less)	19	2, 3	50–00–0	FMR	FMG/FMS
Formamide	10	.....	75–12–7	FAM.	
Formic acid	4	2	64–18–6	FMA	FMB
Formic acid (85% or less)	4	2	64–18–6	FMB	FMA
Formic acid (over 85%)	4	2, 3	64–18–6	FMD.	
Formic acid mixture (containing up to 18% Propionic acid and up to 25% Sodium formate).	4	2, 3	64–18–6	FMC	FMA/FMB
Fructose solution	43	.....	57–48–7	FTS	FRT
Fumaric adduct of Rosin, water dispersion	43	.....	65997–04–8	FAR.	
<i>Fuming sulfuric</i> (alternately <i>sulphuric</i>) acid, <i>see</i> Oleum .....	.....	2	8014–95–7	.....	
Furfural	19	.....	98–01–1	FFA.	
Furfuryl alcohol	20	2	98–00–0	FAL.	
<i>Gas oil, cracked, see</i> Oil, misc.: Gas, cracked .....	.....	.....	64741–62–4	.....	GOC
Gasoline blending stock, alkylates	33	.....	64741–64–6	GAK.	
Gasoline blending stock, reformates	33	.....	8006–61–9	GRF.	
Gasolines:					
Automotive (containing not more than 4.23 grams lead per gal.)	33	.....	86290–81–5	GAT.	
Aviation (containing not more than 4.86 grams lead per gal.)	33	.....	.....	GAV	AVA
Casinghead (<i>natural</i>)	33	.....	68425–31–0	GCS.	
Polymer	33	.....	8006–61–9	GPL.	
Straight run	33	.....	68606–11–1	GSR.	
<i>Gasolines: Pyrolysis (containing Benzene), see</i> Pyrolysis gasoline (con- taining Benzene).	.....	.....	68477–58–7	GPY	PYG
Glucitol/Glycerol blend propoxylated (containing less than 10% amines)	40	3	.....	GGA.	
Glucitol/Glycerol blend propoxylated (containing 10% or more amines)	40	.....	.....	GGB.	
Glucose solution	43	.....	50–99–7	GLS	DTS
Glutaraldehyde solutions (50% or less)	19	.....	111–30–8	GTA.	
Glycerine	20	2	56–81–5	GCR.	
Glycerine (83%)/Dioxanedimethanol (17%) mixture	20	.....	.....	GDN	GDM
<i>Glycerol, see</i> Glycerine .....	.....	2	56–81–5	.....	GCR
Glycerol ethoxylated	40	.....	31694–55–0	GXA.	
Glycerol monooleate	20	.....	25496–72–4	GMO.	
Glycerol polyalkoxylate	40	.....	700038–65–9	GPA.	
Glycerol propoxylated	40	3	25791–96–2	GXP.	
Glycerol, propoxylated and ethoxylated	40	3	9082–00–2	GXE.	
Glycerol/Sucrose blend propoxylated and ethoxylated	40	3	.....	GSB.	
Glyceryl triacetate	34	.....	102–76–1	GCT.	
Glycidyl ester of C10 trialkyl acetic acid	34	.....	.....	GLU	GLT
<i>Glycidyl ester of tertiary carboxylic acid, see</i> Glycidyl ester of C10 trialkyl acetic acid.	.....	.....	.....	GLT	GLU
<i>Glycidyl ester of tridecyl acetic acid, see</i> Glycidyl ester of C10 trialkyl acetic acid.	.....	.....	.....	GLT	GLU
<i>Glycidyl ester of Versatic acid, see</i> Glycidyl ester of C10 trialkyl acetic acid	.....	.....	.....	GLT	GLU
Glycine, sodium salt solution	7	.....	56–40–6	GSS.	
<i>Glycol diacetate, see</i> Ethylene glycol diacetate .....	.....	.....	111–55–7	.....	EGY
Glycol mixture, crude	20	.....	107–21–1	GMC.	
<i>Glycol triacetate, see</i> Glyceryl triacetate .....	.....	.....	102–76–1	.....	GCT
Glycolic acid solution (70% or less)	4	3	79–14–1	GLC.	
Glyoxal solution (40% or less)	19	3	107–22–2	GOS.	
Glyoxylic acid solution (50% or less)	4	3	298–12–4	GAC.	
Glyphosate solution (not containing surfactant)	7	.....	1071–83–6	GIO	RUP
<i>Grape Seed Oil, see</i> Oil, edible: Grape seed .....	.....	.....	8024–22–4	.....	
<i>Groundnut oil, see</i> Oil, edible: Groundnut .....	.....	.....	8002–03–7	.....	OGN (VEO)
<i>Hazelnut oil, see</i> Oil, edible: Hazelnut .....	.....	.....	84012–21–5	.....	OHN (VEO)
<i>Heptadecane (all isomers), see</i> n-Alkanes (C10+) (all isomers) .....	.....	.....	629–78–7	.....	ALV (ALJ)
<i>Heptane (all isomers), see</i> Alkanes (C6–C9) .....	.....	.....	142–82–5	HMX	ALK(HPI/HPT)
n-Heptanoic acid	4	.....	111–14–8	HEN	HEP
Heptanol (all isomers)	20	3	111–70–6	HTX	HTN
Heptene (all isomers)	30	2, 3	592–76–7	HPX	THE
Heptyl acetate	34	.....	112–06–1	HPE.	
<i>Heptylbenzenes, see</i> Alkyl (C5–C8) benzenes .....	.....	.....	1078–71–3	.....	AKD
<i>Herbicide (C15–H22–NO2–Cl), see</i> Metolachlor .....	.....	.....	51218–45–2	.....	MCO
<i>Hexadecanol (Cetyl alcohol), see</i> Alcohols (C13+) .....	.....	.....	36653–82–4	.....	ALY (ASY/AYL)
1-Hexadecylnaphthalene/1,4-bis-(Hexadecyl)naphthalene mixture	32	.....	* 56388–47–7	HNH	HNI
1-n-Hexadecylnaphthalene (90%)/1,4-di-n-(Hexadecyl)naphthalene (10%)	32	.....	* 56388–47–7	HNI	HNH
<i>Hexaethylene glycol, see</i> Polyethylene glycol .....	.....	.....	2615–15–8	HMG	PEG
1,3,5-Hexahydrotriethanol-1,3,5-triazine solution	9	.....	.....	HES.	
Hexahydro-1,3,5-trimethyl-1,3,5-triazine solution (45% or less)	9	.....	.....	HET.	
Hexamethylene diisocyanate	12	.....	822–06–0	HMS	HDI
Hexamethylene glycol	20	.....	629–11–8	HMG	HXG
Hexamethylenediamine (molten)	7	3	124–09–4	HME	HMD/HMC
Hexamethylenediamine adipate (50% in water)	43	.....	15511–81–6	HAM	HAN
Hexamethylenediamine adipate solution	43	.....	15511–81–6	HAN	HAM

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Hexamethylenediamine solution	7		124-09-4	HMC	HMD/HME
Hexamethyleneimine	7		111-49-9	HMI	
Hexamethylenetetramine solutions	7		100-97-0	HTS	HMT
Hexane (all isomers), see Alkanes (C6–C9)		2	110-54-3	HXS	ALK (IHA/HXA)
1,6-Hexanediol, distillation overheads	4	2, 3	629-11-8	HDO	
Hexanoic acid	4		142-62-1	HXO	
Hexanol	20		111-27-3	HXM	HEW/HEZ/HXN
Hexene (all isomers)	30	2, 3	592-41-6	HEX	HXE/HXT/HXU/HXV/MPN/MTN
Hexyl acetate	34		142-92-7	HAE	
Hexylbenzenes, see Alkyl (C5–C8) benzenes			1077-16-3		AKD
Hexylene glycol, see Hexamethylene glycol			107-41-5	HXG	HMG
Hog grease, see Lard			61789-99-9		LRD
Hydrochloric acid	1		7647-01-0	HCL	
Hydrofluorosilicic acid (25% or less), see Fluorosilicic acid (30% or less)			16961-83-4		FSJ(FSK/FSL/HFS)
bis(Hydrogenated tallow alkyl)methyl amines	7		61788-63-4	HTA	
Hydrogen peroxide solutions (over 8% but not more than 60% by mass)	0	1, 3	7722-84-1	HPN	HPO/HPS
Hydrogen peroxide solutions (over 60% but not more than 70% by mass)	0	1, 3	7722-84-1	HPS	HPN/HPO
Hydrogenated starch hydrolysate	0	1, 3	68425-17-2	HSH	
2-Hydroxyethyl acrylate	14	2	818-61-1	HAI	
N-(Hydroxyethyl)ethylenediamine triacetic acid, trisodium salt solution	43		207386-87-6	HET	
N,N-bis(2-Hydroxyethyl) oleamide	10		93-83-4	HOO	
2-Hydroxy-4-(methylthio)butanoic acid	4		583-91-5	HBA	
Hydroxyl terminated polybutadiene, see Polybutadiene, hydroxyl terminated			69102-90-5		PHT
alpha-Hydro-omega-hydroxytetradeca(oxytetramethylene)	40			HTO	PYS/PYT
Illipe oil, see Oil, edible: Illipe			68956-68-3		ILO (VEO)
Isoamyl alcohol	20	3	123-51-3	IAA	AAI/AAL/AAN/APM/ASE
Isobutyl alcohol	20	2, 3	78-83-1	IAL	BAN/BAS/BAT/BAY
Isobutyl formate	34	3	542-55-2	BFI	BFN/BFO
Isobutyl methacrylate	14	3	97-86-9	BMI	BMH/BMN
Isodecaldehyde	19		3085-26-5		
Isononylaldehyde (crude)	19		5435-64-3	INC	
Isophorone	18	2	78-59-1	IPH	
Isophoronediamine	7		2855-13-2	IPI	
Isophorone diisocyanate	12		4089-71-9	IPD	
Isoprene (all isomers)	30		78-79-5	IPR	
Isoprene (part refined)	30		78-79-5	IPS	IPR/ISC
Isoprene concentrate (Shell)	30		78-79-5	ISC	
Isopropanolamine	8	3	78-96-6	MPA	IPF/PAX/PLA
Isopropanolamine solution	8	3	78-96-6	PAI	MPA/PAY/PLA/PRG
Isopropyl acetate	34	3	108-21-4	IAC	PAT
Isopropyl alcohol	20	2, 3	67-63-0	IPA	IPB/PAL
Isopropylamine	7	3	75-31-0	IPP	IPO/IPQ/PRA
Isopropylamine (70% or less) solution	7	3	75-31-0	IPQ	IPO/IPQ/PRA
Isopropylbenzene, see Alkyl (C3–C4) benzenes			98-82-8		AKC(CUM/PBY/PBZ)
Isopropylcyclohexane	31	3	696-29-7	IPX	
Isopropyl ether	41	3	108-20-3	IPE	PRL/PRN
Jatropha oil, see Oil, misc.: Jatropha			88-6-7		JTO
Jet fuels:				JPO	JPT/JPF/JPV
JP-4	33		50815-00-4	JPF	
JP-5	33		8008-20-6	JPV	
JP-8	33		8008-20-6	JPE	
Kaolin clay solution/suspension	43		1332-58-7	KLC	KLS
Kaolin slurry	43		1332-58-7	KLS	KLC
Kerosene	33		8008-20-6	KRS	
Ketone residue	18			KTR	
Kraft black liquor	5		66071-92-9	KBL	KPL
Kraft pulping liquors (free alkali content 3% or more) (Black, Green, or White).	5		68131-33-9	KPL	KBL
Lactic acid	0	1, 2	79-33-4	LTA	
Lactonitrile solution (80% or less)	37	3	78-97-7	LNI	
Lard	34		61789-99-9	LRD	OLD
Latex, ammonia (1% or less)-inhibited	30	3	98-82-8	LTX	
Latex: Carboxylated Styrene-Butadiene copolymer; Styrene-Butadiene rubber.	43	3	98-82-8	LCC	LCB/LSB
Latex, liquid synthetic	43		98-82-8	LLS	LCB/LCC/LSB
Lauric acid	34		143-07-7	LRA	
Lauric acid methyl ester/Myristic acid methyl ester mixture	34		111-82-0	LMM	
Lauryl polyglucose, see Alkyl (C12–C14) polyglucoside solution (55% or less).			59122-55-3		AGM/LAP
Lauryl polyglucose (50% or less), see Alkyl (C12–C14) polyglucoside solution (55% or less).			59122-55-3	LAP	AMG
Lecithin	34		8002-43-5	LEC	
Lignin liquor	43		9005-53-2	LNL	ALG/CLL/LGA/LGM/LSL/SHC/SHQ/SLP
Ligninsulfonic (alternately Ligninsulphonic) acid, magnesium salt solution	43	3	9009-75-0	LGM	LGA/LNL/LSL
Ligninsulfonic (alternately Ligninsulphonic) acid, sodium salt solution, see Lignin liquor or Sodium lignosulfonate (alternately lignosulphonate) solution.			8061-51-6	LGA	LNL or SLG
d-Limonene, see Dipentene			5989-27-5		DPN

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Linear alkyl (C12–C16) propoxyamine ethoxylate	8		68213–26–3	LPE.	
Linseed oil, <i>see</i> Oil, misc.: Linseed			8001–26–1		OLS
Liquefied Natural Gas, <i>see</i> Methane			74–82–8	LNK	MTH
Liquid chemical wastes	0	1, 3		LCW.	
Liquid Streptomyces solubles	43				
Long-chain alkaryl polyether (C11–C20)	41			LCP.	
Long-chain alkaryl sulfonic (alternately sulphonic) acid (C16–C60)	0	1		LCS.	
Long-chain alkyl amine	7		61789–79–5	LAA.	
Long-chain alkylphenate/Phenol sulfide (alternately sulphide) mixture	21			LPS.	
Long-chain alkylphenol (C14–C18)	21			LCA.	
Long-chain alkylphenol (C18–C30)	21			LCK.	
Long-chain alkyl (C13+) salicylic acid	4		69–72–7	LAS.	
Long-chain polyetheramine in alkyl (C2–C4)benzenes	7			LCE.	
L-Lysine solution (60% or less)	43	3	25988–63–0	LYS.	
Magnesium chloride solution	0	1, 2	7786–30–3	MGL.	
Magnesium hydroxide slurry	5		1309–42–8	MHS.	
Magnesium long-chain alkaryl sulfonate (alternately sulphonate) (C11–C50)	34		* 115254–47–2	MAS	MSE
Magnesium long-chain alkyl phenate sulfide (alternately sulphide) (C8–C20)	34			MPS.	
Magnesium long-chain alkyl salicylate (C11+)	34			MLS.	
Magnesium nitrate solution (66.7%)	43		13446	MGP	MGN/MGO
Magnesium nonyl phenol sulfide (alternately sulphide), <i>see</i> Magnesium long-chain alkyl phenate sulfide (alternately sulphide) (C8–C20).					MPS
Magnesium sulfonate (alternately sulphonate), <i>see</i> Magnesium long-chain alkaryl sulfonate (alternately sulphonate) (C11–C50).			71786–47–5	MSE	MAS
Maleic anhydride	11		108–31–6	MLA.	
Maleic anhydride/sodium allylsulphonate copolymer solution	11				PHN (CFO/CRL/CRO/CRS/CSO)
Maltitol solution	0	1, 3	585–88–6	MTI.	
Mango kernel oil, <i>see</i> Oil, edible: Mango kernel			90063–86–8		MKO (VEO)
Mercaptobenzothiazol, sodium salt solution	5		149–30–4	SMB	MBT
2-Mercaptobenzothiazol (in liquid mixture)	5		149–30–4	BTM	SMD
Mesityl oxide	18	2	141–79–7	MSO.	
Metam sodium solution	7		137–42–8	MSS	SMD
Methacrylic acid	4		79–41–4	MAD.	
Methacrylic acid—Alkoxy poly(alkylene oxide) methacrylate copolymer, sodium salt aqueous solution (45% or less).	20	3	79–41–4	MAQ.	
Methacrylic resin in ethylene dichloride	14			MRD.	
Methacrylonitrile	15	2	126–98–7	MET.	
Methane	31		74–82–8	MTH	LNG
3-Methoxy-1-butanol	20		2517–43–3	MTX.	
3-Methoxybutyl acetate	34		4435–53–4	MOA.	
N-(2-Methoxy-1-methyl ethyl)-2-ethyl-6-methyl chloroacetanilide, <i>see</i> Metolachlor.	34		51218–45		MCO
1-Methoxy-2-propyl acetate	34		108–65–6	MXP.	
Methoxy triglycol, <i>see</i> Poly (2–8)alkylene glycol monoalkyl (C1–C6) ether			112–35–6	MTG	PAG (TGY)
Methyl acetate	34		79–20–9	MTT.	
Methyl acetoacetate	34		105–45–3	MAE.	
Methyl acetylene/Propadiene mixture	30		74–99–7	MAP.	
Methyl acrylate	14		96–33–3	MAM.	
Methyl alcohol	20	2	67–56–1	MAL.	
Methylamine solutions (42% or less)	7	3	74–89–5	MSZ.	
Methyl amyl acetate	34		7789–99–3	MAC.	
Methyl amyl alcohol	20		108–11–2	MAA	MIC
Methyl amyl ketone	18		110–43–0	MAK.	
N-Methylaniline	9	3	100–61–8	MAN.	
alpha-Methylbenzyl alcohol with Acetophenone (15% or less)	20	3	98–85–1	MBA.	
Methyl bromide	36		74–83–9	MTB.	
Methyl butanol, <i>see</i> the Amyl alcohols			71–41–0		AAI/AAL/AAN/APM/ASE/IAA
Methyl butenes, <i>see</i> Pentene (all isomers)			109–67–1		PTX (AMW/AMZ/PTE)
Methyl butenol	20		137–32–6	MBL.	
Methyl tert-butyl ether	41	2	1634–04–4	MBE.	
Methyl butyl ketone	18	2	591–78–6	MBB	MBK/MIK
Methyl 3-(3,5 di-tert-butyl-4-hydroxyphenyl) propionate crude melt	20		6386–38–5	MYP.	
Methylbutynol	20		137–32–6	MBY	MHB
3-Methyl butyraldehyde	19		590–86–3	MBR.	
Methyl butyrate	34		623–42–7	MBU.	
Methyl chloride	36		74–87–3	MTC.	
Methylcyclohexane	31		591–47–9	MCY.	
Methylcyclohexanemethanol (crude)	20		34885–03–5	MYH.	
Methylcyclopentadiene dimer	30		26472–00–4	MCK.	
Methylcyclopentadienyl manganese tricarbonyl	0	1, 3	12108–13–3	MCT	MCW
Methylcyclopentadienyl manganese tricarbonyl (60–70%) in mineral oil	0	1	12108–13–3	MCW	MCT
Methyl diethanolamine	8		105–59–9	MDE	MAB
Methyl ethyl ketone	18	2	78–93–3	MEK.	
2-Methyl-6-ethyl aniline	9		24549–06–2	MEN.	
Methyl formate	34		107–31–3	MFH.	
N-Methylglucamine solution	43	3	6284–40–8	MGC.	
2-Methylglutaronitrile	37		4553–62–2	MLN	MGN
2-Methylglutaronitrile with 2-Ethylsuccinonitrile (12% or less)	37	3		MGE	MLN

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Methyl heptyl ketone	18		821-55-6	MHK.	
2-Methyl-2-hydroxy-3-butyne	20		115-19-5	MHB	MBY
Methyl isoamyl ketone, <i>see</i> Methyl amyl ketone			110-12-0	MAJ	MAK
Methyl isobutyl carbinol, <i>see</i> Methyl amyl alcohol			108-11-2	MIC	MAA
Methyl isobutyl ketone	18		108-10-1	MIK	MBB/MBK
Methyl methacrylate	14		80-62-6	MMM.	
Methylene bridged isobutylene phenols	21		68610-06-0	MBP.	
Methylene chloride, <i>see</i> Dichloromethane			75-09-2		DCM
3-Methyl-3-methoxybutanol	20		56539-66-3	MXB.	
2-Methyl-5-ethyl pyridine	9		104-90-5	MEP.	
3-Methyl-3-methoxybutyl acetate	34		103429-90-9	MMB.	
Methyl naphthalene (molten)	32	3	90-12-0	MNA.	
Methylolurea	19		1000-82-4	MUS.	
2-Methyl pentane, <i>see</i> Hexane (all isomers)			107-83-5		HXS (ALK/HXA/IHA/NHX)
2-Methyl-1,5-pentanediamine	7		15520-10-2	MPM.	
2-Methyl-1-pentene, <i>see</i> Hexene (all isomers)			763-29-1	MPN	HEX (HXE/HXT/HXU/HXV/MTN)
4-Methyl-1-pentene, <i>see</i> Hexene (all isomers)			691-37-2	MTN	HEX (HXE/HXT/HXU/HXV/MPN)
Methyl tert-pentyl ether, <i>see</i> tert-Amyl methyl ether			994-05-8		AYE
2-Methyl-1,3-propanediol	20		78-26-2	MDL.	
Methyl propyl ketone	18		107-87-9	MKE.	
2-Methyl-5-ethylpyridine	9		104-90-5	MEP.	
Methylpyridine, <i>see</i> the Methylpyridines				MPQ	MPE/MPF/MPR
2-Methylpyridine	9	3	109-06-8	MPR	MPE/MPF/MPQ
3-Methylpyridine	9	3	109-99-6	MPE	MPF/MPQ/MPR
4-Methylpyridine	9	3	108-89-4	MPF	MPE/MPQ/MPR
N-Methyl-2-pyrrolidone	9	2	872-50-4	MPY.	
Methyl salicylate	34		119-36-8	MES.	
alpha-Methylstyrene	30		98-83-9	MSR.	
3-(Methylthio)propionaldehyde	19		3268-49-3	MTP.	
Metolachlor	34		51218-45-2	MCO.	
Microsilica slurry	43		69012-64-2	MOS.	
Milk	43		8049-98-7	MLK.	
Mineral spirits	33		64475-85-0	MNS.	
Mixed C4 Cargoes	30			MIX.	
Molasses	20		68476-78-8	MOL	MON
Molasses residue (from fermentation)	0	1	94114-07-5	MON	MOL
Molybdenum polysulfide (alternately polysulphide) long-chain alkyl dithiocarbamate complex.	0	1, 3	1317-33-5	MOP.	
Monochlorodifluoromethane	36		75-45-6	MCF.	
Monoethanolamine, <i>see</i> Ethanolamine			141-43-5	MEA.	
Monoethylamine, <i>see</i> Ethylamine			75-04-7		EAM (EAN/EAO)
Monoisopropanolamine, <i>see</i> Isopropanolamine			78-96-6		MPA (PLA/PLX)
Morpholine	7	2	110-91-8	MPL.	
Motor fuel anti-knock compound (containing lead alkyls)	0	1		MFA.	
MTBE, <i>see</i> Methyl tert-butyl ether			1634-04-4		MBE
Myrcene	30		123-35-3	MRE.	
Naphtha:					
Aromatic	33		64742-94-5	NAR.	
Coal tar solvent	33		8030-30-6	NCT.	
Heavy	33		64742-94-5	NAG.	
Paraffinic	33		8012-95-1	NPF.	
Petroleum	33		64742-94-5	PTN.	
Solvent	33		64742-94-5	NSV.	
Stoddard solvent	33		8052-41-3	NSS.	
Varnish Makers' and Painters'	33		8032-32-4	NVM.	
Naphthalene (molten)	32	3	91-20-3	NTM.	
Naphthalene crude (molten)	32		91-20-3	NCM	NAC/NCD
Naphthalene still residue	32	2	91-20-3	NSR.	
Naphthalene sulfonic (alternately sulphonie) acid, sodium salt solution	34		85-47-2	NSB	NSA
Naphthalene sulfonic (alternately sulphonie) acid-Formaldehyde copolymer, sodium salt solution.	0	1	85-47-2	NFS.	
Naphthenic acid	4		1338-24-5	NTI.	
Naphthenic acid, sodium salt solution	43		61790-13-4	NTS.	
Neodecanoic acid	4		26896-20-8	NEA	DCO/NAT
Nitrating acid (mixture of Sulfuric (alternately Sulphuric) and Nitric acids)	0	1	7697-37-2	NIA.	
Nitric acid (70% and over)	3	2, 3	7697-37-2	NCE	NAC/NCD
Nitric acid (less than 70%)	3	2	7697-37-2	NCD	NAC/NCE
Nitric Acid, <i>fuming</i> , <i>see</i> Nitric acid (70% and over)		1, 2, 3	7697-37-2		NCE
Nitric Acid, <i>red fuming</i> , <i>see</i> Nitric acid (70% and over)		1, 2, 3	52583-42-3		NCE
Nitriolacetic acid, trisodium salt solution	34	3	139-13-9	NCA.	
Nitrobenzene	42		98-95-3	NTB.	
<i>o</i> -Nitrochlorobenzene, <i>see</i> <i>o</i> -Chloronitrobenzene			88-73-3		CNO (CNP)
Nitroethane	42		79-24-3	NTE.	
Nitroethane (80%)/Nitropropane (20%)	42	2, 3		NNL	NNM/NNO/NPM/NPN/NPP/NTE
Nitroethane/1-Nitropropane (each 15% or more) mixture	42	2		NNO	NNL/NNM/NPM/NPN/NPP/NTE
Nitrogen	0	1	7727-37-9	NXX.	

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Nitrophenol (mixed isomers)	42		88-75-5	NPX	NIP/NPH
o-Nitrophenol (molten)	0	1, 2	88-75-5	NTP	NIP/NPH/NPX
Nitropropane (60%)/Nitroethane (40%) mixture	42			NNM	NNL/NNO/NPM/NPN/NPP/NTE
1-or 2-Nitropropane	42		108-03-2	NPM	NPN/NPP
o- or p-Nitrotoluenes	42	3	99-99-0	NIT	NIE/NTR/NTT
Nonane (all isomers), see Alkanes (C6–C9)			111-84-2	NAX	ALK (NAN)
Nonanoic acid (all isomers)	4		112-05-0	NNA	NAI/NIN
Nonanoic/Tridecanoic acid mixture	4			NAT	NAI/NIN/NNNA
Non-edible industrial grade palm oil, see Oil, misc.: Palm, non-edible industrial grade.			8002-75-3		OPB
Nonene (all isomers)	30	2	124-11-8	NOO	NNE/NON/OAM/OFX/OFY
Nonyl acetate	34		143-13-5	NAE	
Nonyl alcohol (all isomers)	20	2	143-08-8	NNS	ALR/DBC/NNI/NNN
Nonylbenzene, see Alkyl (C9+) benzenes			1081-77-2		AKB
Non-noxious Liquid Substance, (12) n.o.s. Cat OS	0	1		NOL	
Nonyl methacrylate monomer	14		2696-43-7	NMA	
Nonyl phenol	21		25154-52-3	NNP	
Nonyl phenol poly(4+)ethoxylate, see Alkyl (C7–C11) phenol poly(4–12) ethoxylate.			9016-45-9	NPE	APN
Nonyl phenol sulfide (alternately sulphide) (90% or less) solution, see Alkyl (C8–C40) phenol sulfide (alternately sulphide).			34992-00-2		AKS (NPS)
Nonylphenol (48–62%)/Phenol (42–48%)/Dinonylphenol (1–10%) mixture	21			NYL	
Noxious Liquid Substance, NF, (1) n.o.s. ("trade name" contains "principal components") Cat X.	0	1			
Noxious Liquid Substance, F, (2) n.o.s. ("trade name" contains "principal components") Cat X.	0	1			
Noxious Liquid Substance, NF, (3) n.o.s. ("trade name" contains "principal components") Cat X.	0	1			
Noxious Liquid Substance, F, (4) n.o.s. ("trade name" contains "principal components") Cat X.	0	1			
Noxious Liquid Substance, NF, (5) n.o.s. ("trade name" contains "principal components") Cat Y.	0	1			
Noxious Liquid Substance, F, (6) n.o.s. ("trade name" contains "principal components") Cat Y.	0	1			
Noxious Liquid Substance, NF, (7) n.o.s. ("trade name" contains "principal components") Cat Y.	0	1			
Noxious Liquid Substance, F, (8) n.o.s. ("trade name" contains "principal components") Cat Y.	0	1			
Noxious Liquid Substance, NF, (9) n.o.s. ("trade name" contains "principal components") Cat Z.	0	1			
Noxious Liquid Substance, F, (10) n.o.s. ("trade name" contains "principal components") Cat Z.	0	1			
Noxious Liquid Substance, (11) n.o.s. ("trade name" contains "principal components") Cat Z.	0	1			
Non-noxious Liquid Substance, (12) n.o.s. ("trade name" contains "principal components") Cat OS.	0	1		NOL	
Nutmeg butter oil, see Oil, edible: Nutmeg butter					ONB (VEO)
1-Octadecene, see the olefin or alpha-olefin entries			112-88-9		OAM/OFZ
1-Octadecanol, see Stearyl alcohol			112-92-5		SYL (ALY/ASY)
Octadecenoamide solution	10		3322-62-1	ODD	
Octadecanol (oleyl alcohol), see Alcohols (C13+)			143-28-2		ALY (AYL/ASY/OYL)
Octamethylcyclotetrasiloxane	34	3	556-67-2	OSA	
Octane (all isomers), see Alkanes (C6–C9)			111-65-9	OAX	ALK (IOO/OAN)
Octanoic acid (all isomers)	4		124-07-2	OAY	OAA/EHO
Octanol (all isomers)	20	2	111-87-5	OCX	EHX/OPA/OTA
Octene (all isomers)	30	2	111-66-0	OTX	OAM/OFZ/OFY/OFW/OTE
n-Octyl acetate	34		112-14-1	OAF	OAE
Octyl alcohol, see Octanol (all isomers)		2	111-87-5		OCX (EHX/IOA/OTA)
Octyl aldehydes	19		124-13-0	OAL	EHA/IOC/OLX
Octylbenzenes, see Alkyl (C5–C8) benzenes			2189-60-8		AKD
Octyl decyl adipate	34		110-29-2	ODA	
n-Octyl mercaptan	0		111-88-6	OME	
Octyl nitrates (all isomers), see Alkyl (C7–C9) nitrates		2	629-39-0	ONE	AKN
Octyl phenol	21		27193-28-8	OPH	
Octyl phthalate, see Dioctyl phthalate			117-84-0		DAH (DIE/DIO/DLK/DOP)
Offshore contaminated bulk liquid P	0			OBP	
Offshore contaminated bulk liquid S	0			OBS	
Oil, edible:					
Beechnut	34		481-39-0	OBN	VEO
Castor	34		8001-79-4	OCA	VEO
Cocoa butter	34		8002-31-1	OCB	VEO
Coconut	34	2	8001-31-8	OCC	VEO
Cod liver	34		8001-69-2	OCL	AFN
Corn	34		8001-30-7	OCO	VEO
Cottonseed	34		8001-29-4	OCS	VEO
Fish	34	2	8016-13-5	OFS	AFN
Grape seed	34		8024-22-4		
Groundnut	34		8002-03-7	OGN	VEO
Hazelnut	34		185630-72-2	OHN	VEO

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Illipe	34	.....	91770-65-9	ILO	VEO
Lard	34	.....	61789-99-9	OLD	AFN
Maize, see Oil, edible: Corn .....	.....	.....	8001-30-7	.....	OCO (VEO)
Mango kernel	34	3	90063-86-8	MKO.	
Nutmeg butter	34	.....	8008-45-5	ONB	VEO
Olive	34	.....	8001-25-0	OOL	VEO
Palm	34	2, 3	8002-75-3	OPM	VEO
Palm kernel	34	.....	8023-79-8	OPO	VEO
Palm kernel olein	34	.....	93334-39-5	PKO	VEO
Palm kernel stearin	34	.....	91079-14-0	PKS	VEO
Palm mid fraction	34	.....	91079-14-0	PFM	VEO
Palm olein	34	.....	93334-39-5	PON	VEO
Palm stearin	34	.....	91079-14-0	PMS	VEO
Peanut	34	.....	8002-03-7	OPN	VEO
Poppy	34	.....	8002-11-7	OPY	VEO
Poppy seed	34	.....	8002-11-7	OPS	VEO
Raisin seed	34	.....	8024-22-4	ORA	VEO
Rapeseed	34	.....	8002-13-9	ORP	VEO
Rapeseed (low erucic acid containing less than 4% free fatty acids)	34	3	8002-13-9	ORO	ORP/VEO
Rice bran	34	.....	68553-81-1	ORB	VEO
Safflower	34	.....	8001-23-8	OSF	VEO
Salad	34	.....	9083-41-4	OSL	VEO
Sesame	34	.....	8008-74-0	OSS	VEO
Shea butter	34	.....	194043-92-0	OSH	VEO
Soyabean	34	2	8001-22-7	OSB	VEO
Sunflower, see Oil, edible: Sunflower seed .....	.....	.....	8001-21-6	.....	OSN (VEO)
Sunflower seed	34	.....	8001-21-6	OSN	VEO
Tucum	34	.....	356065-49-1	OTC	VEO
Vegetable	34	.....	9083-41-4	OVG	VEO
Walnut	34	.....	8024-09-7	OWN	VEO
Oil, fuel:					
No. 1	33	.....	8008-20-6	OON.	
No. 1-D	33	.....	.....	OOD.	
No. 2	33	.....	68476-30-2	OTW.	
No. 2-D	33	.....	.....	OTD.	
No. 4	33	.....	68553-00-4	OFR.	
No. 5	33	.....	70892-11-4	OFV.	
No. 6	33	.....	68553-00-4	OSX.	
Oil, misc.:					
Acid mixture from soyabean, corn (maize) and sunflower oil refining	34	.....	.....	AOM.	
Aliphatic	33	.....	8052-41-3	OML.	
Animal	34	.....	68991-19-5	OMA	AFN
Aromatic	33	.....	6472-95-6	OMR.	
Camelina	34	.....	68956-68-3	OCI.	
Cashew nut shell (untreated)	34	.....	8007-24-7	OCN.	
Clarified	33	.....	64741-62-4	OCF.	
Coal	33	.....	8008-2-06	OMC.	
Coconut fatty acid	34	2	61788-47-4	CFA.	
Coconut, fatty acid methyl ester	34	.....	61788-59-8	OCM.	
Cotton seed oil, fatty acid	34	.....	8001-29-4	CFY.	
Crude	33	.....	8002-05-9	OFA.	
Diesel	33	.....	68334-30-5	ODS.	
Disulfide (alternately Disulphide)	0	1	624-92-0	ODI.	
Gas, cracked	33	.....	8006-61-9	GOC.	
Gas, high pour	33	.....	8006-61-9	OGP.	
Gas, low pour	33	.....	8006-61-9	OGL.	
Gas, low sulfur (alternately sulphur)	33	.....	8006-61-9	OGS.	
Heartcut distillate	33	.....	68131-77-1	OHD.	
Jatropha	34	3	88-6-7	JTO.	
Lanolin	34	.....	8006-54-0	OLL	AFN
Linseed	33	.....	8001-26-1	OLS.	
Lubricating	33	2	93572-43-1	OLB.	
Mineral	33	.....	8042-47-5	OMN.	
Mineral seal	33	.....	64742-46-7	OMS.	
Motor	33	.....	.....	OMT.	
Neatsfoot	33	.....	8002-64-0	ONF	AFN
Oiticica	34	.....	8016-35-1	OOI.	
Palm acid	34	.....	8002-75-3	PLM.	
Palm fatty acid distillate	34	.....	68440-15-3	PFD.	
Palm oil, fatty acid methyl ester	34	.....	91051-34-2	OPE.	
Palm kernel acid	34	.....	101403-98	OPK.	
Palm kernel fatty acid distillate	34	.....	68440-15-3	PNG.	
Palm, non-edible industrial grade	34	.....	8002-75-3	OPB.	
Penetrating	33	.....	64742-95-6	OPT.	
Perilla	34	.....	68132-21-8	OPR.	
Pilchard	34	.....	8016-13-5	OPL	AFN
Pine	33	.....	8002-09-3	OPI	PNL
Rapeseed fatty acid methyl esters	34	3	73891-99-3	ORP.	
Residual	33	.....	68476-33-5	ORL.	
Resin, distilled	30	3	8016-37-3	ORR.	

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Road	33		8052-42-4	ORD.	
Rosin	33		8002-16-2	ORN.	
Seal	34		64742-46-7	OSE.	
Soapstock	34		68952-95-4	OIS.	
Soyabean (epoxidized)	34		8013-07-8		OSC/EVO
Soyabean fatty acid methyl ester	34		68919-53-9		OST
Spindle	33		64742-54-7	OSD.	
Tall	34		8002-26-4	OTL	OTI/OTJ
Tall, crude	34	2	8002-26-4	OTI	OTJ/OTL
Tall, distilled	34	2	8002-26-4	OTJ	OTI/OTL
Tall, fatty acid	34	2	61790-12-3	OTT.	
Tall fatty acid (resin acids less than 20%)	34	2	61790-12-3	OTK	OTT
Tall pitch	34		08016-81-7	OTP.	
Transformer	33		64742-53-6	OTF.	
Tung	34		8001-20-5	OTG.	
Turbine	33			OTB.	
Used cooking oil	34			OUC	VEO
Used cooking oil (triglycerides, C16-C18, and C18 unsaturated)	34			OUT	VEO
Vacuum gas oil	33		64741-57-7	OVC.	
<i>Oleamide solution, see Octadecenoamide solution</i>			301-02-0		ODD
Olefin-Alkyl ester copolymer (molecular weight 2000+)	30			OCP.	
Olefin mixture (C7-C9) C8 rich, stabilized	30	3	25339-56-4	OFC	OFW/OFY/OFX
Olefin mixtures (C5-C7)	30	3	25264-93-1	OFY	OAM/OFX/OFW/OFX/OFZ
Olefin mixtures (C5-C15)	30	3	25264-93-1	OFY	OAM/OFX/OFW/OFX/OFZ
Olefins (C13+, all isomers)	30		85535-87-1	OFZ	OAM/OFW
alpha-Olefins (C6-C18) mixtures	30		592-41-6	OAM	OFX/OFW/OFX/OFY/OFZ
Oleic acid	4		112-80-1	OLA.	
Oleum	0	1, 2	8014-95-7	OLM	SAC/SFX
<i>Oleyl alcohol, see Alcohols (C13+)</i>			143-28-2	OYL	ALY (ASY)
Oleylamine	7		112-90-3	OLY.	
<i>Olive oil, see Oil, edible: Olive</i>			8001-25-0		OOL (VEO)
Orange juice (concentrated)	0	1, 3	68514-75-0	OJC	OJN
Orange juice (not concentrated)	0	1, 3	68514-75-0	OJN	OJC
Organomolybdenum amide	10		445409-27-8	OGA.	
<i>ORIMULSION, see Asphalt emulsion</i>					ASQ
Oxyalkylated alkyl phenol formaldehyde	33		9003-35-4	OPF.	
Oxygenated aliphatic hydrocarbon mixture	0	1, 3		OAH.	
<i>Palm acid oil, see Oil, misc.: Palm acid</i>		3	68440-15-3		PLM
<i>Palm fatty acid distillate, see Oil, misc.: Palm fatty acid distillate</i>		3			PFD
<i>Palm kernel acid oil, see Oil, misc.: Palm kernel acid</i>			101403-98		PNO
<i>Palm kernel acid oil, methyl ester, see Oil, misc.: Palm kernel acid, methyl ester.</i>					PNF
<i>Palm kernel oil, see Oil, edible: Palm kernel</i>			8023-79-8		OPO (VEO)
<i>Palm kernel oil fatty acid distillate, see Oil, misc.: Palm kernel fatty acid distillate.</i>					PNG
<i>Palm kernel olein, see Oil, edible: Palm kernel olein</i>		3	93334-39-5		PKO (VEO)
<i>Palm kernel stearin, see Oil, edible: Palm kernel stearin</i>		3			PKS (VEO)
<i>Palm mid fraction, see Oil, edible: Palm mid fraction</i>		3	91079-14-0		PFM (VEO)
<i>Palm oil, see Oil, edible: Palm</i>		2, 3	8002-75-3	OPM	VEO/OPE
<i>Palm oil fatty acid methyl ester, see Oil, misc.: Palm fatty acid methyl ester</i>		3			OPE
<i>Palm olein, see Oil, edible: Palm olein</i>		3	93334-39-5		PON (VEO)
<i>Palm stearin, see Oil, edible: Palm stearin</i>			91079-14-0		PMS (VEO)
Parachlorobenzotrifluoride	32		98-56-6	PBF.	
<i>Paraffin wax, see Waxes: Paraffin</i>		3	8002-74-2		WPF
<i>n-Paraffins (C10-C20), see n-Alkanes (C10+) all isomers</i>				PFN	ALJ
Paraldehyde	19		123-63-7	PDH.	
Paraldehyde-Ammonia reaction product	9			PRB.	
<i>Peanut, see Oil, edible: Peanut</i>			8002-03-7		OPN (VEO)
Pentachloroethane	36		76-01-7	PCE.	
Pentacosane (oxypropane-2,3-diyl)s	20		923-61-5	POY.	
<i>Pentadecanol, see Alcohols (C13+)</i>			629-76-5	PDC	ALY
1,3-Pentadiene	30		1574-41-0	PDE	PDN
1,3-Pentadiene (greater than 50%), Cyclopentene and isomers, mixtures	30	3	1574-41-0	PMM.	
<i>Pentaethylene glycol, see Polyethylene glycols</i>			4792-15-8		PEG
<i>Pentaethylene glycol methyl ether, see Poly (2-8)alkylene glycol monoalkyl (C1-C6) ether.</i>			23778-52-1		PAG
Pentaethylenhexamine	7		4067-16-7	PEN.	
Pentaethylenhexamine/Tetraethylenepentamine mixture	7			PEP.	
Pentane (all isomers)	31		109-66-0	PTY	IPT/PTA
Pentanoic acid	4		109-52-4	POC.	
<i>n-Pentanoic acid (64%)/2-Methyl butyric acid (36%) mixture</i>	4			POJ	POC
<i>Pentasodium salt of Diethylenetriaminepentaacetic acid solution, see Diethylenetriaminepentaacetic acid, pentasodium salt solution.</i>			140-01-2		DYS
Pentene (all isomers)	30		109-67-1	PTX	PTE
Pentyl aldehyde	19		110-62-3	PYL.	
<i>n-Pentyl propionate</i>	34		624-54-4	PPE.	
Perchloroethylene	36	2	127-18-4	PER	TTE
Petrolatum	33		8009-03-8	PTL.	
Phenol	21	2	108-95-2	PHN	PNS
Phenol solutions (2% or less)	43		108-95-2	PNS	PHN

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
1-Phenyl-1-xylyl ethane	32	.....	6196–96–8	PXE.	
Phosphate esters	34	.....	68130–47–2	PZE.	
Phosphate esters, alkyl (C12–C14) amine	7	.....	.....	PEA.	
[[[(Phosphonomethyl)	3	.....	.....	PES.	
imino]					
bis[ethylenenitrilobis					
(methylene)]					
tetrakisphosphonic acid, ammonium salt solution (60% or less)					
Phosphoric acid	1	2	7664–38–2	PAC.	
Phosphorus, yellow or white	0	1	7723–14–0	PPW	PPB/PPR
Phosphosulfurized (alternately Phosphosulphurized) bicycle terpene	0	1	.....	PBT.	
Phthalate based polyester polyol	0	1, 2	32472–85–8	PBE.	
Phthalic anhydride (molten)	11	.....	85–44–9	PAN.	
<i>PIB</i> , see Poly (4+)isobutylene (molecular weight >224).			9003–27–4		
alpha-Pinene	30	.....	7785–26–4	PIO	PIB/PIN
beta-Pinene	30	.....	127–91	PIP	PIN/PIO
<i>Pine oil</i> , see Oil, misc.: Pine			8002–09–3	PNL	OPI
Piperazine (70% or less)	7	3	110–85–0	PIZ	PPB/PPZ
Piperazine (crude)	7	.....	110–85–0	PZC	PPZ/PIZ
Piperazine, 68% solution	7	.....	110–85–0		
Polyacrylic acid solution (40% or less)	43	.....	9003–01–4	PYA.	
Polyalkenyl succinic anhydride amine	7	.....	108–30–5	PSN.	
Polyalkyl acrylate	14	.....	9003–21–8	PAY.	
Polyalkyl (C18–C22) acrylate in Xylene	14	.....	.....	PIX.	
Polyalkylalkenaminesuccinimide, molybdenum oxysulfide (alternately oxysulphide).	0	3	.....	PSO.	
Polyalkylene glycols/Polyalkylene glycol monoalkyl ethers mixtures	40	.....	9038–95–3	PPX.	
<i>Polyalkylene glycol butyl ether</i> , see Poly (2–8)alkylene glycol monoalkyl (C1–C6) ether.				PGB	PAG
Poly(2–8)alkylene glycol monoalkyl (C1–C6) ether	40	2	.....	PAG.	
Including:					
<i>Diethylene glycol butyl ether</i>	40	.....	112–34–5		
<i>Diethylene glycol ethyl ether</i>	40	.....	111–90–0		
<i>Diethylene glycol n-hexyl ether</i>	40	.....	112–59–4		
<i>Diethylene glycol methyl ether</i>	40	.....	111–77–3		
<i>Diethylene glycol propyl ether</i>	40	.....	6881–94–3		
<i>Dipropylene glycol butyl ether</i>	40	.....	112–34–5		
<i>Dipropylene glycol methyl ether</i>	40	.....	34590–94–8		
<i>Polyalkylene glycol butyl ether</i>	40	.....	111–76–2		
<i>Polyethylene glycol monoalkyl ether</i>	40	.....	111–80–5		
<i>Polypropylene glycol methyl ether</i>	40	.....	34590–94–8		
<i>Tetraethylene glycol methyl ether</i>	40	.....	23783–42–8		
<i>Triethylene glycol butyl ether</i>	40	.....	143–22–6		
<i>Triethylene glycol ethyl ether</i>	40	.....	112–50–5		
<i>Triethylene glycol methyl ether</i>	40	.....	112–35–6		
<i>Tripropylene glycol methyl ether</i>	40	.....	25498–49–1		
Poly(2–8)alkylene glycol monoalkyl (C1–C6) ether acetate	34	.....	.....	PAF.	
Including:					
<i>Diethylene glycol butyl ether acetate</i>	34	.....	124–17–4		
<i>Diethylene glycol ethyl ether acetate</i>	34	.....	112–15–2		
<i>Diethylene glycol methyl ether acetate</i>	34	.....	110–49–6		
Polyalkylene oxide polyol	20	.....	.....	PAO.	
Polyalkylene glycols/Polyalkylene glycol monoalkyl ethers mixtures	40	.....	.....	PPX.	
Polyalkylene oxide polyol	20	.....	.....	PAO.	
Polyalkyl (C10–C20) methacrylate	14	.....	221–657–1	PMT	PYY
Polyalkyl methacrylate in mineral oil	14	.....	.....	PYY	PMT
Polyalkyl (C10–C18) methacrylate/Ethylene-propylene copolymer mixture	14	.....	.....	PEM.	
Polyalpha olefins	31	.....	115–07–1	PYO.	
Polyaluminum (alternately Polyaluminium) chloride solution	1	.....	1327–41–9	PLS.	
Polybutadiene, hydroxyl terminated	20	.....	69102–90–5	PLT.	
Polybutene	33	.....	9003–29–6	PLB.	
Polybutenyl succinimide	10	.....	84605–20–9	PBS.	
<i>Polycarboxylic ester (C9+)</i> , see Ditridecyl adipate			16958–92–2		DTY
Poly (2+)cyclic aromatics	32	.....	91–20–3	PCA.	
<i>Polydimethylsiloxane</i> , see Dimethylpolysiloxane			9016–00–6		DMP
Polyether, borated	41	.....	.....	PED.	
Polyether (molecular weight 1350+)	41	.....	.....	PYR.	
Polyether polyols	41	.....	25214–63–5	PEO.	
Polyethylene glycol	40	.....	25322–68–3	PEG.	
Polyethylene glycol dimethyl ether	40	.....	24991–55–7	PEF.	
Poly(ethylene glycol) methylbutenyl ether (molecular weight >1000)	40	.....	.....	PBN.	
<i>Polyethylene glycol monoalkyl ether</i> , see Poly(2–8)alkylene glycol monoalkyl (C1–C6) ether.			111–77–3	PEE	PAG
Polyethylene polyamines	7	2	109–89–7	PEB	PEY
Polyethylene polyamines (more than 50% C5–C20 Paraffin oil)	7	2, 3	.....	PEY	PEB
Polyferric sulfate (alternately sulphate) solution	34	.....	51434–22–1	PSS.	
Polyglycerine/Sodium salts solution (containing less than 3% Sodium hydroxide).	20	2	.....	PGT	PGS
Polyglycerol	20	.....	25618–55–7	PGL.	
Poly(iminoethylene)-graft-N-poly(ethyleneoxy) solution (90% or less)	7	3	.....	PIG	PIM

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Polyisobutenamine in aliphatic (C10–C14) solvent	7	2		PIB	PIA
(Polyisobutene) amino products in aliphatic hydrocarbons	7	3			
Polyisobutenyl anhydride adduct	11			PBA.	
Polyisobutenyl succinimide	10		84605–20–9	PIS.	
Poly(4+)isobutylene (molecular weight >224)	30	3	9003–27–4	PIL.	
Polyisobutylene (molecular weight ≤224)	30	3	9003–27–4	PIL.	
Polyisobutylene succinic anhydride	11		67762–77–0	PYS.	
Polymerized esters	34			PYM.	
Polymethylene polyphenyl isocyanate	12	2	9016–87–9	PPI.	
Polymethylsiloxane	34		9006–65–9	PMX.	
Polyolefin (molecular weight 300+)	33			PMW	PLF
Polyolefin amide alkeneamine (C17+)	33			POH	POD
Polyolefin amide alkeneamine (C28+), <i>see</i> Polyolefin amide alkenamine (C17+).				POD	POH
Polyolefin amide alkeneamine borate (C28–C250)	33		134758–95–5	PAB.	
Polyolefin amide alkeneamine in mineral oil	33			PLK.	
Polyolefin amide alkeneamine/Molybdenum oxysulfide (alternately oxysulphide) mixture.	7			PMO.	
Polyolefin amide alkeneamine polyol	20			PAP.	
Polyolefinamine (C17+)	7		98761–78–5	POG.	
Polyolefinamine (C28–C250)	33			POM.	
Polyolefinamine in alkyl (C2–C4) benzenes	32			POF	POR
Polyolefinamine in aromatic solvent	32	3		POR	POF
Polyolefin aminoester salts (molecular weight 2000+)	34			PAE.	
Polyolefin anhydride	11		9006–26–2	PAR.	
Polyolefin ester (C28–C250)	34			POS.	
Polyolefin in mineral oil	30			PLF	PMW
Polyolefin phenolic amine (C28–C250)	9			PPH.	
Polyolefin phosphorosulfide (alternately phosphorosulphide), barium derivative (C28–C250).	34			PPS.	
Poly (oxyalkylene) alkenyl ether (molecular weight >1000)	41	3	9005–00–9	PXY.	
Polyoxybutylene alcohol	41		9002–92–0	PXA.	
Poly(20)oxyethylene sorbitan monooleate	34		9005–65–6	PSM.	
Polyoxypropylenediamine (molecular weight 2000)	7			PYD.	
Poly(5+) propylene	30		9003–07–0	PLQ	PLP
Polypropylene glycol	40	2	25322–69–4	PGC.	
Polypropylene glycol methyl ether, <i>see</i> Poly (2–8)alkylene glycol monoalkyl (C1–C6) ether.			107–98–2	PGM	PAG
Polysiloxane	34		63148–53–8	PSX.	
Polysiloxane/White spirit, low (15–20%) aromatic	34			PWS.	
Poly(tetramethylene ether) glycols (molecular weight 950–1050), <i>see</i> alpha-hydro-omega-Hydroxytetradeca(oxytetramethylene).			25190–06–1	PYU	HTO
Polytetramethylene ether glycol	40		25190–06–1	PYT	HTO/PYU/PYS
Poppy seed, <i>see</i> Oil, edible: Poppy seed			8002–11–7		OPS (VEO)
Poppy, <i>see</i> Oil, edible: Poppy					OPY (VEO)
Potassium chloride solution	43		7447–40–7	PCU	PCD/PSD
Potassium chloride solution (10% or more)	43		7447–40–7	PCS	CLM/DRL/PCS/PCU
Potassium chloride solution (less than 26%)	43		7447–40–7	PSD	
Potassium formate solutions	34		590–29–4	PFR.	
Potassium hydroxide solution, <i>see</i> Caustic potash solution		2	1310–58–3		CPS/PTH
Potassium oleate	34		143–18–0	POE.	
Potassium polysulfide (alternately polysulphide)/Potassium thiosulfide (alternately thiosulphide) solution (41% or less).	0	1		PYP	PSF/PTF
Potassium salt of polyolefin acid	34			PSP.	
Potassium thiosulfate (alternately thiosulphate) (50% or less)	43		10294–66–3	PTF.	
Propane	31		74–98–6	PRP	LPG
<i>iso</i> -Propanolamine, <i>see</i> Isopropanolamine			78–96–6		MPA (PAX/PLA)
<i>n</i> -Propanolamine	8		107–10–8	PLA	MPA/PAX
2-Propene-1-aminium, N,N-dimethyl-N-2-propenyl-, chloride, homopolymer solution.	0	1, 3		PLN.	
Propionaldehyde	19		123–38–6	PAD.	
beta-Propiolactone	18	3	57–57–8	PLT.	
Propionic acid	4		79–09–4	PNA.	
Propionic anhydride	11		123–62–6	PAH.	
Propionitrile	37		107–12–0	PCN.	
<i>n</i> -Propoxypropanol, <i>see</i> Propylene glycol monoalkyl ether			1569–01–3	PXP	PGE
<i>n</i> -Propyl acetate	34		109–60–4	PAT	IAC
<i>n</i> -Propyl alcohol	20	2	71–23–8	PAL	IPA
<i>n</i> -Propyl chloride	36		540–54–5	PRC.	
Propyl ether	41		557–17–5		IPE/PRE
<i>n</i> -Propylamine	7		107–10–8	PRA	IPO/IPP/IPQ
<i>iso</i> -Propylamine solution, <i>see</i> Isopropylamine (70% or less) solution			75–31–0		IPQ (IPO/IPP/PRA)
Propylbenzenes (all isomers), <i>see</i> Alkyl (C3–C4) benzenes			103–65–1	PBY	AKC (CUM/PBZ)
<i>iso</i> -Propyl cyclohexane, <i>see</i> Isopropylcyclohexane			696–29–7		IPX
Propylene	30		115–07–1	PPL.	
Propylene-Butylene copolymer	30		29160–13–2	PBP.	
Propylene carbonate	34		108–32–7	PLC.	
Propylene dimer	30		26824–72–2	PDR.	
Propylene glycol	20	2	57–55–6	PPG.	
Propylene glycol <i>n</i> -butyl ether, <i>see</i> Propylene glycol monoalkyl ether			5131–66–8	PGD	PGE

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Propylene glycol ethyl ether, <i>see</i> Propylene glycol monoalkyl ether			1569-02-4	PGY	PGE
Propylene glycol methyl ether, <i>see</i> Propylene glycol monoalkyl ether		2	107-98-2	PME	PGE
Propylene glycol methyl ether acetate	34	2	108-65-6	PGN.	
Propylene glycol monoalkyl ether	40			PGE.	
Including:					
<i>n</i> -Propoxypropanol	40		30136-13-1		
Propylene glycol <i>n</i> -butyl ether	40		5131-66-8		
Propylene glycol ethyl ether	40		1569-02-4		
Propylene glycol methyl ether	40		107-98-2		
Propylene glycol propyl ether	40		1569-01-3		
Propylene glycol phenyl ether	40		770-35-4	PGP.	
Propylene glycol propyl ether, <i>see</i> Propylene glycol monoalkyl ether			1569-01-3		PGE
Propylene oxide	16		75-56-9	POX.	
Propylene tetramer	30		6842-15-5	PTT.	
Propylene trimer	30		13987-01-4	PTR.	
Propylene/Propane/MAPP gas mixture	30	2		PPM.	
Pseudocumene, <i>see</i> Trimethylbenzene (all isomers)			95-63-6		TMB/TMD/TME/TRE
Pyridine	9		110-86-1	PRD.	
Pyridine bases, <i>see</i> Paraldehyde-Ammonia reaction product					PRB
Pyrolysis gasoline (containing Benzene)	32	3	68477-58-7	PYG	GPY
Rapeseed oil (low erucic acid containing less than 4% free fatty acids), <i>see</i> Oil, edible: Rapeseed (low erucic acid containing less than 4% free fatty acids).		3	8002-13-9		ORO (VEO)
Rapeseed oil fatty acid methyl esters, <i>see</i> Oil, misc.: Rapeseed fatty acid methyl esters.		3	73891-99-3		RSO
Rapeseed oil, <i>see</i> Oil, edible: Rapeseed			8002-13-9		ORO (VEO)
Refrigerant gases	0	1		RFG.	
Resin oil, distilled, <i>see</i> Oil, misc.: Resin, distilled		3			ORR (ORS)
Rice bran oil, <i>see</i> Oil, edible: Rice bran			68553-81-1		ORB
Rosin soap (disproportionated) solution	43		61790-50-9	RSP.	
Rosin, <i>see</i> Oil, misc.: Rosin			8050-09-7		ORN
Rum, <i>see</i> Alcoholic beverages, n.o.s			64-17-5		ABV
Safflower oil, <i>see</i> Oil, edible: Safflower			8001-23-8		OSF (VEO)
Sewage sludge	43			SWS.	
Shea butter, <i>see</i> Oil, edible: Shea butter		3	194043-92-0		OSH (VEO)
Silica slurry	43		69012-64-2	SLC.	
Siloxanes	34		9011-19-2	SLX.	
Sludge, treated	43			SWA.	
Sodium acetate solutions	34		127-09-3	SAN.	
Sodium acetate, Glycol, Water mixture (containing 1% or less Sodium hydroxide) (if non-flammable or non-combustible).	5	2		SAY	SAO/SAP/SAQ/SAY
Sodium acetate, Glycol, Water mixture (containing Sodium hydroxide)	5			SAQ	SAO/SAP/SAW/SAY
Sodium acetate, Glycol, Water mixture (not containing Sodium hydroxide)	34	2		SAW	SAO/SAP/SAQ/SAY
Sodium alkyl (C14–C17) sulfonates (alternately sulphonates) (60–65% solution).	34			SSU	AKA/AKE
Sodium aluminate solution	5		11138-49-1	SAV	SAU
Sodium aluminate solution (45% or less)	5		11138-49-1	SAU	SAV
Sodium aluminosilicate slurry	34		1344-00-9	SLR.	
Sodium benzoate	34		532-32-1	SBN	SBM
Sodium bicarbonate solution (less than 10%)	34	3	144-55-8	SBC.	
Sodium borohydride (15% or less)/Sodium hydroxide solution	5			SBX	CSS/SBH/SBI/SHD
Sodium bromide solution (less than 50%)	43	3	7647-15-6	SBL	SBR
Sodium carbonate solution	5		497-19-8	SCE.	
Sodium chlorate solution (50% or less)	0	1, 2	7775-09	SDD	SDC
Sodium cyanide solution	5		143-33-9	SCO	SCN/SCS
Sodium dichromate solution (70% or less)	0	1, 2	7789-12-0	SDL	SCR
Sodium dimethyl naphthalene sulfonate solution, <i>see</i> Dimethyl naphthalene sulfonic (alternately sulphononic) acid, sodium salt solution.			532-02-5		DNS
Sodium hydrogen sulfide (alternately sulphide) (6% or less)/Sodium carbonate (3% or less) solution.	0	1, 2, 3		SSS	SCE/SHW
Sodium hydrogen sulfite (alternately sulphite) solution (45% or less)	43		7631-90-5	SHY	SHX
Sodium hydrosulfide (alternately hydrosulphide)/Ammonium sulfide (alternately sulphide) solution.	5	2		SSA	ASF/ASS
Sodium hydrosulfide (alternately hydrosulphide) solution (45% or less)	5	2	16721-80-5	SHR.	
Sodium hydroxide solution, <i>see</i> Caustic soda solution		2	1310-73-2		CSS (SHD)
Sodium hypochlorite solution (15% or less)	5		7681-52-9	SHP	SHC/SHQ
Sodium hypochlorite solution (20% or less)	5		7681-52-9	SHQ	SHC/SHQ
Sodium lignosulfonate (alternately lignosulphonate) solution	43		8061-51-6	SLG	LNL
Sodium long-chain alkyl salicylate (C13+)	34		84539-60-6	SLS.	
Sodium-2-mercaptobenzothiazol solution, <i>see</i> Mercaptobenzothiazol, sodium salt solution.			2492-26-4		SMB
Sodium methoxide (25% in methanol)	0	1	124-41-4	SMO.	
Sodium methylate 21–30% in methanol	0	1, 2, 3	124-41-4	SMT	SMS
Sodium naphthalene sulfonate (alternately sulphonate) solution, <i>see</i> Naphthalene sulfonic (alternately sulphononic) acid (40% or less), sodium salt solution (40% or less).			532-02-5	SNS	NSA (NSB)
Sodium naphthenate solution, <i>see</i> Naphthenic acid, sodium salt solution			61790-13-4		NTS
Sodium nitrite solution	5		7632-00-0	SNI	SNT
Sodium <i>N</i> -methyl dithio carbamate solution, <i>see</i> Metam sodium solution			137-42-8	MSS	SMD
Sodium petroleum sulfonate (alternately sulphonate)	34		68608-26-4	SPS.	

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Sodium poly (4+)acrylate solution	43	2	9003-04-7	SOP	SOO
Sodium polyacrylate solution	43	2	9003-04-7	SOO	SOP
Sodium salt of Ferric hydroxyethylethylenediaminetriacetic acid solution, see Ferric hydroxyethylethylenediaminetriacetic acid, trisodium salt solution.			139-89-9	STA	FHX
Sodium silicate solution	43	2	1344-09-8	SSN	SSC
Sodium sulfate (alternately sulphate) solution	34	3	7757-82-5	SST	SSO
Sodium sulfide (alternately sulphide) solution (15% or less)	43		1313-82-2	SDR	SDS
Sodium sulfide (alternately sulphide)/Hydrosulfide (alternately Hydrosulphide) solution (H ₂ S 15 ppm or less).	0	1, 2		SSH	SDS/SHR/SSI/SSJ
Sodium sulfide (alternately sulphide)/Hydrosulfide (alternately Hydrosulphide) solution (H ₂ S greater than 15 ppm but less than 200 ppm).	0	1, 2		SSI	SDS/SHR/SSH/SSJ
Sodium sulfide (alternately sulphide)/Hydrosulfide (alternately Hydrosulphide) solution (H ₂ S greater than 200 ppm).	0	1, 2		SSJ	SDS/SHR/SSH/SSI
Sodium sulfite (alternately sulphite) solution (25% or less)	43		7757-83-7	SUP	SSF/SUS
Sodium tartrates/Sodium succinates solution	43			STM.	
Sodium thiocyanate solution (56% or less)	0	1, 2	540-72-7	STS	SCY
Sorbitol solution	20		50-70-4	SBU	SBT
Soyabean fatty acid methyl ester, see Oil, misc.: Soyabean fatty acid methyl ester.			67784-80-9		OST
Soyabean oil (epoxidized)	34		8013-07-8		OSC/EVO
Soyabean oil, see Oil, edible: Soyabean		2	8001-22-7		OSB (VEO)
Stearic acid, see Fatty acids (saturated, C13+)			57-11-4	SRA	FAD (FAB/FAE/FDI/FDT)
Stearyl alcohol	20		112-92-5	SYL	ALY/ASY
Stoddard solvent, see Naphtha: Stoddard solvent			8032-32-4		NSS
Styrene monomer	30		100-42-5	STY.	
Sulfohydrocarbon (alternately Sulphohydrocarbon) (C3–C88)	33			SFO.	
Sulfohydrocarbon (alternately Sulphohydrocarbon), long-chain (C18+) alkylamine mixture.	7			SFX.	
Sulfolane (alternately Sulpholane)	39		126-33-0	SFL.	
Sulfonated (alternately Sulphonated) polyacrylate solutions	43	2		SPA.	
Sulfur (alternately Sulphur) (molten)	0	1, 2	7704-34-9	SXX.	
Sulfur (alternately Sulphur) dioxide	0	1	7446-09-5	SFD.	
Sulfuric (alternately Sulphuric) acid	2	2	7664-93-9	SFA	SAC
Sulfuric (alternately Sulphuric) acid, spent	2	2	7664-93-9	SAC	SFA
Sulfurized (alternately Sulphurized) fat (C14–C20)	33			SFT.	
Sulfurized (alternately Sulphurized) polyolefinamide	10			SPY.	
Sulfurized (alternately Sulphurized) polyolefinamide alkene (C28–C250) amine.	33			SPO.	
Sunflower seed oil, see Oil, edible: Sunflowerseed	34		8001-21-6		OSN (VEO)
Sym-trichlorobenzene, see 1,2,4-Trichlorobenzene.			108-70-3		
Tall oil, see Oil, misc.: Tall			8002-26-4		OTL (OTI/OTJ)
Tall oil, crude, see Oil, misc.: Tall, crude		2, 3	8002-26-4		OTI (OTJ/OTL)
Tall oil, distilled, see Oil, misc.: Tall, distilled		3	8002-26-4		OTJ (OTI/OTL)
Tall oil, fatty acid, see Oil, misc.: Tall fatty acid		2	61790-12-3		OTT
Tall oil fatty acid (resin acids less than 20%), see Oil, misc.: Tall oil fatty acid (resin less than 20%).		2			OTK (OTT)
Tall oil fatty acid, barium salt	0	1, 2		TOB.	
Tall oil pitch, see Oil, misc.: Tall pitch		3	08016-81-7		OTP (OTI/OTJ/OTL)
Tall oil soap (crude)	34			TOR	TOS
Tall oil soap (disproportionated) solution	43			TOS.	
Tallow	34	2	61789-97-7	TLO.	
Tallow alcohol, see Alcohols (C13+)		2	67762-27-0	TFA	ALY (ASY)
Tallow alkyl nitrile	37			TAN.	
Tallow fatty acid	34	2	61790-37-2	TFD.	
Tallow fatty alcohol, see Alcohols (C13+)		2	67762-27-0	TFA	ALY
TAME, see tert-Amyl methyl ether			994-05-8		AYE
Tertiary butylphenols	21		128-39-2	BLT	BTP
Tetrachloroethane	36		79-34-5	TEC.	
1,1,2,2-Tetrachloroethane, see Tetrachloroethane	36		79-34-5	TEC	TEE
Tetradecanol, see Alcohols (C13+)			112-72-1	TTN	ALY
Tetradecene, see olefins or alpha-olefin entries			1120-36-1		OAM/OFY/OFW/OFZ/TDD
Tetradecylbenzene, see Alkyl (C9+) benzenes			1459-10-5	TDB	AKB
Tetraethyl silicate monomer/oligomer (20% in ethanol)	0	1, 3		TSM.	
Tetraethylene glycol	40		112-60-7	TTG.	
Tetraethylene glycol methyl ether, see Poly (2–8)alkylene glycol monoalkyl (C1–C6) ether.			23783-42-8		PAG
Tetraethylenepentamine	7	2	112-57-2	TTP.	
Tetrahydrofuran	41		109-99-9	THF.	
Tetrahydronaphthalene	32		119-64-2	THN.	
Tetramethylbenzene (all isomers)	32		527-53-7	TTC	TTB
1,2,3,5-Tetramethylbenzene, see Tetramethylbenzene (all isomers)			527-53-7	TTB	TTC
Tetrapropylbenzene, see Alkyl (C9+) benzenes					AKB
Tetrasodium salt of ethylenediaminetetraacetic acid solution, see Ethylenediaminetetraacetic acid, tetrasodium salt solution.			13235-36-4		EDS
Titanium dioxide slurry	43		13463-67-7	TDS.	
Titanium tetrachloride	2		7550-45-0	TTT.	
Toluene	32	2	108-88-3	TOL.	
Toluene diisocyanate	12	2	584-84-9		TDI
Toluenediamine	9		95-80-7	TDA.	
o-Toluidine	9	2	95-53-4	TLI	TOD/TOI

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
<i>Triarylphosphate, see</i> Triisopropylated phenyl phosphates			115–86–6	TRA	TPL
Tributyl phosphate	34		126–73–8	TBP.	
1,2,3-Trichlorobenzene (molten)	36	3	120–82–1	TBZ	TCB
1,2,4-Trichlorobenzene	36		120–82–1	TCB	TBZ
<i>1,2,3-Trichlorobenzol, see</i> 1,2,3-Trichlorobenzene (molten)			87–61–6	TBZ	TCB
1,1,1-Trichloroethane	36	2	71–55–6	TCE	TCM
1,1,2-Trichloroethane	36		79–00–5	TCM	TCE
Trichloroethylene	36	2	79–01–6	TCL	
1,1,2-Trichloro-1,2,2-trifluoroethane	36		76–13–1	TTF.	
Tricresyl phosphate (containing 1% or more ortho-isomer)	34	3	78–30–8 (o isomer)	TCO	TCP/TCQ
Tricresyl phosphate (containing less than 1% ortho-isomer)	34	3	1330–78–5	TCP	TCO/TCQ
1,2,3-Trichloropropane	36	2	96–18–4	TCN.	
<i>Tridecane (all isomers), see</i> n-Alkanes (C10+) (all isomers)			629–50–5	TRD	ALV (ALJ)
Tridecanoic acid	34		638–53–9	TDO.	
<i>Tridecanol, see</i> Alcohols (C13+)			112–70–9	TDN	ALY (ASK/ASY/AYK/LAL)
<i>Tridecene, see</i> Olefins (C13+ all isomers)			2437–56–1	TRD	OAM/OFY/OFW/OFZ/TDC
Tridecyl acetate	34		1072–33–9	TAE.	
<i>Tridecylbenzene, see</i> Alkyl (C9+) benzenes			123–02–4	TRB	AKB
Triethanolamine	8	2	102–71–6	TEA.	
Triethylamine	7		121–44–8	TEN.	
Triethylbenzene	32		102–25–0 (1,3,5)	TEB.	
Triethylene glycol	40		112–27–6	TEG.	
<i>Triethylene glycol butyl ether, see</i> Poly (2–8)alkylene glycol monoalkyl (C1–C6) ether.			143–22–6	TBE	PAG
Triethylene glycol butyl ether mixture	40		143–22–6	TBD.	
Triethylene glycol di-(2-ethylbutyrate)	34		95–08–9	TGD.	
Triethylene glycol dibenzoate	34		120–56–9	TGB.	
Triethylene glycol ether mixture	40		112–35–6	TYM.	
<i>Triethylene glycol ethyl ether, see</i> Poly (2–8)alkylene glycol monoalkyl (C1–C6) ether.			112–50–5	TGE	PAG
<i>Triethylene glycol methyl ether, see</i> Poly (2–8)alkylene glycol monoalkyl (C1–C6) ether.			112–35–6	TGY	PAG
Triethylenetetramine	7	2	112–24–3	TET.	
Triethyl phosphate	34		78–40–0	TPS.	
Triethyl phosphite	34	2	122–52–1	TPI.	
Triisobutylene	30		7756–94–7	TIB.	
Triisooctyl trimellitate	34		27251–75–8	TIS.	
Triisopropanolamine	8		122–20–3	TIP.	
<i>Triisopropanolamine salt of 2,4-Dichlorophenoxyacetic acid solution, see</i> 2,4-Dichlorophenoxyacetic acid, Triisopropanolamine salt solution.					DTI
Triisopropylated phenyl phosphates	34		26967–76–0	TPL.	
Trimethylacetic acid	4		75–98–9	TAA.	
Trimethylamine solution (30% or less)	7		75–50–3	TMT	TMA
Trimethylbenzene (all isomers)	32		95–63–6 (1,2,4)	TRE	TMB/TMD/TME
<i>Trimethyl nonanol, see</i> Dodecyl alcohol			112–53–8		DDN (ASK/ASY/LAL)
Trimethylol propane polyethoxylated	20		50586–59–9	TPR.	
Trimethyl phosphite	34	2	121–45–9	TPP.	
Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4-)	12		28679–16–5	THI.	
Trimethylhexamethylenediamine (2,2,4- and 2,4,4-)	7		25513–64–8	THA.	
2,2,4-Trimethyl-1,3-pentanediol diisobutyrate	34		6846–50–0	TMQ.	
2,2,4-Trimethyl-1,3-pentanediol-1-isobutyrate	34		18491–15–1	TMP.	
2,2,4-Trimethyl-3-pentanol-1-isobutyrate	34			TMR.	
1,3,5-Trioxane	41	2	110–88–3	TRO.	
Triphenylborane (10% or less)/Caustic soda solution	5		960–71–4	TPB.	
<i>Tripropylene, see</i> Propylene trimer			13987–01–4		PTR
Tripropylene glycol	40		24800–44–0	TGC.	
<i>Tripropylene glycol methyl ether, see</i> Poly (2–8) alkylene glycol monoalkyl (C1–C6) ether.			25498–49–1	TGM	PAG
<i>Trisodium nitrilotriacetate solution, see</i> Nitrilotriacetic acid, trisodium salt solution.			5064–31–3	TSO	NCA (TSN)
Trisodium phosphate solution	5		10101–89–0	TSP.	
<i>Trisodium salt of N-(Hydroxyethyl)ethylenediaminetriacetic acid solution, see</i> N-(Hydroxyethyl)ethylenediaminetriacetic acid, trisodium salt solution.			207386–87–6		HET
Trixylyl phosphate	34		25155–23–1		TRP
<i>Trixylenyl phosphate, see</i> Trixylyl phosphate			25155–23–1		TRP
<i>Tung oil, see</i> Oil, misc.: Tung			8001–20–5		OTG
Turpentine	30		9005–90–7	TPT.	
<i>Turpentine substitute, see</i> White spirit (low (15–20%) aromatic)			8052–41–13		WSL (WSP)
<i>Undecane (all isomers), see</i> Alkanes (C10+) (all isomers)			1120–21–4	UDN	ALV (ALJ)
Undecanoic acid	4		112–37–8	UDA.	
<i>Undecanol, see</i> Undecyl alcohol			112–42–5		UND (ALR)
Undecene	30		1120–21–4	UDD	UDC
1-Undecene	30		821–95–4	UDC	UDD
Undecyl alcohol	20		112–42–5	UND	ALR
<i>Undecylbenzene, see</i> Alkyl (C9+) benzenes			67774–74–7	UDB	AKB
Urea solution	43		57–13–6	USL	URE
Urea, Ammonium mono- and di-hydrogen phosphate/Potassium chloride solution.	0	1		UPX.	
Urea/Ammonium nitrate solution (containing less than 1% free Ammonia)	43	2		UAU	ANU/UAS/UAT/UAV
Urea/Ammonium nitrate solution (containing 1% or more free Ammonia)	6			UAT	ANU/UAS

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Urea/Ammonium phosphate solution	43			UAP.	IVA/VAL
Vacuum gas oil, see oil misc.: Vacuum gas oil	33	.....	64741-57-7	OVC.	
Valeraldehyde (all isomers)	19	.....	110-62-3	VAK	
Vanillin black liquor (free alkali content 3% or more)	5	.....	68514-06-7	VBL.	
Vegetable acid oils, n.o.s	34	.....	.....	VAD.	
Including:					
Corn acid oil	34	.....	68308-50-9		
Cottonseed acid oil	34	.....	68308-51-0		
Dark mixed acid oil	34	.....	.....		
Groundnut acid oil	34	.....	.....		
Mixed acid oil	34	.....	.....		
Mixed general acid oil	34	.....	.....		
Mixed hard acid oil	34	.....	.....		
Mixed soft acid oil	34	.....	.....		
Rapeseed acid oil	34	.....	112-86-7		
Safflower acid oil	34	.....	.....		
Soya acid oil	34	.....	68308-53-2		
Sunflower seed acid oil	34	.....	84625-38-7		
Vegetable oil mixtures, containing less than 15% free fatty acid (m)	34			VEO.	VFD.
Vegetable fatty acid distillates, n.o.s	34	3	.....	VFD.	
Including:					
Palm kernel fatty acid distillate	34	.....	67701-05-7		
Palm oil fatty acid distillate	34	.....	68440-15-3		
Tall fatty acid distillate	34	.....	61790-12-3		
Tall oil fatty acid distillate	34	.....	61790-12-3		
Vegetable oils, n.o.s	34	.....	.....	VEO.	
Including:					
Beechnut oil	34	.....	.....		
Camelina oil	34		68956-68-3		JTO.
Cashew nut shell	34	.....	8007-24-7		
Castor oil	34	.....	8001-79-4		
Cocoa butter	34	.....	8002-31-1		
Coconut oil	34	2	8001-31-8		
Corn oil	34	.....	8001-30-7		
Cottonseed oil	34	.....	801-29-4		
Croton oil	34	.....	8001-28-3		
Grape seed oil	34	.....	8024-22-4		
Groundnut acid oil	34	.....	.....		
Hazelnut oil	34		84012-21-5		
Illipe oil	34	.....	91770-65-9		
Jatropha oil	34	.....	88-6-7		
Linseed oil	34	.....	8001-26-1		
Mango kernel oil	34	.....	90063-86-8		
Nutmeg butter	34	.....	8008-45-5		
Oiticica oil	34	.....	8016-35-1		
Olive oil	34	.....	8001-25-0		
Palm kernel oil	34	.....	8023-79-8		
Palm kernel olein	34	.....	93334-39-5		
Palm kernel stearin	34				
Palm mid fraction	34	.....	91079-14-0		
Palm, non-edible industrial grade	34	.....	8002-75-3		
Palm oil	34	2, 3	8002-75-3		
Palm olein	34	.....	93334-39-5		
Palm stearin	34	.....	91079-14-0		
Peanut oil	34	.....	8002-03-7		
Peel oil (oranges and lemons)	34	.....	8008-56-8		
Perilla oil	34	.....	68132-21-8		
Pine oil	34	.....	8002-09-3		
Poppy seed oil	34		8002-11-7		
Poppy oil	34	.....	.....		
Raisin seed oil	34	.....	8024-22-4		
Rapeseed oil	34	.....	8002-13-9		
Rapeseed (low erucic acid containing less than 4% free fatty acids)	34	3	.....		
Resin oil, distilled	30	3	.....		
Rice bran oil	34	.....	68553-81-1		
Rosin oil	34	.....	8002-16-2		
Safflower oil	34	.....	8001-23-8		
Salad oil	34	.....	68956-68-3		
Sesame oil	34		8008-74-0		
Shea butter	34	.....	194043-92-0		
Soyabean oil	34	2	8001-22-7		
Sunflower seed oil	34	.....	8001-21-6		
Tall	34	.....	8002-26-4		
Tall, crude	34	.....	8002-26-4		
Tall, distilled	34	.....	8002-26-4		
Tall, pitch	34	.....	8016-81-7		
Tucum oil	34	.....	98143-57-8		
Tung oil	34	.....	8001-20-5		
Walnut oil	34		8024-09-7		VPS.
Vegetable protein solution (hydrolyzed)	43	.....	100209-45-8	VPS.	

TABLE 1 TO PART 150—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	Footnote	CAS No.	CHRIS code	Related CHRIS codes
Vinyl acetate	13	2	108-05-4	VAM.	
Vinyl chloride	35		75-01-4	VCM.	
Vinyl ethyl ether	13		109-92-2	VEE.	
Vinylidene chloride	35		75-35-4	VCI.	
Vinyl neodecanoate	13	2	51000-52-3	VND.	
Vinyltoluene	13		25013-15-4	VNT.	
Water	43		7732-18-5	WTR.	
Waxes				WAX.	
Including:					
Candelilla	34		8006-44-8	WCD.	
Carnauba	34		8015-86-9	WCA.	
Hydrocarbon	31			WHC	WPF
Paraffin	31		8002-74-2	WPF.	
Petroleum	33			WPT.	
White spirit, see White spirit (low (15–20%) aromatic)			8052-41-13	WSP	WSL
White spirit (low (15–20%) aromatic)	33		8052-41-3	WSL	WSP
Wine, see Alcoholic beverages			64-17-5	ABV.	
Wood lignin with Sodium acetate/oxalate	0	1, 3		WOL.	
Xylenes	32	2	106-42-3	XLX	XLM/XLO/XLP
Xylenes/Ethylbenzene (10% or more) mixture	32			XEB.	
Xylenols	21		105-67-9	XYL.	
Zinc alkaryl dithiophosphate (C7–C16)	34			ZAD.	
Zinc alkenyl carboxamide	10			ZAA	WSL
Zinc alkyl dithiophosphate (C3–C14)	34		688649-42-3	ZAP.	
Zinc bromide/Calcium bromide solution, see Drilling brine (containing Zinc salts).			7699-45-8		DZB

Notes:

Italicized words are not part of the cargo name but may be used in addition to the cargo name.

CAS numbers marked with an asterisk (*) represent the CAS number of the lowest member in the homologous series.

Not all chemicals have been assigned CAS numbers. These cells are left blank in the CAS Number column.

Footnotes:

1. Because of very high reactivity, unusual conditions of carriage, or potential compatibility problems, this commodity is not assigned to a specific group in Figure 1 to 46 CFR part 150 (Compatibility Chart).

2. See Appendix I to 46 CFR part 150 (Exceptions to the Chart).

3. Entry was added from the March 2012 Annex to the 2007 edition of the IBC Code (MEPC 63/23/Add.1), the December 2012 IMO Marine Environmental Protection Committee Circular (MEPC.2/Circ.18), or the December 2013 IMO Marine Environmental Protection Committee Circular (MEPC.2/Circ.19).

■ 5. Revise Table 2 to Part 150 to read as follows:

TABLE 2 TO PART 150—GROUPING OF CARGOES

Group	Cargo
0. Unassigned Cargoes ..	Acetone cyanohydrin. Alkenoic acid, polyhydroxy ester borated. Alkylbenzene distillation bottoms. Alkyl (C8–C10)/(C12–C14):(60% or more/40% or less). Alkyl (C11–C17) benzene sulfonic (alternately sulphonic) acid. Alkylbenzene sulfonic (alternately sulphonic) acid (less than 4%).¹ Alkyl (C18–C28) toluenesulfonic (alternately toluenesulphonic) acid. Aluminum (alternately Aluminium) chloride/Hydrogen chloride solution. Ammonium hydrogen phosphate solution. Ammonium nitrate solution (45% or less). Ammonium nitrate solution (93% or less). Ammonium thiocyanate/Ammonium thiosulfate (alternately thiosulphate) solution. Argon, liquefied. Benzenesulfonyl (alternately Benzenesulphonyl) chloride.¹ gamma-Butyrolactone.¹ Carbon dioxide (high purity). Carbon dioxide (reclaimed quality). Carbon dioxide, liquefied. Chlorine. 2-Chloro-4-ethylamino-6-isopropylamino-5-triazine solution. Chlorosulfonic (alternately Chlorosulphonic) acid. Decyloxytetrahydro-thiophene dioxide. 2,4-Dichlorophenoxyacetic acid, Dimethylamine salt solution (70% or less).¹ Dimethyl disulfide (alternately disulphide). Diphenylol propane-Epichlorohydrin resins. Disulfide (alternately Disulphide). Dodecyl hydroxypropyl sulfide (alternately sulphide).¹ Dodecyl benzenesulfonic (alternately Dodecyl benzenesulphonic) acid.¹ Ethylene oxide. Hydrogen peroxide solutions (over 60% but not more than 70% by mass). Hydrogen peroxide solutions (over 8% but not more than 60% by mass).

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
	Hydrogenated starch hydrolysate. Lactic acid.¹ Liquid chemical wastes. Long-chain alkaryl sulfonic (alternately sulphonic) acid (C16–C60).¹ Magnesium chloride solution.¹ Maltitol solution. Methylcyclopentadienyl manganese tricarbonyl. Methylcyclopentadienyl manganese tricarbonyl (60–70%) in mineral oil. Molasses residue (from fermentation). Molybdenum polysulfide (alternately polysulphide) long-chain alkyl dithiocarbamide complex. Motor fuel anti-knock compound (containing lead alkyls). Naphthalene sulfonic (alternately sulphonic) acid-formaldehyde copolymer, sodium salt solution. Nitrating acid (mixture of Sulfuric (alternately Sulphuric) and Nitric acids). Nitric acid (70% and over).¹ Nitric acid fuming. Nitric acid red fuming. Nitrogen. o-Nitrophenol (molten).¹ Noxious Liquid Substance, NF, (1) n.o.s. (“trade name” contains “principal components”) Cat X. Noxious Liquid Substance, F, (2) n.o.s. (“trade name” contains “principal components”) Cat X. Noxious Liquid Substance, NF, (3) n.o.s. (“trade name” contains “principal components”) Cat X. Noxious Liquid Substance, F, (4) n.o.s. (“trade name” contains “principal components”) Cat X. Noxious Liquid Substance, NF, (5) n.o.s. (“trade name” contains “principal components”) Cat Y. Noxious Liquid Substance, F, (6) n.o.s. (“trade name” contains “principal components”) Cat Y. Noxious Liquid Substance, NF, (7) n.o.s. (“trade name” contains “principal components”) Cat Y. Noxious Liquid Substance, F, (8) n.o.s. (“trade name” contains “principal components”) Cat Y. Noxious Liquid Substance, NF, (9) n.o.s. (“trade name” contains “principal components”) Cat Z. Noxious Liquid Substance, F, (10) n.o.s. (“trade name” contains “principal components”) Cat Z. Noxious Liquid Substance, (11) n.o.s. (“trade name” contains “principal components”) Cat Z. Non-noxious Liquid Substance, (12) n.o.s. (“trade name” contains “principal components”) Cat OS. n-Octyl Mercaptan. Offshore contaminated bulk liquid P (Pollution-only products). Offshore contaminated bulk liquid S (Safety hazard products). Oleum.¹ Orange juice (concentrated). Orange juice (not concentrated). Oxygenated aliphatic hydrocarbon mixture. Phosphorus, yellow or white. Phosphosulfurized (alternately Phosphosulphurized) bicycle terpene. Phthalate-based polyester polyol.¹ Polyalkylalkenaminesuccinimide, molybdenum oxysulfide. Potassium polysulfide (alternately polysulphide), Potassium thiosulfide (alternately thiosulphide) solution (41% or less). 2-Propene-1-aminium, N,N-dimethyl-N-2-propenyl-, chloride, homopolymer solution. Refrigerant gases. Sodium chlorate solution (50% or less).¹ Sodium dichromate solution (70% or less).¹ Sodium hydrogen sulfide (alternately sulphide) (6% or less)/Sodium carbonate (3% or less) solution.¹ Sodium methoxide (25% in methanol). Sodium methylate (21–30% in methanol). Sodium sulfide (alternately sulphide)/Hydrosulfide (alternately Hydrosulphide) solution (H₂S 15 ppm or less). Sodium sulfide (alternately sulphide), Hydrosulfide (alternately Hydrosulphide) solution (H₂S greater than 15 ppm but less than 200 ppm).¹ Sodium sulfide (alternately sulphide)/Hydrosulfide (alternately Hydrosulphide) solution (H₂S greater than 200 ppm). Sodium thiocyanate solution (56% or less).¹ Sulfur (alternately Sulphur) (molten). Sulfur (alternately Sulphur) dioxide. Tall oil fatty acid, barium salt.¹ Tetraethyl silicate monomer/oligomer (20% in ethanol). Urea, Ammonium mono- and di-hydrogen phosphate/Potassium chloride solution. Wood lignin with Sodium acetate/oxalate. Di-(2-ethylhexyl) phosphoric acid. Ferric chloride solution. Fluorosilicic acid (20–30%) in water solution. Fluorosilicic acid (30% or less). Hydrochloric acid. Hydrofluorosilicic acid (25% or less). Phosphoric acid. Polyaluminum (alternately Polyaluminium) chloride solution. Sulfuric (alternately Sulphuric) acid.¹ Sulfuric (alternately sulphuric) acid, spent. Titanium tetrachloride.
1. Non-Oxidizing Mineral Acids.	
2. Sulfuric (Alternately Sulphuric) Acids.	

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
3. Nitric Acids	Ferric nitrate/Nitric acid solution. Nitric acid (70% or less).
4. Organic Acids	Acetic acid. ¹ Acetic acid. ¹ Butyric acid. Chloroacetic acid (80% or less). 2- or 3-Chloropropionic acid. Citric acid (70% or less). Decanoic acid. 2,2-Dichloropropionic acid. Dimethyl octanoic acid. Fish protein concentrate (containing 4% or less formic acid). Fish silage protein concentrate (containing 4% or less formic acid). Formic acid. ¹ Formic acid (85% or less). Formic acid (over 85%). Formic acid mixture (containing up to 18% Propionic acid and up to 25% Sodium formate). Glycolic acid (70% or less). Glyoxylic acid solution (50% or less). n-Heptanoic acid. 1,6-Hexanediol, distillation overheads. Hexanoic acid. 2-Hydroxy-4-(methylthio)butanoic acid. Jatropha oil. Long-chain alkyl (C13+) salicylic acid. Methacrylic acid. Naphthenic acid. Neodecanoic acid. Nonanoic acid (all isomers). Nonanoic/Tridecanoic acid mixture. Octanoic acid (all isomers). Oleic acid. Pentanoic acid. n-Pentanoic acid (64%)/2-Methyl butyric acid (36%) mixture. Propionic acid. Trimethylacetic acid. Undecanoic acid.
5. Caustics	Aluminum (alternately Aluminium) hydroxide/sodium hydroxide/sodium carbonate solution (40% or less). Ammonium sulfide (alternately sulphide) solution (45% or less). Calcium hydroxide slurry. Calcium hypochlorite solution (15% or less). Calcium hypochlorite solution (more than 15%). Caustic potash solution. ¹ Caustic soda solution. ¹ Cresylic acid, sodium salt solution. 1,4-Dihydro-9,10-dihydroxy anthracene, disodium salt solution. Kraft black liquor. Kraft pulping liquors (free alkali content 3% or more) (Black, Green, or White). Magnesium hydroxide slurry. Mercaptobenzothiazol, sodium salt solution. 2-Mercaptobenzothiazol (in liquid mixture). Potassium hydroxide solution. ¹ Sodium acetate, Glycol, Water mixture (containing 1% or less Sodium hydroxide) (if non-flammable or non-combustible). Sodium acetate, Glycol, Water mixture (containing Sodium hydroxide). Sodium aluminate solution. Sodium aluminate solution (45% or less). Sodium borohydride (15% or less)/Sodium hydroxide solution. Sodium carbonate solutions. Sodium cyanide solution. Sodium hydrosulfide (alternately hydrosulphide) solution (45% or less). ¹ Sodium hydrosulfide (alternately hydrosulphide)/Ammonium sulfide (alternately sulphide) solution. ¹ Sodium hypochlorite solution (15% or less). Sodium hypochlorite solution (20% or less). Sodium 2-mercaptobenzothiazol solution. Sodium nitrite solution. Triphenylborane (10% or less)/Caustic soda solution. Trisodium phosphate solution. Vanillin black liquor (free alkali content 3% or more).
6. Ammonia	Ammonia, anhydrous. Ammonium hydroxide (28% or less Ammonia). Urea/Ammonium nitrate solution (containing 1% or more Ammonia).

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
7. Aliphatic Amines	Alkyl amine (C17+). Alkyl (C12+) dimethylamine. N-Aminoethylpiperazine. Butylamine (all isomers). Crude piperazine. Cyclohexylamine. Dibutylamine. Diethylamine. ¹ Diethylenetriamine. ¹ Diisobutylamine. Diisopropylamine. Dimethylamine. Dimethylamine solution (45% or less). Dimethylamine solution (greater than 45% but not greater than 55%). Dimethylamine solution (greater than 55% but not greater than 65%). N,N-Dimethylcyclohexylamine. N,N-Dimethyldodecylamine. Di-n-propylamine. Dodecylamine/Tetradecylamine mixture. Dodecyldimethylamine/Tetradecyldimethylamine mixture. Ethoxylated tallow alkyl amine. Ethoxylated tallow alkyl amine, glycol mixture. Ethoxylated tallow amine (>95%). Ethylamine. ¹ Ethylamine solution (72% or less). N-Ethylbutylamine. N-Ethylcyclohexylamine. Ethyleneamine EA 1302. ¹ Ethylenediamine. ¹ 2-Ethylhexylamine. N-Ethylmethylallylamine. Glycine, sodium salt solution. Glyphosate solution (not containing surfactant). Hexamethylenediamine (molten). Hexamethylenediamine solution. Hexamethylenimine. Hexamethylenetetramine solutions. bis-(Hydrogenated tallow alkyl) methyl amines. Isophoronediamine. Isopropylamine. Isopropylamine (70% or less) solution. Long-chain alkyl amine. Long-chain polyetheramine in alkyl (C2–C4) benzenes. Metam sodium solution. Methylamine solutions (42% or less). 2-Methyl-1,5-pentanediamine. Monoethylamine. Morpholine. ¹ Oleylamine. Pentaethylenhexamine. Pentaethylenhexamine/Tetraethylenepentamine mixture. Phosphate esters, alkyl (C12–C14) amine. Piperazine (70% or less). Piperazine (crude). Piperazine, 68% solution. Polyalkenyl succinic anhydride amine. Polyethylene polyamines. ¹ Polyethylene polyamines (more than 50% C5–C20 Paraffin oil). Poly(iminoethylene)-graft-N-poly (ethyleneoxy) solution (90% or less). (Polyisobutene) amino products in aliphatic hydrocarbons. Polyisobutenamine in aliphatic (C10–C14) solvent. Polyolefin amide alkeneamine/Molybdenum oxysulfide (alternately oxysulphide) mixture. Polyolefinamine (C17+). Polyoxypropylenediamine. n-Propylamine. iso-Propylamine solution. Sodium N-methyl dithio carbamate solution. Sulfohydrocarbon (alternately Sulphohydrocarbon), long-chain (C18+) alkylamine mixture. Tetraethylenepentamine. ¹ Triethylamine. Triethylenetetramine. ¹ Trimethylamine solution (30% or less).

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
8. Alkanolamines	Trimethylhexamethylenediamine (2,2,4- and 2,4,4-). Alkyl (C12–C16) propoxyamine ethoxylates. 2-(2-Aminoethoxy)ethanol. Aminoethyldiethanolamine/Aminoethylethanolamine solution. Aminoethylethanolamine. 2-Amino-2-methyl-1-propanol. Diethanolamine. Diethylaminoethanol. Diisopropanolamine. Dimethylethanolamine.¹ Ethanolamine. Ethoxylated alkylalkoxy alkyl amine. Ethoxylated long-chain (C16+) alkylalkoxyalkanamine. Isopropanolamine. Isopropanolamine solution. Linear alkyl (C12–C16) propoxyamine ethoxylates. Methyl diethanolamine. Monoethanolamine. Monoisopropanolamine. n-Propanolamine. Triethanolamine. Triisopropanolamine.
9. Aromatic Amines	Alkyl (C8–C9) phenylamine in aromatic solvents. Amine C–6, morpholine process residue. Aniline. Calcium long chain alkyl phenolic amine (C8–C40). 4-Chloro-2-methylphenoxyacetic acid, Dimethylamine salt solution. Dialkyl (C8–C9) diphenylamines. 2,6-Diethylaniline. 2,6-Dimethylaniline. Diphenylamine (molten). Diphenylamine, reaction product with 2,2,4-trimethylpentene. Diphenylamines, alkylated. 2-Ethyl-6-methyl-N-(1'-methyl-2-methoxyethyl)aniline. 1,3,5-Hexahydrotriethanol-1,3,5-triazine solution. Hexahydro-1,3,5-trimethyl-1,3,5-triazine solution (45% or less). N-Methylaniline. 2-Methyl-6-ethyl aniline. 2-Methyl-5-ethylpyridine. Methylpyridine. 2-Methylpyridine. 3-Methylpyridine. 4-Methylpyridine. N-Methyl-2-pyrrolidone.¹ Paraldehyde-Ammonia reaction product. Polyolefin phenolic amine (C28–C250). Pyridine. Pyridine bases. Toluenediamine. o-Toluidine.
10. Amides	Acetochlor. Acrylamide solution (50% or less). Alkenyl (C11+) amide. N,N-Dimethylacetamide. N,N-Dimethylacetamide solution. N,N-Dimethylacetamide solution (40% or less). Dimethylformamide. Formamide. N,N-bis(2-Hydroxyethyl) oleamide. Octadecenoamide solution. Oleamide solution. Organomolybdenum amide. Polybutenyl succinimide. Polyisobutenyl succinimide. Sulfurized (alternately Sulphurized) polyolefinamide. Zinc alkenyl carboxamide.
11. Organic Anhydrides ..	Acetic anhydride. Alkenyl (C16–C20) succinic anhydride. Alkyl succinic anhydride. Maleic anhydride. Maleic anhydride/sodium allylsulphonate copolymer solution. Phthalic anhydride (molten).

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
12. Isocyanates	Polyisobutenyl anhydride adduct. Polyisobutylene succinic anhydride. Polyolefin anhydride. Propionic anhydride. Diphenylmethane diisocyanate. Hexamethylene diisocyanate. Isophorone diisocyanate. Polymethylene polyphenyl isocyanate. Toluene diisocyanate. Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4-).
13. Vinyl Acetates	Vinyl acetate. Vinyl ethyl ether. Vinyl neodecanate. Vinyl toluene.
14. Acrylates	Butyl acrylate (all isomers). Butyl methacrylate. Butyl/Decyl/Cetyl/Eicosyl methacrylate mixture. Cetyl/Eicosyl methacrylate mixture. Decyl acrylate. Dodecyl methacrylate. Dodecyl/Octadecyl methacrylate mixture. Dodecyl/Pentadecyl methacrylate mixture. Ethyl acrylate. 2-Ethylhexyl acrylate. Ethyl methacrylate. 2-Hydroxyethyl acrylate. ¹ Isobutyl methacrylate. Methacrylic resin in ethylene dichloride. Methyl acrylate. Methyl methacrylate. Nonyl methacrylate monomer. Polyalkyl acrylate. Polyalkyl (C18–C22) acrylate in Xylene. Polyalkyl (C10–C20) methacrylate. Polyalkyl methacrylate in mineral oil. Polyalkyl (C10–C18) methacrylate/Ethylene-propylene copolymer mixture.
15. Substituted Allys	Acrylonitrile. ¹ Allyl alcohol. ¹ Allyl chloride. Dichloropropene (all isomers). 1,3-Dichloropropene. Dichloropropene/Dichloropropane mixtures. Methacrylonitrile.
16. Alkylene Oxides	Brominated Epoxy Resin in Acetone. 1,2-Butylene oxide. Diglycidyl ether of Bisphenol A. Diglycidyl ether of Bisphenol F. Epoxy resin. Ethylene oxide/Propylene oxide mixture. Ethylene oxide/Propylene oxide mixture with an Ethylene oxide content not more than 30% by mass. Propylene oxide.
17. Epichlorohydrins	Chlorohydrins. Chlorohydrins (crude). Epichlorohydrin.
18. Ketones	Acetone. ¹ Acetophenone. Butyl heptyl ketone. Camphor oil (light). 1-(4-Chlorophenyl)-4,4-dimethyl pentan-3-one. ¹ Cyclohexanone. Cyclohexanone/Cyclohexanol mixtures. Diisobutyl ketone. Ethyl amyl ketone. Isophorone. Ketone residue. Mesityl oxide. ¹ Methyl amyl ketone. Methyl butyl ketone. Methyl ethyl ketone. ¹ Methyl heptyl ketone. Methyl isoamyl ketone. Methyl isobutyl ketone. ¹

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
19. Aldehydes	Methyl propyl ketone. beta-Propiolactone. Acetaldehyde. Acrolein. ¹ Butyraldehyde (all isomers). Crotonaldehyde. ¹ Crude isononylaldehyde. Decaldehyde. n-Decaldehyde. 2-Ethyl-3-propylacrolein. ¹ Formaldehyde (50% or more)/Methanol mixtures. ¹ Formaldehyde solutions (37%-50%). ¹ Formaldehyde solutions (45% or less). ¹ Furfural. Glutaraldehyde solutions (50% or less). Glyoxal solution (40% or less). Isodecaldehyde. Isononylaldehyde (crude). 3-Methyl butyraldehyde. Methylolureas. 3-(Methylthio)propionaldehyde. Octyl aldehyde. Paraldehyde. Pentyl aldehyde. Propionaldehyde. Valeraldehyde (all isomers).
20. Alcohols, Glycols	Acrylonitrile-Styrene copolymer dispersion in Polyether polyol. Alcoholic beverages. Alcohol (C9–C11) poly (2.5–9) ethoxylates. Alcohol (C6–C17) (secondary) poly (3–6) ethoxylates. Alcohol (C10–C18) poly (7) ethoxylates. Alcohol (C6–C17) (secondary) poly (7–12) ethoxylates. Alcohol (C12–C16) poly (1–6) ethoxylates. Alcohol (C12–C16) poly (7–19) ethoxylates. Alcohol (C12–C16) poly (20+) ethoxylates. Alcohol polyethoxylates. Alcohol polyethoxylates, secondary. Alcoholic beverages, n.o.s. Alcohols (C12+), primary, linear. Alcohols (C8–C11), primary, linear and essentially linear. Alcohols (C12–C13), primary, linear and essentially linear. Alcohols (C14–C18), primary, linear and essentially linear. Alcohols (C13+). Alkyl/cyclo (C4–C5) alcohols:. Amyl alcohol, primary. n-Amyl alcohol. sec-Amyl alcohol. tert-Amyl alcohol. Cetyl Alcohol (Hexadecanol). Oleyl Alcohol (Octadecanol). Pentadecanol. Tallow alcohol. Tetradecanol. Tridecanol. Behenyl alcohol. Bio-fuel blends of Gasoline and Ethyl alcohol (>25% but <99% by volume). Brake fluid base mix: Poly(2–8)alkylene (C2–C3) glycols/Polyalkylene (C2–C10) glycols monoalkyl (C1–C4) ethers and their borate esters. 2-Butoxyethanol (58%)/Hyperbranched polyesteramide (42%) (mixture). Butyl alcohol (all isomers). ¹ n-Butyl alcohol. Butylene glycol. Choline chloride solutions. Crude Isopropanol. Cyclohexanol. Decyl alcohol (all isomers). ¹ Decyl/Dodecyl/Tetradecyl alcohol mixture. Diacetone alcohol. ¹ 2,2-Dimethylpropane-1,3-diol (molten or solution). tert-Dodecanethiol. ¹ Dodecyl alcohol (all isomers). n-Dodecyl mercaptan.

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
	Ethoxylated alcohols, C11–C15. Ethyl alcohol. ¹ Ethyl butanol. Ethylene chlorohydrin. Ethylene cyanohydrin. Ethylene glycol. ¹ Ethylene glycol (>75%)/Sodium alkyl carboxylates/borax mixture. Ethylene glycol (>85%)/Sodium alkyl carboxylates mixture. Furfuryl alcohol. ¹ Glycerine. ¹ Glycerine (83%)/Dioxanedimethanol (17%) mixture. Glycerol. Glycerol monooleate. Glycol mixture, crude. Heptanol (all isomers). Hexadecanol (Cetyl alcohol). Hexamethylene glycol. Hexanol. Hexylene glycol. Isoamyl alcohol. Isobutyl alcohol. Isopropyl alcohol. Methacrylic acid—Alkyloxypoly (alkylene oxide) methacrylate copolymer, sodium salt aqueous solution (45% or less). 3-Methoxy-1-butanol. Methyl alcohol. ¹ Methyl amyl alcohol. alpha-Methylbenzyl alcohol with Acetophenone (15% or less). Methyl butanol. Methyl butenol. Methyl 3- (3,5 di-tert-butyl-4-hydroxyphenyl) propionate crude melt. Methyl butynol. Methylcyclohexanemethanol (crude). 2-Methyl-2-hydroxy-3-butyne. Methyl isobutyl carbinol. 3-Methyl-3-methoxybutanol. 2-Methyl-1,3-propanediol. Molasses. Nonyl alcohol (all isomers). ¹ 1-Octadecanol. Octadecenol (oleyl alcohol). Octanol (all isomers). ¹ Octyl alcohol. ¹ Pentacos(oxypropane-2,3-diyl)s. Polyalkylene oxide polyol. Polybutadiene, hydroxyl terminated. Polyglycerine/Sodium salts solution (containing less than 3% Sodium hydroxide). ¹ Polyglycerol. Polyolefin amide alkeneamine polyol. n-Propyl alcohol. ¹ Propylene glycol. ¹ Sorbitol solution. Stearyl alcohol. Tallow alcohol. Tallow fatty alcohol (C13+). Trimethyl nonanol. Trimethylol propane polyethoxylated. Undecanol. Undecyl alcohol. Wine.
21. Phenols, Cresols	Alkyl (C4–C9) phenols. Alkylated (C4–C9) hindered phenols. Alkylphenols (C10–C18, C12 rich). Benzyl alcohol. Carbolic oil. Creosote. ¹ Creosote (coal tar). Creosote (wood tar). Cresols (all isomers). Cresol/Phenol/Xylenol mixture. Cresols with 5% or more phenol. Cresols with less than 5% phenol. Cresylic acid.

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
	Cresylic acid dephenolized. Cresylic acid tar. Cresylic acid with 5% or more phenol. Dibutylphenols. 2,4-Dichlorophenols. Di-tert-butylphenol. 2,4-Di-tert-butylphenol. 2,6-Di-tert-butylphenol. 2,4-Dichlorophenol. Dodecyl phenol. o-Ethyl phenol. Long-chain alkylphenate/Phenol sulfide (alternately sulphide) mixture. Long-chain alkylphenol (C14–C18). Long-chain alkylphenol (C18–C30). Methylene bridged isobutylenated phenols. Nonylphenol. Nonylphenol (48–62%)/Phenol (42–48%)/Dinonylphenol (1–10%) mixture. Octyl phenol. Phenol. Tertiary butylphenols. Xylenols. epsilon-Caprolactam (molten or aqueous solutions).
22. Caprolactam Solutions.	
23–29. Unassigned.	
30. Olefins	Acrylic acid/ethenesulfonic (alternately ethenesulphonic) acid copolymer with phosphonate groups, sodium salt solution. Aryl polyolefin (C11–C50). Butadiene (all isomers). Butadiene/Butylene mixtures (containing Acetylenes). Butene oligomer. Butylenes (all isomers). 1,5,9-Cyclododecatriene. Cyclopentadiene/Styrene/Benzene mixture. 1,3-Cyclopentadiene dimer (molten). Cyclopentene. Decene. Dicyclopentadiene, Resin Grade, 81–89%. Diisobutylene. Dipentene. Dodecene (all isomers). 1-Dodecene. Ethylene. Ethylidene norbornene. ¹ Heptene (all isomers). Hexene (all isomers). Isoprene (all isomers). Isoprene (part refined). Isoprene concentrate (Shell). Latex ammonia (1% or less)-inhibited. d-Limonene. Methyl acetylene/Propadiene mixture. Methyl butenes. Methylcyclopentadiene dimer. 2-Methyl-1-pentene. 4-Methyl-1-pentene. alpha-Methylstyrene. Mixed C4 Cargoes. Myrcene. Nonene (all isomers). 1-Octadecene. Octene (all isomers). Olefin-Alkyl ester copolymer (molecular weight 2000+). Olefin mixture (C7–C9) C8 rich, stabilized. Olefin mixtures (C5–C7). Olefin mixtures (C5–C15). Olefins (C13+, all isomers). alpha-Olefins (C6–C18) mixtures. 1,3-Pentadiene. 1,3-Pentadiene (greater than 50%), Cyclopentene and isomers, mixtures. Pentene (all isomers). Pentene. alpha-Pinene.

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
31. Paraffins	beta-Pinene. Piperylene concentrate. Poly(4+)isobutylene (molecular weight >224). Polyisobutylene (molecular weight ≤224). Polyolefin in mineral oil. Poly(5+)propylene. Propylene. Propylene-butylene copolymer. Propylene dimer. Propylene tetramer. Propylene trimer. Propylene/Propane/MAPP gas mixture. Styrene monomer. Tetradecene. Tridecene. Triisobutylene. Tripropylene. Turpentine. Undecene. 1-Undecene. Alkanes (C10–C26) linear and branched (flash point >60 °C). Alkanes (C10–C26) linear and branched (flash point ≤60 °C). Alkanes (C6–C9). n-Alkanes (C9–C11). n-Alkanes (C10+) (all isomers). iso- & cyclo-Alkanes (C10–C11). iso- & cyclo-Alkanes (C12+). Butane (all isomers). Butane/Propane mixture. Cycloheptane. Cyclohexane. Cyclopentane. Ethane. Ethyl cyclohexane. Ethylene-Propylene copolymer (in liquid mixtures). Heptadecane (all isomers). Hydrocarbon wax. Isopropylcyclohexane. Methane. Methylcyclohexane. 2-Methyl pentane. Nonane (all isomers). Octane (all isomers). Paraffin wax. Pentane (all isomers). Polyalpha olefins. Propane.
32. Aromatic Hydrocarbons Mixtures.	Alkyl acrylate-Vinyl pyridine copolymer in Toluene. Alkyl (C3–C4) benzenes: Butylbenzenes. Cumene. Propylbenzenes. Alkyl (C5–C8) benzenes: Amylbenzenes. Heptylbenzenes. Hexylbenzenes. Octylbenzenes. Alkyl (C9+) benzenes: Decylbenzenes. Dodecylbenzenes. Nonylbenzenes. Tetradecylbenzenes. Tetrapropylbenzenes. Tridecylbenzenes. Undecylbenzenes. Alkylbenzenes mixtures (containing naphthalene). Alkylbenzene mixtures (containing at least 50% of Toluene). Alkylbenzene, Alkylindane, Alkylindene mixture (each C12–C17). Alkyl toluene. Alkyl (C18+) toluenes. Benzene. Benzene and mixtures having 10% Benzene or more.

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
33. Miscellaneous Hydrocarbon Mixtures.	Benzene hydrocarbon mixtures (containing Acetylenes) (having 10% Benzene or more). Benzene/Toluene/Xylene mixtures (having 10% Benzene or more). Butyl phenol, Formaldehyde resin in Xylene. Butyl toluene. C9 Resinfeed (DSM).¹ <i>p</i>-Cymene. Detergent alkylate. Diethylbenzene. Diisopropylbenzene (all isomers). Diisopropylinaphthalene. Diphenyl. Dodecyl xylene. Ethylbenzene. Ethyl toluene. 1-Hexadecylnaphthalene/1,4-bis (Hexadecyl) naphthalene mixture. 1,n-Hexadecylnaphthalene (90%)/1,4-Di-n-(Hexadecyl) naphthalene (10%). Hexylbenzenes. Methyl naphthalene (molten). Naphthalene crude (molten). Naphthalene (molten). Naphthalene still residue. Parachlorobenzotrifluoride. 1-Phenyl-1-xylyl ethane. Poly(2+) cyclic aromatics. Polyolefinamine in alkyl (C2–C4) benzenes. Polyolefinamine in aromatic solvent. Pyrolysis gasoline (containing Benzene). Tetrahydronaphthalene. Tetramethylbenzene (all isomers). C9 Resinfeed (DSM).² 1,2,3,5-Tetramethylbenzene. Toluene. Tridecylbenzene. Triethylbenzene. Trimethylbenzene (all isomers). Xylenes. Xylenes/Ethylbenzene (10% or more) mixture. Alachlor technical (90% or more). Alkylbenzene sulfonic (alternately sulphonic) acid, sodium salt solution. Alkyl dithiothiadiazole (C6–C24). Alkyl (C18–C28) toluenesulfonic (alternately toluenesulphonic) acid, Calcium salts, high overbase. Alkyl (C18–C28) toluenesulfonic (alternately toluenesulphonic) acid, Calcium salts, low overbase. Asphalt. Asphalt blending stocks, roofers flux. Asphalt blending stocks, straight run residue. Asphalt emulsion. Asphalt, kerosene, and other components. Aviation alkylates (C8 paraffins and isoparaffins BPT 95 to 120 °C). Bio-fuel blends of Diesel/gas oil and Alkanes (C10–C26), linear and branched with a flash point >60 °C (>25% but <99% by volume). Bio-fuel blends of Diesel/gas oil and Alkanes (C10–C26), linear and branched with a flash point ≤60 °C (>25% but <99% by volume). Calcium sulfonate (alternately sulphonate)/Calcium carbonate/Hydrocarbon solvent mixture. Coal tar. Coal tar crude bases. Coal tar distillate. Coal tar pitch (molten). Coal tar, high temperature. Decahydronaphthalene. Diphenyl/Diphenyl ether mixture. Distillates, flashed feed stocks. Distillates, straight run. Drilling mud (low toxicity) (if flammable or combustible). Gas oil, cracked. Gasoline blending stock, alkylates. Gasoline blending stock, reformates. Gasolines: Automotive (containing not over 4.23 grams lead per gal.). Aviation (containing not over 4.86 grams lead per gal.). Casinghead (natural). Polymer. Straight run.

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
	Jet Fuels: JP-4. JP-5. JP-8. Kerosene. Mineral spirits. Naphtha: Aromatic. Coal tar solvent. Heavy. Paraffinic. Petroleum. Solvent. Stoddard solvent. Varnish Makers' and Painters'. Oil, fuel: No. 1. No. 1-D. No. 2. No. 2-D. No. 4. No. 5. No. 6. Oil, misc.: Aliphatic. Aromatic. Clarified. Coal. Crude. Diesel. Gas, cracked. Gas, high pour. Gas, low pour. Gas, low sulfur (alternately sulphur). Heartcut distillate. Lubricating. Mineral. Mineral seal. Motor. Neatsfoot. Penetrating. Pine. Residual. Road. Rosin. Spindle. Transformer. Turbine. Vacuum gas oil. Oxyalkylated alkyl phenol formaldehyde. Petrolatum. Petroleum wax. Polybutene. Polyolefin (molecular weight 300+). Polyolefin amide alkeneamine (C17+). Polyolefin amide alkeneamine (C28+). Polyolefin amide alkeneamine borate (C28-C250). Polyolefin amide alkeneamine in mineral oil. Polyolefinamine (C28-C250). Sulfohydrocarbon (alternately Sulphohydrocarbon) (C3-C88). Sulfurized (alternately Sulphurized) fat (C14-C20). Sulfurized (alternately Sulphurized) polyolefinamide alkene (C28-C250) amine. Waxes: Petroleum. White spirit. White spirit (low (15-20%) aromatic). Alkenyl (C8+) amine, Alkenyl (C12+) acid ester mixture. Alkyl dithiocarbamate (C19-C35). Alkyl ester copolymer (C4-C20). Alkyl ester copolymer in mineral oil. Alkyl (C7-C9) nitrates. ¹ Alkyl (C8-C40) phenol sulfide (alternately sulphide). Alkyl (C10-C20), (saturated and unsaturated) phosphite.
34. Esters	

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
	Alkyl sulfonic (alternately sulphonic) acid ester of phenol. Alkyl (C18–C28) toluenesulfonic (alternately toluenesulphonic) acid, Calcium salts, borated. Alkylaryl phosphate mixtures (more than 40% Diphenyl tolyl phosphate, less than 0.02% ortho-isomer). Amyl acetate (all isomers). Amyl acid phosphate. Animal and Fish oils, n.o.s.: Cod liver oil. Lanolin. Neatsfoot oil. Pilchard oil. Sperm oil. Animal and Fish acid oils and distillates, n.o.s.: Animal acid oil. Fish acid oil. Lard acid oil. Mixed acid oil. Mixed general acid oil. Mixed hard acid oil. Mixed soft acid oil. Barium long-chain (C11–C50) alkaryl sulfonate (alternately sulphonate). Barium long-chain alkyl (C8–C14) phenate sulfide (alternately sulphide). Benzenetricarboxylic acid trioctyl ester. Benzyl acetate. Bio-fuel blends of Diesel/gas oil and FAME (<25% but <99% by volume). Bio-fuel blends of Diesel/gas oil and vegetable oil (>25% but <99% by volume) Boronated calcium sulfonate. Bis (2-ethylhexyl) terephthalate. Boronated calcium sulfonate (alternately sulphonate). Butyl acetate (all isomers). Butyl benzyl phthalate. Butyl butyrate (all isomers). n-Butyl formate. n-Butyl propionate. Butyl stearate. Calcium alkyl (C10–C28) salicylate. Calcium alkyl (C9) phenol sulfide (alternately sulphide), polyolefin phosphorosulfide (alternately phosphorusulphide) mixture. Calcium carbonate slurry. Calcium long-chain alkaryl sulfonate (alternately sulphonate) (C11–C50). Calcium long-chain alkyl (C5–C10) phenate. Calcium long-chain alkyl (C5–C20) phenate. Calcium long-chain alkyl (C11–C40) phenate. Calcium long-chain alkyl (C18–C28) salicylate. Calcium long-chain alkyl phenate sulfide (alternately sulphide) (C8–C40). Calcium long-chain alkyl salicylate (C13+). Calcium nitrate solutions (50% or less). Calcium nitrate/Magnesium nitrate/Potassium chloride solution. Calcium salts of fatty acids. Calcium stearate. Cobalt naphthenate in solvent naphtha. Copper salt of long-chain (C17+) alkanoic acid. Copper salt of long-chain (C3–C16) fatty acid. Cyclohexane-1,2-dicarboxylic acid, diisononyl ester. Cyclohexyl acetate. Decyl acetate. Dialkyl (C7–C13) phthalates: 2,6-Diaminohexanoic acid phosphonate mixed salts solution. Di-(2-ethylhexyl) phthalate. Diheptyl phthalate. Dihexyl phthalate. Diisooctyl phthalate. Dioctyl phthalate. Diisodecyl phthalate. Diisononyl phthalate. Dinonyl phthalate. Ditridecyl phthalate. Diundecyl phthalate. Dialkyl thiophosphates sodium salts solution. Dibutyl hydrogen phosphonate. Dibutyl phthalate. Dibutyl terephthalate. Di-(2-ethylhexyl) adipate.

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
	Di-(2-ethylhexyl) terephthalate. Diethylene glycol dibenzoate. Diethylene glycol phthalate. Diethyl phthalate. Diethyl sulfate (alternately sulphate). Di-n-hexyl adipate. Diisobutyl phthalate. Dimethyl adipate. Dimethylcyclicsiloxane hydrolyzate. Dimethyl glutarate. Dimethyl hydrogen phosphite.¹ Dimethyl naphthalene sulfonic (alternately sulphonic) acid, sodium salt solution.¹ Dimethyl phthalate. Dimethylpolysiloxane. Dimethyl succinate. Dipropylene glycol dibenzoate. Dithiocarbamate ester (C7–C35). Ditridecyl adipate. 2-Dodecenylsuccinic acid, dipotassium salt solution. 2-Ethoxyethyl acetate. Ethyl acetate. Ethyl acetoacetate. Ethyl butyrate. 2-Ethyl-2-(2,4-dichlorophenoxy) acetate. 2-Ethyl-2-(2,4-dichlorophenoxy) propionate. S-Ethyl dipropylthiocarbamate. Ethylene carbonate. Ethylene glycol acetate. Ethylene glycol butyl ether acetate. Ethylene glycol diacetate. Ethylene glycol methyl ether acetate. Ethyl-3-ethoxypropionate. Ethyl hexyl phthalate. Ethyl hexyl tallate. 2-Ethyl-2-(hydroxymethyl) propane-1,3-diol (C8–C10) ester. Ethyl lactate. Ethyl propionate. Fatty acid methyl esters. Fatty acids (C8–C10). Fatty acids (C12+). Fatty acids (saturated, C13+). Fatty acids (C16+). Fatty acids, essentially linear (C6–C18) 2-ethylhexyl ester. Glycerol triacetate. Glycidyl ester of C10 trialkyl acetic acid. Glycidyl ester of tertiary carboxylic acid. Glycidyl ester of tridecyl acetic acid. Glycidyl ester of Versatic acid. Glycol diacetate. Glycol triacetate. Heptyl acetate. Herbicide (C15-H22-NO2-Cl). Hexyl acetate. Hog grease. Isobutyl formate. Isopropyl acetate. Lauric acid. Lauric acid methyl ester/Myristic acid methyl ester mixture. Lecithin. Magnesium long-chain alkaryl sulfonate (alternately sulphonate) (C11–C50). Magnesium long-chain alkyl phenate sulfide (alternately sulphide) (C8–C20). Magnesium long-chain alkyl salicylate (C11+). Magnesium nonyl phenol sulfide (alternately sulphide). Magnesium sulfonate (alternately sulphonate). 3-Methoxybutyl acetate. 1-Methoxy-2-propyl acetate. Methyl acetate. Methyl acetoacetate. Methyl amyl acetate. Methyl butyrate. Methyl formate. 3-Methyl-3-methoxybutyl acetate.

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
	Methyl salicylate. N-(2-Methoxy-1-methyl ethyl)-2-ethyl-6-methyl chloroacetanilide. Metolachlor. Naphthalene sulfonic (alternately sulphonic) acid, sodium salt solution. Nitrilotriacetic acid, trisodium salt solution. Nonyl acetate. Nonyl phenol sulfide (90% or less) solution. Octamethylcyclotetrasiloxane. n-Octyl acetate. Octyl decyl adipate. Octyl nitrate. Octyl phthalate. Oil, edible: Beechnut. Castor. Cocoa butter. Coconut. Cod liver. Corn. Cotton seed. Fish. Grape seed. Groundnut. Hazelnut. Illipe. Lard. Maize. Mango kernel. Nutmeg butter. Olive. Palm. Palm kernel. Palm kernel olein. Palm kernel stearin. Palm mid fraction. Palm olein. Palm stearin. Peanut. Poppy. Poppy seed. Raisin seed. Rapeseed. Rapeseed, (low erucic acid containing less than 4% free fatty acids). Rice bran. Safflower. Salad. Sesame. Shea butter. Soyabean. Sunflower. Sunflower seed. Tucum. Vegetable. Walnut. Oil, misc.: Acid mixture from soyabean, corn (maize) and sunflower oil refining. Animal. Camelina. Cashew nut shell oil (untreated). Coconut fatty acid. Coconut, fatty acid methyl ester. Cottonseed oil, fatty acid. Lanolin. Linseed. Oiticica. Palm acid. Palm fatty acid distillate. Palm oil, fatty acid methyl ester. Palm kernel acid. Palm kernel fatty acid distillate. Palm, non-edible industrial grade. Perilla.

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
	Pilchard. Rapeseed fatty acid methyl esters. Seal. Soapstock. Soyabean (epoxidized). Soyabean fatty acid methyl ester. Tall. Tall, crude. Tall, distilled. Tall, fatty acid. Tall, fatty acid (resin acids less than 20%). Tall pitch. Tung. Used cooking oil. Used cooking oil (triglycerides, C16–C18 and C18 unsaturated). n-Pentyl propionate. Phosphate esters. [[[(Phosphonomethyl)imino]bis[ethylenenitrilobis(methylene)]]tetrakisphosphonic acid, ammonium salt solution (60% or less). Poly(2–8)alkylene glycol monoalkyl (C1–C6) ether acetate: Diethylene glycol butyl ether acetate. Diethylene glycol ethyl ether acetate. Diethylene glycol methyl ether acetate. Polycarboxylic ester (C9+). Polyferric sulfate (alternately sulphate) solution. Polymerized esters. Polymethylsiloxane. Polyolefin aminoester salts (molecular weight 2000+). Polyolefin ester (C28–C250). Polyolefin phosphorosulfide (alternately phosphorosulphide), barium derivative (C28–C250). Poly(20)oxyethylene sorbitan monooleate. Polysiloxane. Polysiloxane/White spirit, low (15–20%) aromatic. Potassium formate solutions. Potassium formate solution (75% or more). Potassium oleate. Potassium salt of polyolefin acid. n-Propyl acetate. Propylene carbonate. Propylene glycol methyl ether acetate. Shea butter. Siloxanes. Sodium acetate solution. Sodium acetate/Glycol/Water mixture (not containing Sodium hydroxide). Sodium alkyl (C14–C17) sulfonates (alternately sulphonates) 60–65% solution. Sodium aluminosilicate slurry. Sodium benzoate. Sodium bicarbonate solution (less than 10%). Sodium dimethyl naphthalene sulfonate (alternately sulphonate) solution.² Sodium long-chain alkyl salicylate (C13+). Sodium naphthalene sulfonate (alternately sulphonate) solution. Sodium petroleum sulfonate (alternately sulphonate). Sodium sulfate (alternately sulphate) solution. Tall oil soap, crude. Tallow. Tallow fatty acid. Tributyl phosphate. Tricresyl phosphate (containing 1% or more ortho-isomer). Tricresyl phosphate (containing less than 1% ortho-isomer). Tridecanoic acid. Tridecyl acetate. Triethylene glycol di-(2-ethylbutyrate). Triethylene glycol dibenzoate. Triethyl phosphate. Triethyl phosphite.¹ Triisooctyl trimellitate.¹ Triisopropylated phenyl phosphates. Trimethyl phosphite.¹ 2,2,4-Trimethyl-1,3-pentanediol diisobutyrate. 2,2,4-Trimethyl-1,3-pentanediol-1-isobutyrate. 2,2,4-Trimethyl-3-pentanol-1-isobutyrate. Trisodium nitrilotriacetate solution.

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
	Trixylyl phosphate. Trixylenyl phosphate. Vegetable acid oils, n.o.s.: Corn acid oil. Cottonseed acid oil. Dark mixed acid oil. Groundnut acid oil. Mixed acid oil. Mixed general acid oil. Mixed hard acid oil. Mixed soft acid oil. Rapeseed acid oil. Safflower acid oil. Soya acid oil. Sunflower seed acid oil. Vegetable oil mixtures, containing less than 15% free fatty acid (m). Vegetable fatty acid distillates, n.o.s.: Palm kernel fatty acid distillate. Palm oil fatty acid distillate. Tall fatty acid distillate. Tall oil fatty acid distillate. Vegetable oils, n.o.s.: Beechnut oil. Camelina oil. Cashew nut shell. Castor oil. Cocoa butter. Coconut oil. Corn oil. Cotton seed oil. Croton oil. Grape seed oil. Groundnut oil. Hazelnut oil. Illipe oil. Linseed oil. Mango kernel oil. Nutmeg butter. Oiticica oil. Olive oil. Palm kernel oil. Palm kernel olein. Palm kernel stearin. Palm mid fraction. Palm, non-edible industrial grade. Palm oil. Palm olein. Palm stearin. Peanut oil. Peel oil (oranges and lemons). Perilla oil. Pine oil. Poppy seed oil. Poppy oil. Raisin seed oil. Rapeseed oil. Rapeseed (low erucic acid containing less than 4% free fatty acids). Rice bran oil. Rosin oil. Safflower oil. Salad oil.. Sesame oil. Shea butter. Soyabean oil. Sunflower seed oil. Tall. Tall, crude. Tall, distilled. Tall, pitch. Tucum oil. Tung oil. Walnut oil.

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
	Waxes: Candelilla. Carnauba. Zinc alkaryl dithiophosphate (C7–C16). Zinc alkyl dithiophosphate (C3–C14). Vinyl chloride. Vinylidene chloride. Benzyl chloride. Bromochloromethane. Carbon tetrachloride. ¹ Catoxid feedstock. ¹ Chlorinated paraffins (C10–C13). Chlorinated paraffins (C14–C17) (with 50% Chlorine or more, and less than 1% C13 or shorter chains). Chlorinated paraffins (C14–C17) (with 52% Chlorine). Chlorinated paraffins (C18+) with any level of Chlorine. Chlorobenzene. Chloroform. <i>m</i> -Chlorotoluene. <i>o</i> -Chlorotoluene. <i>p</i> -Chlorotoluene. Chlorotoluenes (mixed isomers). Dibromomethane. Dichlorobenzene (all isomers). 3,4-Dichloro-1-butene. Dichlorodifluoromethane. 1,1-Dichloroethane. 1,6-Dichlorohexane. Dichloromethane. Dichloropropane. 1,1-Dichloropropane. 1,2-Dichloropropane. 1,3-Dichloropropane. Ethyl chloride. Ethylene dibromide. Ethylene dichloride. ¹ Methyl bromide. Methyl chloride. Methylene chloride. Monochlorodifluoromethane. Pentachloroethane. Perchloroethylene. <i>n</i> -Propyl chloride. Sym-trichlorobenzene. Tetrachloroethane. 1,1,2,2-Tetrachloroethane. 1,2,3-Trichlorobenzene (molten). 1,2,4-Trichlorobenzene. 1,2,3-Trichlorobenzol. 1,1,1-Trichloroethane. ¹ 1,1,2-Trichloroethane. Trichloroethylene. ¹ 1,1,2-Trichloro-1,2,2-trifluoroethane. 1,2,3-Trichloropropane. Acetonitrile. Acetonitrile (low purity grade). Adiponitrile. Lactonitrile solution (80% or less). 2-Methylglutaronitrile. 2-Methylglutaronitrile with 2-Ethylsuccinonitrile (12% or less). Propionitrile. Tallow alkyl nitrile. Carbon disulfide (alternately disulphide).
35. Vinyl Halides	
36. Halogenated Hydrocarbons.	
37. Nitriles	
38. Carbon Disulfide (Alternately Disulfide).	
39. Sulfolane (Alternately Sulfolane).	
40. Glycol Ethers	Alkyl (C7–C11) phenol poly(4–12) ethoxylates. Alkyl (C9–C15) phenyl propoxylate. Alkyl (C10–C15, C12 rich) phenol poly(4–12)ethoxylate. Diethylene glycol. ¹ Diethylene glycol butyl ether. Diethylene glycol dibutyl ether. Diethylene glycol diethyl ether.

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
	Diethylene glycol ethyl ether. Diethylene glycol methyl ether. Diethylene glycol n-hexyl ether. Diethylene glycol phenyl ether. Diethylene glycol propyl ether. Dipropylene glycol. Dipropylene glycol butyl ether. Dipropylene glycol methyl ether. 2-Ethoxyethanol. Ethoxy triglycol (crude). Ethylene glycol dibutyl ether. Ethylene glycol monoalkyl ethers: Ethylene glycol butyl ether. Ethylene glycol tert-butyl ether. Ethylene glycol ethyl ether. Ethylene glycol hexyl ether. Ethylene glycol isopropyl ether. Ethylene glycol methyl butyl ether. Ethylene glycol methyl ether. Ethylene glycol propyl ether. Ethylene glycol n-propyl ether. Ethylene glycol phenyl ether. Ethylene glycol phenyl ether/Diethylene glycol phenyl ether mixture. Glucitol/Glycerol blend propoxylated (containing less than 10% amines). Glucitol/Glycerol blend propoxylated (containing 10% or more amines). Glycerol, ethoxylated. Glycerol polyalkoxylate. Glycerol, propoxylated. Glycerol, propoxylated and ethoxylated. Glycerol/Sucrose blend propoxylated and ethoxylated. alpha-Hydro-omega-hydroxytetradeca (oxytetramethylene). Methoxy triglycol. Nonyl phenol poly(4+)ethoxylates. Pentaethylene glycol methyl ether. Polyalkylene glycols/Polyalkylene glycol monoalkyl ethers mixtures. Poly(2–8)alkylene glycol monoalkyl (C1–C6) ethers: Diethylene glycol butyl ether. Diethylene glycol ethyl ether. Diethylene glycol n-hexyl ether. Diethylene glycol methyl ether. Diethylene glycol propyl ether. Dipropylene glycol butyl ether. Dipropylene glycol methyl ether. Polyalkylene glycol butyl ether. Polyethylene glycol monoalkyl ether. Polypropylene glycol methyl ether. Tetraethylene glycol methyl ether. Triethylene glycol butyl ether. Triethylene glycol ethyl ether. Triethylene glycol methyl ether. Tripropylene glycol methyl ether. Polyethylene glycol. Polyalkylene glycol butyl ether. Polyethylene glycol dimethyl ether. Poly (ethylene glycol) methylbutenyl ether (molecular weight >1000). Polypropylene glycol. Poly (tetramethylene ether) glycols (molecular weight 950–1050). Polytetramethylene ether glycol. Propylene glycol monoalkyl ethers: n-Propoxypropanol. Propylene glycol n-butyl ether. Propylene glycol ethyl ether. Propylene glycol methyl ether. Propylene glycol propyl ether. Propylene glycol phenyl ether. Tetraethylene glycol. Triethylene glycol. Triethylene glycol butyl ether mixture. Triethylene glycol ether mixture. Tripropylene glycol.
41. Ethers	Alcohol (C12–C13, branched and linear) poly(4–8)propoxy sulfates (alternately sulphates), sodium salt 25–30% solution.

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
	Alkaryl polyethers (C9–C20). tert-Amyl ethyl ether. tert-Amyl methyl ether. n-Butyl ether. Dichloroethyl ether. 2,2'-Dichloroisopropyl ether. Diethyl ether. Dimethyl ether. Dimethyl furan. 1,4-Dioxane. Diphenyl ether. Diphenyl ether/Diphenyl phenyl ether mixture. Ethyl tert-butyl ether. ¹ Isopropyl ether. Long chain alkaryl polyether (C11–C20). Methyl-tert-butyl ether. ¹ Methyl tert-pentyl ether. Polyether, borated. Polyether (molecular weight 1350+). Polyether polyols. Poly(oxyalkylene) alkenyl ether (molecular weight >1000). Polyoxybutylene alcohol. Propyl ether. Tetrahydrofuran. 1,3,5-Trioxane.
42. Nitrocompounds	o-Chloronitrobenzene. Dinitrotoluene (molten). Nitrobenzene. o-Nitrochlorobenzene. Nitroethane. Nitroethane (80%)/Nitropropane (20%). Nitroethane/1-Nitropropane (each 15% or more) mixture. Nitrophenol (mixed isomers). Nitropropane (60%)/Nitroethane (40%) mixtures. 1- or 2-Nitropropane. o- or p-Nitrotoluenes.
43. Miscellaneous Water Solutions.	Alkyl (C8–C10) polyglucoside solution (65% or less). Alkyl (C8–C10)/(C12–C14):(40% or less/60% or more) polyglucoside solution (55% or less). Alkyl (C8–C10)/(C12–C14):(50%/50%) polyglucoside solution (55% or less). Alkyl (C8–C10)/(C12–C14):(60% or more/40% or less) polyglucoside solution (55% or less). Alkyl (C12–C14) polyglucoside solution (55% or less). Aluminum sulfate (alternately Aluminium sulphate) solution. ¹ 2-Amino-2-hydroxymethyl-1,3-propanediol solution. Ammonium bisulfite (alternately bisulphite) solution (70% or less). ¹ Ammonium chloride solution (less than 25%). Ammonium polyphosphate solution. Ammonium sulfate (alternately sulphate) solution. Ammonium sulfate (alternately sulphate) solution (20% or less). Ammonium thiosulfate (alternately thiosulphate) solution (60% or less). Apple juice. Caramel solutions. Cesium formate solution. Clay slurry. Coal slurry. Corn syrup. Cyclohexane oxidation products, sodium salts solution. Dextrose solution. 2,4-Dichlorophenoxyacetic acid, Diethanolamine salt solution. 2,4-Dichlorophenoxyacetic acid, Triisopropanolamine salt solution. ¹ Diethylenetriaminepentaacetic acid, pentasodium salt solution. Dodecyl diphenyl ether disulfonate (alternately disulphonate) solution. Drilling brines (containing Calcium, Potassium, or Sodium salts). Drilling brines (containing Zinc salts). Drilling brines, including: Calcium bromide solution, Calcium chloride solution, and Sodium chloride solution. Drilling mud (low toxicity) (if non-flammable or non-combustible). Ethylenediaminetetracetic acid/tetrasodium salt solution. Ethylene-Vinyl acetate copolymer (emulsion). Ferric hydroxyethylethylenediaminetriacetic acid, trisodium salt solution. ¹ Fish solubles (water-based fish meal extracts). Fructose solution. Fumaric adduct of Rosin, water dispersion. Glucose solution.

TABLE 2 TO PART 150—GROUPING OF CARGOES—Continued

Group	Cargo
	Hexamethylenediamine adipate (50% in water). Hexamethylenediamine adipate solution. N-(Hydroxyethyl)ethylenediamine triacetic acid, trisodium salt solution. Kaolin clay solution/suspension. Kaolin slurry. Latex, liquid synthetic. Latex: Carboxylated Styrene-Butadiene copolymer; Styrene-butadiene rubber. Lauryl polyglucose. Lauryl polyglucose (50% or less). Lignin liquor. Ligninsulfonic (alternately Ligninsulphonic) acid, magnesium salt solution. Ligninsulfonic (alternately Ligninsulphonic) acid, sodium salt solution. Liquid Streptomyces solubles. L-Lysine solution (60% or less). Magnesium nitrate solution (66.7%). Microsilica slurry. Milk. N-Methylglucamine solution. Naphthenic acid, sodium salt solution. Pentasodium salt of Diethylenetriaminepentaacetic acid solution. Phenol solutions (2% or less). Polyacrylic acid solution (40% or less). Potassium chloride solution. Potassium chloride solution (10% or more). Potassium chloride solution (less than 26%). Potassium thiosulfate (alternately thiosulphate) (50% or less). Rosin soap (disproportionated) solution. Sewage sludge. Silica slurry. Sludge, treated. Sodium bromide solution (less than 50%). Sodium hydrogen sulfite (alternately sulphite) solution (45% or less). Sodium lignosulfonate (alternately lignosulphonate) solution. <i>Sodium naphthalene sulfonate solution (40% or less), see Naphthalene sulphononic acid, sodium salt solution (40% or less).</i> <i>Sodium naphthenate solution, see Naphthenic acid, sodium salt solution.</i> Sodium poly(4+)acrylate solution. Sodium polyacrylate solution.¹ Sodium salt of Ferric hydroxyethylethylenediaminetriacetic acid solution. Sodium silicate solution.¹ Sodium sulfide (alternately sulphide) solution (15% or less). Sodium sulfite (alternately sulphite) solution (25% or less). Sodium tartrates/Sodium succinates solution. Sulfonated (alternately Sulphonated) polyacrylate solution.¹ Tall oil soap (disproportionated) solution. Tetrasodium salt of ethylenediaminetetraacetic acid solution. Titanium dioxide slurry. Triisopropanolamine salt of 2,4-Dichlorophenoxyacetic acid solution. Trisodium salt of N-(Hydroxyethyl)ethylenediaminetriacetic acid solution. Urea solution. Urea/Ammonium nitrate solution (containing less than 1% free Ammonia). Urea/Ammonium phosphate solution. Vegetable protein solution (hydrolyzed). Water.

Notes:

¹ Due to potential compatibility issues, see Appendix I to 46 CFR part 150 (Exceptions to the Chart).

- 6. Amend Appendix I to Part 150 by:
- a. In the table in paragraph (a):
- i. After the entry for “Caustic soda 50% or less (5)”, add an entry for “2,4, D Dimethyl amine salt (DMA 806) (0)”;
- ii. Remove the entry for “Dimethyl disulfide (alternately disulfide) (0)”;
- iii. Adding in alphabetic order entries for “Dimethyl disulfide (alternately disulphide) (0)”; “tert-Dodecanethiol (Sulfole 120) (0)”, “tert-Dodecanethiol

(0)”, “n-Dodecyl mercaptan (0)”, “Hexamethylenediamine (7)”, “Hexamethylenediamine (molten) (HMD 98%, molten) (7)”, “Hexamethylenediamine solution (7)”, “Hexamethylenediamine solution (HMD 90%) (7)”, “Phenol (90% hydrated) (21)”, “Sodium hydrosulfide (alternately hydrosulphide) solution (5)”, “Sodium Methylate, 30% solution in Methanol (0)”, “Sulfuric

(alternately Sulphuric) acid (95–98%) (2)”; and

- b. Amend paragraph (b) by adding entries, in alphabetical order, for “Glycol Ethers (Group 40)” and “Toluene diisocyanate (TDI) (12)”.

The additions read as follows:

Appendix I to Part 150—Exceptions to the Chart

(a) * * *

Member of reactive group	Compatible with
2,4, D Dimethyl amine salt (DMA 806) (0)	Acetone (18). Ethyl Acrylate (14). Methyl Alcohol (20). Toluene (32).
tert-Dodecanethiol (Sulfole 120) (0)	Acetone (18). Ethyl Acrylate (14). Methyl Alcohol (20). Polymeric methylene diphenyl diisocyanate (Papi 27) (12). Toluene (32).
tert-Dodecanethiol (0)	All Chemicals in Group 33.
n-Dodecyl-mercaptan (0)	Acetone (18). All chemicals in Group 33.
Hexamethylenediamine (7)	Ethyl Alcohol (Ethanol) (20).
Hexamethylenediamine (molten) (HMD 98%, molten) (7)	n-Butyl Alcohol (20). Isobutyl Alcohol (20). Isopropyl Alcohol (20).
Hexamethylenediamine solution (7)	CepSinol™ 1216 (Alcohols (C12+), primary, linear) (20).
Hexamethylenediamine solution (HMD 90%) (7)	n-Butyl Alcohol (20). Isobutyl Alcohol (20). Isopropyl Alcohol (20).
Phenol (90% hydrated) (21)	Toluene diisocyanate (12).
Sodium hydrosulfide (alternatively hydrosulphide) solution (5)	Ethyl Alcohol (Ethanol) (20).
Sodium Methylate, 30% solution in Methanol (0)	n-Butyl Alcohol (20). Decene (30). Decyl Alcohol (20). Dialkyl (C9–C10) phthalates (34). Dichloromethane (36). Ethanolamine (8) (including Monoethanolamine). Hexene (all isomers) (30). Methyl Isobutyl Ketone (18). Olefin mixtures (C5–C15) (30). Olefins (C13+ all isomers) (30). Phenol (21). n-Propyl Alcohol (20). Propylheptanol (20). C9-Resinfeed (32). Sodium Borohydride (15% or less)/Sodium hydroxide solution (5). Solvent Naphtha (33). Styrene Monomer (30). Toluene (32). Xylenes (Incl. m-Xylene) (32).
Sulfuric (alternatively Sulphuric) acid (95–98%) (Group 2)	Methyl ester fatty acid (34). Soybean oil (34).

(b) * * *

* * * * *

Glycol Ethers (Group 40) are not compatible with Acrylonitrile (Group 15);

* * * * *

Toluene diisocyanate (TDI) (12) is not compatible with Alkylbenzene sulphonic acid, sodium salt solution (Group 33), Calcium nitrate solutions

(50% or less) (Group 34), Calcium nitrate/Magnesium nitrate/Potassium chloride solution (Group 34), Formaldehyde solutions (45% or less) (Group 19), Glutaraldehyde solutions (50% or less) (Group 19), Lactonitrile solution (80% or less) (Group 37), Nitrilotriacetic acid, trisodium salt solution (Group 34), Sodium acetate solutions (Group 34), Sodium sulphate

solutions (Group 34), Polyferric sulphate solution (Group 34).

* * * * *

Dated: November 7, 2023.

W.R. Arguin,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

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Part III

Commodity Futures Trading Commission

17 CFR Parts 1, 22, and 30

Investment of Customer Funds by Futures Commission Merchants and
Derivatives Clearing Organizations; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 22, and 30

RIN 3038-AF24

Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing to amend its regulations governing the types of investments that futures commission merchants (“FCMs”) and derivatives clearing organizations may make with funds held for the benefit of customers trading futures, foreign futures, and cleared swap transactions. The Commission is also specifying market risk capital charges that an FCM would be required to take on the revised permitted investments in computing the firm’s adjusted net capital. The proposed amendments would also amend regulations that require each FCM to report to the Commission and to the firm’s designated self-regulatory organization the name, location, and amount of customer funds held by each depository, including any investments of customer funds held by the depository. Lastly, the Commission is proposing to revise its regulations to eliminate the requirement that a depository holding customer funds must provide the Commission with read-only electronic access to such accounts for the FCM to treat the funds held in the accounts as customer segregated fund accounts.

DATES: Comments must be received on or before January 17, 2024.

ADDRESSES: You may submit comments, identified by RIN 3038-AF24, by any of the following methods:

- **CFTC Comments Portal:** <https://comments.cftc.gov>. Select the “Submit Comments” link for this rulemaking and follow the instructions on the Public Comment Form.

- **Mail:** Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://comments.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (“FOIA”), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations.¹

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://comments.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT:

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¹ 17 CFR 145.9. Commission Regulations referred to herein are found at 17 CFR Chapter I, and are accessible on the Commission’s website: <https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm>.

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I. Introduction

A. Background and Statutory Authority

1. Segregation of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations

A primary objective of the Commodity Exchange Act (“Act”)² and Commission regulations is the establishment of a framework to safeguard funds of customers engaging in CFTC-regulated derivative transactions. A core component of the framework is the requirement for a futures commission merchant (“FCM”) or a derivatives clearing organization (“DCO”) to treat customer funds as belonging to the customers and not as the property of the FCM or DCO, and for the FCM or DCO to segregate customer funds from its own funds by holding the funds in specially designated customer accounts maintained at banks, trust companies, FCMs, or DCOs, as applicable. The segregation of customer funds from an FCM’s or DCO’s own funds is intended to ensure that customer funds are used

² 7 U.S.C. 1 *et seq.*

only to support customer trading and transactions, and to facilitate the return of the funds to customers in the event of the insolvency of the FCM or DCO.

Customer funds are classified into one of three distinct regulatory frameworks that are based on the derivatives markets on which the customers are transacting. Specifically, customer funds are classified as either: (i) “futures customer funds;” (ii) “Cleared Swaps Customer Collateral;” or (iii) “30.7 customer funds.”³ The term “futures customer funds” is defined by Regulation 1.3 to mean, in relevant part, all money, securities, and property received by an FCM or a DCO from, for, or on behalf of “futures customers”⁴ to margin, guarantee, or secure futures and options on futures transactions traded on a CFTC-designated contract market, and all money accruing to futures customers as a result of trading futures and options on futures. Section 4d(a)(2) of the Act requires an FCM to treat and deal with futures customer funds received to margin, guarantee, or secure trades or contracts of any futures customer, or accruing to a futures customer as the result of such trades or contracts, as belonging to the futures customer.⁵ Section 4d(a)(2) further provides that an FCM may not commingle futures customer funds of a futures customer with the FCM’s own funds, provided, however, that the FCM may commingle the futures customer funds of two or more futures customers and deposit the funds with any bank, trust company, DCO, or other FCM.⁶

Section 4d(b) of the Act addresses the duties imposed on DCOs and other depositories receiving futures customer funds from FCMs pursuant to Section 4d(a)(2) of the Act.⁷ Section 4d(b) provides that it is unlawful for any person, including a DCO, that has received futures customer funds to hold, dispose of, or use the funds as belonging to the depositing FCM or any person other than the futures customers of the FCM.⁸ The Commission adopted Regulations 1.20 through 1.30, and Regulations 1.32 and 1.49, to implement the segregation requirements for futures

customer funds mandated by Sections 4d(a)(2) and 4d(b) of the Act.⁹

The term “Cleared Swaps Customer Collateral” is defined by Regulations 1.3 and 22.1¹⁰ to mean, in relevant part, all money, securities, or other property received by an FCM or a DCO from, for, or on behalf of, a “Cleared Swaps Customer” to margin, guarantee, or secure “Cleared Swap” positions.¹¹ Section 4d(f)(2)(A) of the Act requires an FCM to treat Cleared Swaps Customer Collateral received from a Cleared Swaps Customer, or accruing to a Cleared Swaps Customer as a result of Cleared Swap positions, as belonging to the Cleared Swaps Customer.¹² Section 4d(f)(2)(B) of the Act provides that an FCM may not commingle Cleared Swaps Customer Collateral of a Cleared Swaps Customer with the FCM’s own funds,¹³ provided, however, that the FCM may commingle Cleared Swaps Customer Collateral of two or more Cleared Swap Customers and deposit the funds in any bank, trust company, DCO, or other FCM.¹⁴ Section 4d(f)(6) of the Act provides that it is unlawful for any person, including a DCO and any depository institution, that has received Cleared Swaps Customer Collateral to hold, dispose of, or use the Cleared Swaps Customer Collateral as belonging to the depositing FCM or any person other than the Cleared Swaps Customer of the FCM.¹⁵ The Commission adopted Regulations 22.2 through 22.13, and Regulations 22.15 through 22.17, to implement the segregation requirements for Cleared Swaps Customer Collateral mandated by Section 4d(f) of the Act.¹⁶

The term “30.7 customer funds” is defined by Regulation 30.1 to mean any money, securities, or other property received by an FCM from, for, or on behalf of a U.S. person or foreign-domiciled person (a “30.7 customer”) to margin, guarantee, or secure futures or options on futures positions executed on foreign boards of trade (“foreign

futures”).¹⁸ Section 4(b)(2)(A) of the Act authorizes the Commission to adopt regulations imposing requirements on FCMs regarding the safeguarding of 30.7 customer funds deposited by 30.7 customers for trading on foreign boards of trade.¹⁹ The Commission adopted Regulation 30.7 pursuant to Section 4(b)(2)(A) of the Act.²⁰ Regulation 30.7(e)(2) requires an FCM to segregate 30.7 customer funds from the FCM’s own funds, and Regulation 30.7(b) provides that an FCM may hold 30.7 customer funds with designated depositories, including banks, trust companies, DCOs, foreign brokers, and clearing organizations of foreign boards of trade.²¹

Throughout this release, the terms “futures customer funds,” “Cleared Swaps Customer Collateral,” and “30.7 customer funds” are collectively referred to as “Customer Funds,” unless otherwise stated.

2. Authority for Futures Commission Merchants and Derivatives Clearing Organizations To Invest Customer Funds

Section 4d(a)(2) of the Act authorizes FCMs to invest futures customer funds in: (i) obligations of the U.S.; (ii) obligations fully guaranteed as to principal and interest by the U.S.; and (iii) general obligations of any State or of any political subdivision of a State.²² Regulation 1.25 was initially adopted to implement Section 4d(a)(2), and authorized FCMs and DCOs to invest futures customer funds in the instruments set forth in Section 4d(a)(2) of the Act (the “Permitted Investments”).²³

The Commission, in 2000, expanded the Permitted Investments beyond the investments specifically stated in Section 4d(a)(2) of the Act to include certificates of deposit, commercial paper, corporate notes, foreign sovereign debt, and interests in money market funds.²⁴ In addition, the Commission

⁹ 17 CFR 1.20 through 17 CFR 1.30, 17 CFR 1.32, and 17 CFR 1.49.

¹⁰ 17 CFR 22.1.

¹¹ The term “Cleared Swaps Customer” is defined by Regulation 22.1 to mean, in relevant part, any customer entering into a Cleared Swap. The term “Cleared Swap” is defined to mean any swap that is, directly or indirectly, submitted to and cleared by a DCO registered with the Commission. See 7 U.S.C. 1a(7) and 17 CFR 22.1.

¹² 7 U.S.C. 6d(f)(2)(A).

¹³ 7 U.S.C. 6d(f)(2)(B).

¹⁴ 7 U.S.C. 6d(f)(3)(A)(i).

¹⁵ 7 U.S.C. 6d(f)(6).

¹⁶ 17 CFR 22.2 through 17 CFR 22.13, 17 CFR 22.15 through 17 CFR 22.17.

¹⁷ The term “30.7 customer” is defined by Regulation 30.1 to mean any person located in the U.S., its territories or possessions, as well as any foreign-domiciled person, who trades in foreign futures or foreign options. 17 CFR 30.1.

¹⁸ 17 CFR 30.1.

¹⁹ 7 U.S.C. 6(b)(2)(A).

²⁰ 17 CFR 30.7.

²¹ 17 CFR 30.7(b) and 17 CFR 30.7(e)(2).

²² 7 U.S.C. 6d(a)(2).

²³ See *Title 17—Commodity and Securities Exchanges*, 33 FR 14454 (Sept. 26, 1968), amending Regulation 1.25 and providing that FCMs and clearing organizations may invest customer funds in obligations of the U.S., in general obligations of any State or of any political subdivision of any State, or in obligations fully guaranteed as to principal and interest by the U.S.

²⁴ See *Rules Relating to Intermediaries of Commodity Interest Transactions*, 65 FR 77993 (Dec. 13, 2000) (publishing final rules); and *Investment of Customer Funds*, 65 FR 82270 (Dec. 28, 2000) (making technical corrections and accelerating the effective date of the final rules from

Continued

³ See generally, 17 CFR 1.20 (segregation framework for futures customer funds); 17 CFR 22.2 and 22.3 (segregation framework for Cleared Swaps Customer Collateral); and 17 CFR 30.7 (segregation framework for 30.7 customer funds).

⁴ The term “futures customer” is defined by Regulation 1.3 to mean, in relevant part, any person who uses an FCM as an agent in connection with trading in any contract for the purchase or sale of a commodity for future delivery or any option on such contract. 17 CFR 1.3.

⁵ 7 U.S.C. 6d(a)(2).

⁶ *Id.*

⁷ 7 U.S.C. 6d(b).

⁸ *Id.*

authorized an FCM or a DCO to buy the Permitted Investments under agreements to resell the securities (“reverse repurchase agreements”) and to sell the Permitted Investments under agreements to repurchase the securities (“repurchase agreements”).²⁵ To minimize credit risk, market risk, and liquidity risk, the Commission also imposed conditions that Permitted Investments were required to meet, including a restriction on the dollar-weighted average of the time-to-maturity of securities held in the segregated portfolio, asset-based and issuer-based concentration limits, and prohibitions on certain investments containing embedded derivatives.²⁶ More generally, Regulation 1.25 requires all Permitted Investments to be “consistent with the objectives of preserving principal and maintaining liquidity.”²⁷ The 2000 Permitted Investments Amendment was adopted under the authority of Section 4(c) of the Act.²⁸ In adopting the amendment, the Commission stated that the expanded list of Permitted Investments would enhance the yield available to FCMs, DCOs, and their customers without compromising the safety of futures customer funds.²⁹

Following the 2000 Permitted Investments Amendment, the list of Permitted Investments has undergone several revisions.³⁰ In its current form, Regulation 1.25 lists seven categories of investments that qualify as Permitted Investments: (i) obligations of the U.S. and obligations fully guaranteed as to principal and interest by the U.S. (“U.S.

government securities”); (ii) general obligations of any State or political subdivision of a State (“municipal securities”); (iii) obligations of any U.S. government corporation or enterprise sponsored by the U.S. (“U.S. agency obligations”); (iv) certificates of deposit issued by a bank; (v) commercial paper fully guaranteed by the U.S. under the Temporary Liquidity Guarantee Program (“TLGP”) as administered by the Federal Deposit Insurance Corporation (“FDIC”) (“commercial paper”); (vi) corporate notes and bonds fully guaranteed as to principal and interest by the U.S. under the TLGP (“corporate notes and bonds”); and (vii) interests in money market mutual funds.³¹ In addition, Regulation 1.25(a)(2) permits FCMs and DCOs to buy and sell the Permitted Investments under Repurchase Transactions.³²

Section 4(b)(2)(A) of the Act grants the Commission the plenary authority to adopt rules and regulations regarding an FCM’s safeguarding of 30.7 customer funds.³³ Prior to 2011, an FCM was not subject to restrictions on the investments that it could enter into with 30.7 customer funds.³⁴ In 2011, the Commission extended the requirements of Regulation 1.25 to an FCM’s investment of 30.7 customer funds for trading foreign futures positions. Specifically, the Commission amended Regulation 30.7 to provide that to the extent an FCM invested 30.7 customer funds, it must invest such funds subject to, and in compliance with, the terms and conditions of Regulation 1.25.³⁵ The Commission exercised its plenary authority under Section 4(b) of the Act to adopt Regulation 30.7.

The Commission also extended the requirements of Regulation 1.25 to FCMs and DCOs investing Cleared Swaps Customer Collateral.³⁶ Regulations 22.2 and 22.3 were adopted in 2012 under the authority of Section 4d(f)(4) of the Act,³⁷ which provides that Cleared Swaps Customer Collateral may be invested by an FCM or a DCO

in: (i) obligations of the U.S.; (ii) general obligations of any State or of any political subdivision of a State; (iii) obligations fully guaranteed as to principal and interest by the U.S.; and, (iv) any other investment that the Commission may by rule or regulation prescribe.³⁸ Section 4d(f)(4) of the Act further provides that the investments must be made in accordance with the rules and regulations, and subject to any conditions, as the Commission prescribes.³⁹

In addition to setting forth the Permitted Investments that FCMs and DCOs may enter into with Customer Funds, Regulation 1.25 also includes several conditions on the investment of Customer Funds. Regulation 1.25(b)(3) contains both asset-based and issuer-based concentration limits applicable to Permitted Investments. The asset-based concentration limit restricts the total amount of Customer Funds that an FCM or a DCO may invest in a particular Permitted Investment to a defined percentage of the total funds held in segregation by the FCM or DCO.⁴⁰ The issuer-based concentration limit caps the total amount of Customer Funds that may be invested in instruments offered by, or managed by, a particular issuer to a defined percentage of the total funds held in segregation by the FCM or DCO.⁴¹

Consistent with the objective of limiting customer risk, Commission regulations also provide that FCMs and DCOs are financially responsible for any losses resulting from Permitted Investments, and are explicitly prohibited from allocating investment losses to customers or clearing FCMs, respectively.⁴²

February 12, 2001 to December 28, 2000) (collectively, the “2000 Permitted Investments Amendment”).

²⁵ *Id.* Reverse repurchase agreements and repurchase agreements are collectively referred to as “Repurchase Transactions” in the Proposal.

²⁶ 17 CFR 1.25(b).

²⁷ *Id.*

²⁸ Section 4(c)(1) of the Act empowers the Commission to “promote responsible economic or financial innovation and fair competition” by exempting any transaction or class of transactions (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), from any of the provisions of the Act, subject to certain exceptions. The Commission may grant such an exemption by rule, regulation, or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative. *See* 7 U.S.C. 6(c). A further discussion of Section 4(c)(1) of the Act is set forth in Section IV of this **Federal Register** release.

²⁹ *See* 2000 Permitted Investments Amendment at 78007.

³⁰ *See Investment of Customer Funds and Record of Investments*, 70 FR 28190 (May 17, 2005) (“2005 Permitted Investments Amendment”), and *Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions*, 76 FR 78776 (Dec. 19, 2011) (“2011 Permitted Investments Amendment”).

³¹ 17 CFR 1.25(a)(1).

³² 17 CFR 1.25(a)(2).

³³ 7 U.S.C. 6(b)(2)(A).

³⁴ 2011 Permitted Investments Amendment at 78777, providing that because Congress did not expressly apply the investment limitations set forth in Section 4d of the Act to 30.7 customer funds, the Commission historically has not subjected such funds to the investment limitations applicable to futures customer funds.

³⁵ *See* 17 CFR 30.7. The Commission stated that it was appropriate to align the investment standards of Regulation 30.7 with those of Regulation 1.25 as many of the same prudential concerns arise with respect to both futures customer funds and 30.7 customer funds. *See* 2011 Permitted Investment Amendment at 78791.

³⁶ *See* 17 CFR 22.2(e)(1) and 17 CFR 22.3(d).

³⁷ 7 U.S.C. 6d(f).

³⁸ *See Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Amendments to the Commodity Broker Bankruptcy Provisions*, 77 FR 6336 (Feb. 7, 2012).

³⁹ *See* 7 U.S.C. 6d(f)(4).

⁴⁰ 17 CFR 1.25(b)(3)(i).

⁴¹ 17 CFR 1.25(b)(3)(ii).

⁴² Regulation 1.29 provides that FCMs or DCOs, as applicable, shall bear sole responsibility for any losses resulting from the investment of futures customer funds, and further provides that no investment losses shall be borne or otherwise allocated to FCM customers or to FCMs clearing customer accounts at DCOs. 17 CFR 1.29(b).

Regulation 22.2(e)(1) provides that an FCM shall bear sole responsibility for any losses resulting from the investment of Cleared Swaps Customer Collateral and may not allocate investment losses to Cleared Swaps Customers of the FCM. 17 CFR 22.2(e)(1).

Regulation 30.7(i) provides that an FCM shall bear sole financial responsibility for any losses resulting from the investment of 30.7 customer funds, and further provides that no investment losses may be allocated to the 30.7 customers of the FCM. 17 CFR 30.7(i).

In addition, Regulation 22.3(d) provides that DCOs may invest Cleared Swaps Customer

The Commission has previously noted the importance of conducting periodic reassessments of Regulation 1.25 “and, as necessary, revising regulatory policies to strengthen safeguards designed to minimize risk while retaining an appropriate degree of investment flexibility and opportunities for capital efficiency for DCOs and FCMs investing customer segregated funds.”⁴³ In furtherance of these objectives and in consideration of the requests for amendments to Regulation 1.25 discussed in Section II below, the Commission is proposing to amend the list of Permitted Investments in Regulation 1.25 to: (i) add two new asset classes (*i.e.*, specified foreign sovereign debt instruments and certain exchange-traded funds (“ETFs”)), subject to certain conditions, (ii) limit the scope of money market funds (“MMFs”) whose interests qualify as Permitted Investments, and (iii) remove corporate notes, corporate bonds, and commercial paper. In connection with the proposed amendments to the list of Permitted Investments, the Commission is further proposing changes to the counterparty and depository requirements of Regulation 1.25(d)(2) and (7) and revisions to the concentration limits for Permitted Investments set forth in Regulation 1.25(b)(3), and is specifying the capital charges that would apply to the proposed new categories of Permitted Investments. Additionally, the Commission is proposing an amendment to Regulation 22.3(d) to clarify that DCOs are financially responsible for any losses resulting from investments of Cleared Swap Customer Collateral in Permitted Investments, consistent with Regulation 1.29, which addresses financial responsibility for losses resulting from investment of futures customer funds. The proposed amendment reflects the Commission’s original intent to permit investments of Cleared Swaps Customer Collateral within the parameters applicable to investments of futures customer funds.⁴⁴ The Commission is also proposing to replace the London

Interbank Offered Rate (“LIBOR”) with the Secured Overnight Financing Rate (“SOFR”) as a permitted benchmark for variable and floating interest rates for securities that qualify as Permitted Investments. Each of the proposed amendments is discussed below.

II. Requests for Amendments to the List of Permitted Investments

The Futures Industry Association (“FIA”) and CME Group Inc. (“CME”) (collectively, the “Petitioners”) submitted a joint petition requesting the Commission to issue an order under Section 4(c) of the Act, or to take such other action as the Commission deems appropriate, to expand investments that FCMs and DCOs may enter into with Customer Funds.⁴⁵ The Petitioners request that the Commission take action to permit FCMs and DCOs to invest Customer Funds in the foreign sovereign debt of Canada, France, Germany, Japan, and the United Kingdom (“Specified Foreign Sovereign Debt”), subject to the condition that the investment in the foreign sovereign debt is limited to balances owed by FCMs and DCOs to customers and FCM clearing firms, respectively, denominated in the applicable currency of Canada, France, Germany, Japan, or the United Kingdom.⁴⁶ The Petitioners further request that the Commission exempt FCMs and DCOs from the provisions of Regulation 1.25(d)(2) to authorize FCMs and DCOs to enter into Repurchase Transactions involving Specified Foreign Sovereign Debt with foreign banks and foreign securities brokers or dealers and to hold Specified Foreign Sovereign Debt in safekeeping accounts at foreign banks.⁴⁷

In support of the request, the Petitioners note that the Commission issued an order in 2018 pursuant to Section 4(c) of the Act providing a limited exemption to Section 4d of the Act and Regulation 1.25 to permit DCOs to invest futures customer funds and Cleared Swaps Customer Collateral in the foreign sovereign debt of France and

Germany.⁴⁸ The exemption for DCOs to invest in French and German sovereign debt is subject to conditions, including that: (i) investment in French or German sovereign debt is limited to investments made with euro-denominated balances owed to the futures customers and Cleared Swaps Customers of FCM clearing members; (ii) the dollar-weighted average of the remaining time-to-maturity of a DCO’s portfolio of investments in each of French and German sovereign debt may not exceed 60 days; and (iii) a DCO may not make a direct investment in any sovereign debt instrument of France or Germany that has a remaining time-to-maturity in excess of 180 calendar days.⁴⁹ The 2018 Order also provides that if the two-year credit default spread of the French or German sovereign debt exceeds 45 basis points (“BPS”), the DCO may not make any new direct investments in the relevant sovereign debt using futures customer funds or Cleared Swaps Customer Collateral, and must discontinue investing futures customer funds and Cleared Swaps Customer Collateral in the relevant debt through Repurchase Transactions as soon as practicable under the circumstances.⁵⁰

The 2018 Order also grants an exemption from Regulation 1.25(d)(2) to permit DCOs to enter into Repurchase Transactions involving French or German sovereign debt with foreign banks and foreign securities brokers or dealers as counterparties.⁵¹ A DCO may

⁴⁸ *Order Granting Exemption from Certain Provisions of the Commodity Exchange Act Regarding Investment of Customer Funds and from Certain Related Commission Regulations*, 83 FR 35241 (Jul. 25, 2018) (“2018 Order”). The 2018 Order provides an exemption only to DCOs. FCMs are not subject to the 2018 Order, and currently may not invest Customer Funds in any foreign sovereign debt.

⁴⁹ Conditions (3)(a), 3(c), and 3(d) of the 2018 Order at 35245.

⁵⁰ Condition (3)(b) of the 2018 Order at 35245.

⁵¹ As noted above, Regulation 1.25(d)(2) provides that an FCM or a DCO may enter into Repurchase Transactions only with the following counterparties: (i) a bank as defined in Section 3(a)(6) of the Securities Exchange Act of 1934; (ii) a domestic branch of a foreign bank insured by the FDIC; (iii) an SEC-registered securities broker or dealer; or (iv) an SEC-registered government securities broker or dealer. Section 3(a)(6) of the Securities Exchange Act of 1934 defines the term “bank” to mean: (i) a banking institution organized under the laws of the U.S. or a Federal savings association; (ii) a member bank of the Federal Reserve System; (iii) any other banking institution or savings association doing business under the laws of any State or the U.S., a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by a State or Federal authority having supervision over banks or savings associations; and (iv) a receiver,

Collateral in Permitted Investments set forth in Regulation 1.25. The regulation, however, does not provide that a DCO is responsible for investment losses. The Commission is proposing to amend Regulation 22.3(d) to explicitly provide that a DCO shall bear sole responsibility for any losses resulting from the investment of Cleared Swaps Customer Collateral, and may not allocate such losses to Cleared Swaps Customers. See Section III.C. below. 17 CFR 22.3(d).

⁴³ 2011 Permitted Investments Amendment at 78777.

⁴⁴ See *Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations*, 78 FR 68506 (Nov. 14, 2013) (“2013 Protections of Customer Funds”) at 68556.

⁴⁵ *Petition for Order under Section 4(c) of the Commodity Exchange Act*, dated May 24, 2023 (the “Joint Petition”). On September 22, 2023, the Petitioners submitted updated data in support of the Joint Petition and corrected an inadvertent transposition of data items in the Joint Petition. *Supplement to Petition for Order under Section 4(c) of the Commodity Exchange Act* (“Supplement to Joint Petition”). The Joint Petition and the Supplement to Joint Petition are available on the Commission’s website, https://www.cftc.gov/media/9531/FIA_CMEPetition_Regulation125_052423/download and https://www.cftc.gov/media/9536/FIALetterSupplementing_Regulation125_092223/download.

⁴⁶ Joint Petition at p. 4.

⁴⁷ Joint Petition at p. 5.

enter into Repurchase Transactions with a foreign bank or foreign securities broker or dealer provided that the such firm qualifies as a permitted depository under Regulation 1.49(d)(3) and is located in a money center country or in another jurisdiction that has adopted the euro as its currency.⁵² The 2018 Order further grants an exemption from the requirement in Regulation 1.25(d)(7) that securities transferred to an FCM or a DCO under reverse repurchase agreements must be held in safekeeping accounts with certain U.S.-domiciled banks, a Federal Reserve Bank, a DCO, or the Depository Trust Company,⁵³ to permit DCOs to hold French or German sovereign debt received under reverse repurchase agreements in a safekeeping account with foreign banks that qualify as depositories for Customer Funds under Regulation 1.49(d)(3).

The Petitioners further request that FCMs and DCOs be permitted to invest Customer Funds in certain ETFs that invest primarily in short-term U.S. Treasury securities (“U.S. Treasury ETFs”).⁵⁴ In support of their request, the Petitioners state that U.S. Treasury ETFs have characteristics that may be consistent with those of other Permitted Investments and may provide FCMs and DCOs with an opportunity to diversify further their investments of customer funds.⁵⁵

The Commission also received a petition from Invesco Capital Management LLC (“Invesco”), which serves as a sponsor of various ETFs, advocating for the addition of U.S. Treasury ETF securities to the list of Permitted Investments.⁵⁶ Invesco states

conservator, or other liquidating agent of any institution or firm included in clauses (i), (ii), or (iii) above (“Section 3(a)(6) bank”). 15 U.S.C. 78 *et seq.* Foreign-domiciled banks and foreign securities brokers or dealers are not authorized counterparties for Repurchase Transactions under Regulation 1.25(d)(2).

⁵² Regulation 1.49(d)(3) provides that a foreign depository must be a bank or trust company that has in excess of \$1 billion in regulatory capital, a registered FCM, or a DCO in order to be a qualified counterparty to Repurchase Transactions.

⁵³ Specifically, Regulation 1.25(d)(7) provides that securities transferred to an FCM or a DCO under a reverse repurchase agreement must be held in a safekeeping account only with the following depositories: (i) a Section 3(a)(6) bank; (ii) a domestic branch of a foreign bank insured by the FDIC; (iii) a Federal Reserve Bank; (iv) a DCO; or (v) the Depository Trust Company. A foreign-domiciled bank is currently not an authorized depository for securities transferred to an FCM or a DCO under Regulation 1.25(d)(7).

⁵⁴ Joint Petition at pp. 8–9.

⁵⁵ *Id.*

⁵⁶ Letter from Anna Paglia, Chief Executive Officer, Invesco Capital Management LLC, dated September 28, 2023 (“Invesco Petition”). See https://www.cftc.gov/media/9541/Invesco_CFTCPetition_Regulation125_092823/download. Invesco is a registered with the Commission as a

that U.S. Treasury ETFs will provide FCMs and DCOs with additional investment choices for customer funds, promote operational efficiencies and offer potentially better investment returns for FCMs, DCOs, and their customers, and facilitate financial market innovation.⁵⁷ Invesco further states that permitting investments of U.S. Treasury ETFs would be consistent with, and promote, the public interest goals enumerated in the Act.⁵⁸ Invesco further notes that U.S. Treasury ETFs invest in a sub-set of the same high-quality liquid instruments that are Permitted Investments under Regulation 1.25 (*i.e.*, U.S. government securities), and as such, the ETFs offer an indirect, possibly simpler, and more cost-efficient way for FCMs and DCOs to invest Customer Funds in U.S. Treasury securities and obligations fully guaranteed as to principal and interest by the U.S. as the ETFs eliminate the need for FCMs and DCOs to administer investments in individual U.S. government securities.⁵⁹

Finally, the Petitioners also request that the Commission amend its regulations consistent with CFTC Staff Letter 21–02 and CFTC Staff Letter 22–21,⁶⁰ to permit FCMs and DCOs to invest Customer Funds in qualifying Permitted Investments that have adjustable rates of interest that correlate closely to SOFR.⁶¹

III. Proposal

As part of its periodic assessment of Regulation 1.25 and in consideration of the information set forth in the Joint Petition and the Invesco Petition, the Commission is proposing to amend the list of Permitted Investments, subject to certain terms and conditions, as discussed in detail below. In connection with the proposed amendments to the list of Permitted Investments, the Commission is further proposing

commodity pool operator and commodity trading advisor, and is registered with the Securities and Exchange Commission (“SEC”) as an investment adviser.

⁵⁷ Invesco Petition at p. 1.

⁵⁸ *Id.*

⁵⁹ See Invesco Petition at p. 2.

⁶⁰ CFTC Staff Letter 21–02—*CFTC Regulation 1.25—Investment of Customer Funds—Time-Limited No-Action Position for Investments in Securities with an Adjustable Rate of Interest Benchmarked to the Secured Overnight Financing Rate*, issued January 4, 2021 (“Staff Letter 21–02”); CFTC Staff Letter 22–21—*CFTC Regulation 1.25—Investment of Customer Funds in Securities with an Adjustable Rate of Interest Benchmarked to the Secured Overnight Financing Rate—Extension of Time-Limited No-Action Position Concerning Investments by Futures Commission Merchants and No-Action Position Concerning Investments by Derivatives Clearing Organizations*, issued December 23, 2022 (“Staff Letter 22–21”).

⁶¹ See Joint Petition at p. 4.

changes to the counterparty and depository requirements of Regulation 1.25(d)(2) and (7), and revisions to the concentration limits for Permitted Investments set forth in Regulation 1.25(b)(3). Separately, the Commission is specifying capital charges that FCMs would apply to the revised list of Permitted Investments as proposed, and is proposing a clarifying amendment to Regulation 22.3(d) to specify that DCOs bear the financial responsibility for losses resulting from Permitted Investments. The Commission is also proposing to replace LIBOR with SOFR as a permitted benchmark for the interest rate of adjustable rate securities that qualify as Permitted Investments. Lastly, the Commission is proposing to revise its regulations to eliminate the requirement that a depository holding customer funds must provide the Commission with read-only electronic access to such accounts for the FCM to treat the accounts as customer segregated fund accounts. Collectively, the proposed revisions and amendments are referred to as the “Proposal.”

A. Investment of Customer Funds

1. Interests in Money Market Funds

Regulation 1.25(a)(1)(vii) currently provides that FCMs and DCOs may invest Customer Funds in interests in MMFs, subject to specified terms and conditions.⁶² To qualify as a Permitted Investment, a MMF must: (i) be an investment company that is registered with the SEC under the Investment Company Act of 1940⁶³ and hold itself out to investors as a MMF in accordance with SEC Rule 2a–7;⁶⁴ (ii) be sponsored by a federally-regulated financial institution, a Section 3(a)(6) bank,⁶⁵ an investment adviser registered under the Investment Advisers Act of 1940,⁶⁶ or a domestic branch of a foreign bank insured by the FDIC; and (iii) compute the net asset value (“NAV”) of the fund by 9 a.m. of the business day following each business day and make the NAV available to MMF shareholders by that time.⁶⁷

The Commission is proposing to amend Regulation 1.25(a)(1)(vii) to limit the scope of MMFs whose interests qualify as Permitted Investments to “government money market funds,” as defined in SEC Rule 2a–7, in response to two sets of amendments that the SEC adopted to its rules governing MMFs

⁶² 17 CFR 1.25(a)(vii).

⁶³ 15 U.S.C. 80a–1—80a–64.

⁶⁴ 17 CFR 270.2a–7.

⁶⁵ For a definition of Section 3(a)(6) bank, see *supra* note 51.

⁶⁶ 15 U.S.C. 80b–1—80b–21.

⁶⁷ 17 CFR 1.25(c).

discussed below.⁶⁸ A Government MMF is defined in SEC Rule 2a–7 as a fund that invests 99.5 percent or more of its total assets in cash, “government securities,” and/or Repurchase Transactions that are collateralized fully by cash or “government securities.”⁶⁹ A “government security” is defined as “any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit of any of the foregoing.”⁷⁰ Therefore, a “government security” encompasses “U.S. government securities” and “U.S. agency obligations” as defined under Regulation 1.25(a)(1)(i) and (iii), respectively.⁷¹

As noted above, the Commission is proposing to amend Regulation 1.25 to limit the scope of MMFs that qualify as Permitted Investments in response to SEC revisions to its MMF rules. In that regard, in 2014, the SEC amended Rule 2a–7 to permit an MMF to impose liquidity fees on participant redemptions or to temporarily suspend participant redemptions if the MMF’s investment portfolio triggered certain liquidity thresholds.⁷² The 2014 SEC MMF Final Rule was adopted to mitigate the adverse effects on fund liquidity resulting from increased participant redemptions during times of financial stress.⁷³

The 2014 SEC MMF Final Rule provides that a MMF that invests less than 30 percent of its total assets in instruments defined as “weekly liquid assets”⁷⁴ may impose a liquidity fee of

up to two percent of the value of any shares redeemed, or may temporarily suspend participants’ redemptions for up to 10 business days in a 90-day period, if the MMF’s board of directors determines that imposing the liquidity fee or suspending redemptions is in the best interest of the MMF.⁷⁵ In addition, if a MMF invests less than 10 percent of its total assets in weekly liquid assets, the MMF must impose a liquidity fee of at least one percent, and not more than two percent, on the value of any shares redeemed, unless the MMF’s board of directors determines that the fee is not in the best interest of the MMF.⁷⁶ The SEC Redemption Provisions are directly applicable to Prime MMFs, and Government MMFs may voluntarily elect to impose such provisions (“Electing Government MMFs”).⁷⁷

Commission staff subsequently received inquiries from market participants concerning the permissibility of investing Customer Funds in MMF interests under Regulation 1.25 in light of the SEC Redemption Provisions. The Commission’s Division of Swap Dealer and Intermediary Oversight (“DSIO”), currently known as the Market Participants Division (“MPD”) issued CFTC Staff Letter 16–68⁷⁸ and the Commission’s Division of Clearing and Risk (“DCR”) issued CFTC Staff Letter 16–69⁷⁹ addressing the SEC Redemption Provisions and the investment of Customer Funds in MMFs by FCMs and DCOs, respectively. Staff Letter 16–68⁸⁰ expressed DSIO staff’s

(v) amounts receivable and due unconditionally within 5 business days on pending sales of portfolio securities. 17 CFR 270.2a–7(c)(a)(28).

⁷⁵ 17 CFR 270.2a–7(c)(2)(i).

⁷⁶ 17 CFR 270.2a–7(c)(2)(ii). (The liquidity fees and suspension of redemptions provisions of SEC Rule 2a–7(c)(2) are referred to as the “SEC Redemption Provisions” in this document.)

⁷⁷ 17 CFR 270.2a–7(c)(2)(iii).

⁷⁸ CFTC Letter No. 16–68, *No-Action Relief with Respect to CFTC Regulation 1.25 Regarding Money Market Funds* (Aug. 8, 2016) (“Staff Letter 16–68”). CFTC Staff Letters are available at the Commission’s website, www.cftc.gov.

As noted above, Staff Letter 16–68 was issued by DSIO, which was subsequently renamed MPD. For purposes of clarity, the Commission notes that the formal division name change is not reflected in the proposed amendments to existing Commission regulations and appendices discussed in this Proposal, as the Commission plans to address the name change in a separate Commission rulemaking. The new division name, however, appears in the newly introduced proposed appendices H and I to Part 1 and Appendix G to Part 30, as these appendices do not currently exist in Commission’s regulations and would not be addressed in the above-referenced separate rulemaking.

⁷⁹ CFTC Letter No. 16–69, *Staff Interpretation Regarding CFTC Part 39 In Light Of Revised SEC Rule 2a–7* (Aug. 8, 2016) (“Staff Letter 16–69”).

⁸⁰ See also CFTC Staff Advisory No. 16–75, *Practical Application of No-Action Letter No. 16–68*

view that the SEC Redemption Provisions conflict with paragraphs (b)(1)⁸¹ and (c)(5)(i)⁸² of Regulation 1.25, as the Redemption Provisions have the effect of potentially reducing the liquidity of Prime MMFs and Electing Government MMFs. Therefore, in connection with the no-action position taken in the staff letter, DSIO indicated that FCMs may no longer invest Customer Funds in such MMFs.⁸³

Staff Letter 16–69 set forth DCR staff’s interpretation that Regulations 39.15(c) and (e)⁸⁴ prohibit a DCO from holding funds belonging to clearing members or their customers in Prime MMFs or Electing Government MMFs. DCR staff stated that the SEC Redemption Provisions were not consistent with Regulation 39.15(c), which requires a DCO to hold funds and assets belonging to clearing members and their customers in a manner that minimizes the risk of loss or of delay in the access by the DCO to such funds and assets. DCR staff further stated that the SEC Redemption Provisions were inconsistent with Regulation 39.15(e), which limits a DCO to investing funds and assets belonging to clearing members and their customer in instruments with minimal credit, market, and liquidity risk. Therefore, FCMs and DCOs have not invested customer funds in Prime MMFs or Electing Government MMFs since the issuance of the aforementioned Staff Letters in 2016.

The SEC has recently adopted additional amendments to its MMF rules, including amendments revising the SEC Redemption Provisions discussed above.⁸⁵ The SEC MMF Reforms are intended to address issues observed by the SEC with MMFs in connection with the economic shock from the onset of the COVID–19 pandemic. Specifically, the SEC stated in March 2020, that concerns about the impact of COVID–19 pandemic led

Regarding the Investments in Money Market Mutual Funds (Oct. 18, 2016) (“Staff Letter 16–75”) (discussing the practical applicability and effect of Staff Letter 16–68).

⁸¹ 17 CFR 1.25(b)(1) (providing that investments of customer funds must be highly liquid such that the investments must have the ability to be liquidated and converted into cash within one business day without material discount in value).

⁸² 17 CFR 1.25(c)(5)(i) (providing that to qualify as a Permitted Investment an MMF must be legally obligated to pay a fund investor (including an FCM) by the close of business on the day following a redemption request).

⁸³ Staff Letter 16–68 at p. 2.

⁸⁴ 17 CFR 39.15(c) and (e).

⁸⁵ *Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers, Technical Amendments to Form N–CSR and Form N–1A*, 88 FR 51404 (Aug. 3, 2023) (“SEC MMF Reforms”). The SEC MMF Reforms have an effective date of October 2, 2023.

⁶⁸ SEC Rule 2a–7 addresses MMFs that primarily invest in securities issued or guaranteed by the U.S. government (“government money market funds” or “Government MMFs”), MMFs that primarily invest in short-term corporate debt securities (“Prime MMFs”), and other types of MMFs that are not relevant to this Proposal, such as tax-exempt funds. 17 CFR 270.2a–7.

⁶⁹ 17 CFR 270.2a–7(a)(14).

⁷⁰ 15 U.S.C. 80a–2(a)(16).

⁷¹ Regulation 1.25(a)(1)(i) and (iii) defines “U.S. government securities” as obligations of the U.S. and obligations fully guaranteed as to principal and interest by the U.S. and “U.S. agency obligations” as obligations of any U.S. government corporation or enterprise sponsored by the U.S. government, respectively.

⁷² *Money Market Fund Reform; Amendments to Form PF*, 79 FR 47736 (Aug. 14, 2014) (“2014 SEC MMF Final Rule”). See 17 CFR 270.2a–7(c)(2).

⁷³ 2014 SEC MMF Final Rule at 47747.

⁷⁴ The term “weekly liquid assets” is generally defined as: (i) cash; (ii) direct obligations of the U.S. Government; (iii) U.S. Agency securities that are issued at a discount to the principal amount to be repaid at maturity and have a remaining time to maturity of 60 days or less; (iv) securities that mature, or are subject to a demand feature that is exercisable and payable, within 5 business days; or

investors to reallocate their assets into cash and short-term government securities. Certain Prime MMFs, in particular, experienced significant outflows, contributing to stress on short-term funding markets that resulted in government intervention to enhance the liquidity of such markets.⁸⁶ The events of March 2020 led the SEC to re-evaluate certain aspects of the regulatory framework applicable to MMFs. In considering the potential factors that caused the increased redemption activity in March 2020, the SEC noted that, among other concerns, fears about the potential imposition of redemption gates and liquidity fees based on observed declines in some funds' weekly liquid assets appear to have incentivized investors to redeem from certain MMFs.⁸⁷ Further, according to the SEC, the presence of a liquidity threshold for consideration of fees and gates appears to have affected fund managers' behavior, encouraging the sale of long-term portfolio assets to maintain weekly liquid assets above the 30 percent threshold. The SEC also cited to evidence suggesting that investors are particularly sensitive to the potential imposition of redemption gates, which fully inhibit the redeemability of MMF shares for the duration of the gate.⁸⁸ In the SEC's view, generally supported by commenters' feedback, the gates and liquidity fees associated with predictable weekly liquid asset triggers proved counterproductive in stemming heavy redemptions from certain MMFs.⁸⁹ As such, the SEC concluded that MMFs needed better functioning tools for managing through stress while mitigating harm to shareholders.⁹⁰

Accordingly, in an effort to improve the resilience of MMFs and address the issue of preemptive investor redemption behavior, particularly in times of stress, the SEC adopted changes to the fee and gate provisions in SEC Rule 2a–7. The SEC MMF Reforms, among other things, amend the SEC Redemption Provisions by removing a Prime MMF's ability to temporarily suspend participant redemptions and by removing an Electing Government MMF's ability to voluntarily retain authority to suspend participant redemptions. The SEC MMF

Reforms will also require Prime MMFs to impose a liquidity fee when the fund experiences net redemptions that exceed 5 percent of the fund's net assets, and will permit Prime MMFs to impose a discretionary liquidity fee if the fund's board of directors determines that a fee is in the best interest of the fund.⁹¹ Government MMFs will not be required to implement the mandatory liquidity fee but, consistent with the current SEC Redemption Provisions, may choose to rely on the ability to impose discretionary liquidity fees.⁹² Such fees, however, are no longer tied to the weekly liquid asset threshold.⁹³

The SEC's liquidity fee mechanism is designated to address shareholder dilution and the potential for first-mover advantage by allocating liquidity costs to redeeming investors. Although the mechanism may contribute to decreasing outflows from certain MMFs, the Commission preliminarily believes that the potential imposition of a fee will nonetheless have the effect of reducing the liquidity of such funds and will reduce the principal of an FCM's or DCO's investment in MMF shares. Therefore, consistent with the positions taken in Staff Letter 16–68 and Staff Letter 16–69, the Commission is preliminarily of the view that FCMs and DCOs should be allowed to invest Customer Funds only in MMFs that will not be subject to a liquidity fee (*i.e.*, Government MMFs that do not elect to apply a discretionary liquidity fee). Thus, the proposed amendments would remove Prime MMFs and Electing Government MMFs, as participants in such funds may be subject to liquidity fees in certain circumstances. Therefore, the Commission is proposing amendments to Regulation 1.25(a)(1)(vii) that would limit the scope of MMFs whose interests qualify as

Permitted Investments to Government MMFs that are not Electing Government MMFs ("Permitted Government MMFs").⁹⁴ To qualify as a Permitted Government MMF, at least 99.5 percent of the fund's investment portfolio must be comprised of cash, government securities (*i.e.*, U.S. Treasury securities, securities fully-guaranteed as to principal and interest by the U.S. Government, and U.S. agency obligations), and/or Repurchase Transactions that are fully collateralized by government securities as set forth in SEC Rule 2a–7. The Commission preliminarily believes that the proposed amendment would ensure that FCMs and DCOs invest Customer Funds in instruments that are consistent with the objectives of Regulation 1.25 of preserving principal and maintaining liquidity of the investments.

The Commission also notes that the proposed amendments to remove from the scope of Permitted Investments the interests in MMFs whose redemptions may be subject to a liquidity fee would prohibit an FCM from depositing proprietary interests in such MMFs into Customer Funds accounts. Regulations 1.23(a)(1), 22.2(e)(3)(i), and 30.7(g)(1) permit FCMs to deposit proprietary cash and unencumbered securities into the accounts of futures customers, Cleared Swaps Customers, and 30.7 customers, respectively, to help ensure that at all times the accounts maintain sufficient funds to cover the amounts due to all customers and prevent the accounts from becoming undersegregated.⁹⁵ The securities deposited by FCMs, however, must be Permitted Investments as set forth in Regulation 1.25.⁹⁶ Therefore, with respect to MMFs, FCMs would only be permitted to deposit proprietary interest in Permitted Government MMFs in the accounts of futures customers, Cleared Swaps Customers, and 30.7 customers under the Proposal.

To eliminate MMFs whose redemptions may be subject to a liquidity fee from the scope of Permitted Investments under Regulation 1.25, the Commission proposes to revise Regulation 1.25(a)(1)(vii), which would be redesignated Regulation 1.25(a)(1)(v) to accommodate other amendments to Regulation 1.25(a) discussed in this Proposal, by replacing the term "money

⁸⁶ As noted in the SEC MMF Reforms' adopting release, to support the short-term funding markets, on March 18, 2020, the Federal Reserve, with the approval of the Department of the Treasury, established the Money Market Mutual Fund Liquidity Facility. The facility provided loans to financial institutions on advantageous terms to purchase securities from MMFs that were raising liquidity. See SEC MMF Reforms at 51408.

⁸⁷ SEC MMF Reforms at 51407.

⁸⁸ *Id.* at 51409.

⁸⁹ *Id.*

⁹⁰ *Id.* at 51408.

⁹¹ 17 CFR 270.2a–7(c)(2)(i) and (ii) (as amended by the SEC MMF Reforms). In describing the different types of MMFs, the SEC distinguishes between Prime MMFs, Government MMFs, and tax-exempt (or municipal) MMFs. See SEC MMF Reforms at 51406. Tax-exempt MMFs primarily hold obligations of state and local governments and their instrumentalities, and pay interest that is generally exempt from Federal income tax for individual taxpayers. Within the category of Prime and tax-exempt MMFs, the SEC also treats retail and institutional funds separately. The new mandatory liquidity fee framework will apply to institutional Prime and institutional tax-exempt MMFs. Tax-exempt MMFs are not specifically discussed in this Proposal, though the Commission notes that these funds would be subject to the same restrictions as those proposed with respect to Prime MMFs. Retail MMFs are held only by natural persons, and as such, are not discussed in this Proposal either.

⁹² 17 CFR 270.2a–7(c)(2)(i)(B) (as amended by the SEC MMF Reforms).

⁹³ 17 CFR 270.2a–7(c)(2)(i) (as amended by the SEC MMF Reforms).

⁹⁴ See proposed paragraph (a)(1)(iv) of Regulation 1.25. As discussed in Section III.A, the Commission is proposing to renumber paragraph (a)(1) of Regulation 1.25 to reflect proposed revisions to the list of Permitted Investments. The proposed revisions would result in the renumbering of current paragraph (a)(1)(vii) to paragraph (a)(1)(v) of Regulation 1.25.

⁹⁵ 17 CFR 1.23(a)(1), 22.2(e)(3)(i), and 30.7(g)(1).

⁹⁶ *Id.*

market mutual fund” with the term “government money market funds as defined in § 270.2a–7 of this title, provided that the funds do not elect to be subject to liquidity fees in accordance with § 270.2a–7 of this title (government money market fund).” The Commission also proposes to make further conforming changes throughout Regulation 1.25 and the Appendix to Regulation 1.25 by replacing all references to “money market mutual fund” with “government money market fund.” In addition, the Appendix to Regulation 1.25 would be redesignated as Appendix E to Part 1 to address a change in the rules of the Office of the Federal Register regarding the structure of regulatory text to be codified in the Code of Federal Regulations.

Request for comment: The Commission seeks comment on all aspects of the Proposal to limit the scope of MMFs whose interests qualify as Permitted Investments to certain Government MMFs to address changes to SEC rules governing MMFs as described above, including:

1. Other than concentration limits that are discussed further below, should any other safeguards be considered for Government MMFs whose interests qualify as Permitted Investments under the Proposal to ensure that the credit, liquidity, and market risk of those investments is maintained at an acceptable level, particularly in light of the history of runs in the Prime MMF markets and the potential for contagion?

2. Regulation 1.25(b)(5)(ii) currently provides that an FCM or a DCO may invest Customer Funds in a fund affiliated with that FCM or DCO. Should the Commission revise Regulation 1.25(b)(5)(ii) to prohibit an FCM or a DCO from investing Customer Funds in affiliated funds? Are there other Commission or SEC rules that mitigate any potential conflicts of interest that may arise from an FCM or a DCO investing Customer Funds in affiliated funds?

2. Foreign Sovereign Debt

Regulation 1.25(a)(1) currently permits FCMs and DCOs to invest in the sovereign debt of the U.S. only. Regulation 1.25 previously permitted FCMs and DCOs to invest Customer Funds in the foreign sovereign debt of any country, provided that the investments were limited to balances owed by FCMs or DCOs to customers denominated in the currency of the applicable foreign sovereign debt.⁹⁷ The Commission subsequently eliminated all foreign sovereign debt as a Permitted

Investment in 2011, citing an interest in both simplifying the regulation and safeguarding Customer Funds in light of economic crises experienced by a number of foreign sovereigns.⁹⁸ The Commission, however, also stated that it recognized that the safety of sovereign debt issuances of one country may vary greatly from the sovereign debt issuances of another country, and that investment in certain sovereign debt may be consistent with Regulation 1.25’s objective of preserving principal and maintaining liquidity of investments.⁹⁹ The Commission further stated that it was amenable to considering requests for Section 4(c) exemptions to permit FCMs and DCOs to invest Customer Funds in foreign sovereign debt. Specifically, the Commission stated that it would consider permitting Customer Funds to be invested in the foreign sovereign debt of a country to the extent that: (i) FCMs or DCOs held balances in segregated accounts owed to customers denominated in that country’s currency; and (ii) the foreign sovereign debt serves to preserve principal and maintain liquidity of Customer Funds as required for all other investments of Customer Funds under Regulation 1.25.¹⁰⁰

As discussed in Section II above, the Commission subsequently issued the 2018 Order pursuant to Section 4(c) of the Act granting DCOs a limited exemption from the provisions of Regulation 1.25(a) to authorize the investment of euro-denominated futures customer funds and Cleared Swaps Customer Collateral in euro-denominated sovereign debt issued by France or Germany subject to specified terms and conditions.¹⁰¹ The 2018 Order also provides an exemption from Regulation 1.25(d) to permit DCOs to enter into Repurchase Transactions involving French or German sovereign debt with: (i) the European Central Bank; (ii) the Deutsche Bundesbank; (iii) the Banque de France; (iv) a foreign bank located in a country that has adopted the euro as its currency and maintains in excess of \$1 billion in regulatory capital; and (v) a foreign dealer located in a country that has adopted the euro as its currency and is subject to regulation by a national financial regulator.¹⁰² The 2018 Order also permits DCOs to hold German or French foreign sovereign debt

purchased under reverse repurchase agreements with depositories located in a country that has adopted the euro as its currency and that maintain in excess of \$1 billion in regulatory capital, provided that the DCOs separately account for the securities purchased as futures customer funds or Cleared Swaps Customer Collateral, as applicable.¹⁰³

The 2018 Order also contains certain conditions regarding the investment of futures customer funds or Cleared Swaps Customer Collateral in French or German sovereign debt. Specifically, the 2018 Order provides that the dollar-weighted average time-to-maturity of a DCO’s portfolio of investments in either French or German sovereign debt may not exceed 60 days.¹⁰⁴ In addition, the 2018 Order provides that a DCO may not make a direct investment in any French or German debt instrument with a remaining time-to-maturity of greater than 180 calendar days.¹⁰⁵

For the reasons stated below, the Commission is proposing to amend Regulation 1.25 to add Specified Foreign Sovereign Debt to the list of Permitted Investments. The proposed addition of Specified Foreign Sovereign Debt would be subject to certain conditions that are consistent with the criteria specified in the 2011 Permitted Investments Amendment¹⁰⁶ and the conditions specified in the 2018 Order discussed above. The proposed conditions are also consistent with the general objectives set forth in Regulation 1.25 of preserving principal and maintaining liquidity of Permitted Investments.¹⁰⁷

The proposed amendments would expand the exemptive relief provided in the 2018 Order by adding the debt of Canada, Japan, and the United Kingdom, in addition to that of France and Germany, to the list of Permitted Investments under Regulation 1.25, and by allowing FCMs, in addition to DCOs, to invest in the foreign sovereign debt.¹⁰⁸ FCMs collectively held an aggregate of a U.S. dollar equivalent of \$51 billion of Customer Funds denominated in Canadian dollars

¹⁰³ Condition 3(f) of the 2018 Order at 35245.

¹⁰⁴ Condition 3(c) of the 2018 Order at 35245.

¹⁰⁵ Condition 3(d) of the 2018 Order at 35245.

¹⁰⁶ See 2011 Permitted Investments Amendment at 78782 (stating that the Commission would consider permitting foreign sovereign debt investments to the extent that: (i) the petitioner has balances in segregated accounts owed to customers or clearing member FCMs in that country’s currency; and (ii) the sovereign debt serves to preserve principal and maintain liquidity of customer funds as required for all other investments of customer funds under Regulation 1.25).

¹⁰⁷ 17 CFR 1.25(b).

¹⁰⁸ Proposed Regulation 1.25(a)(1)(vi).

⁹⁸ 2011 Permitted Investments Amendment at 78781.

⁹⁹ *Id.* at 78782.

¹⁰⁰ *Id.*

¹⁰¹ 2018 Order at 35244–35245. The 2018 Order does not address 30.7 customer funds.

¹⁰² Condition 3(e) of the 2018 Order at 35245.

⁹⁷ Regulation 1.25(a)(1) (2005).

("CAD"), euros ("EUR"), Japanese yen ("JPY"), and Great British pounds ("GBP") on August 15, 2023. The \$51 billion represented approximately 10 percent of the total \$490 billion of Customer Funds held by FCMs in segregated accounts on August 15, 2023.¹⁰⁹

Having considered the Joint Petition and analyzing the instruments' characteristics, the Commission believes that including Specified Foreign Sovereign Debt as a Permitted Investment would be consistent with the overall objectives set forth in Regulation 1.25 of preserving principal and maintaining liquidity of Customer Funds. The Joint Petition states that the Specified Foreign Sovereign Debt has credit and liquidity characteristics that are comparable to the credit and liquidity characteristics of U.S. Treasury securities. Specifically, the Joint Petition states that the credit default swaps of Canada, France, Germany, Japan, and the United Kingdom have relatively narrow spreads similar to the credit default spread of the United States.¹¹⁰ With respect to liquidity, the Joint Petition states that there were substantial amounts of outstanding marketable Canadian, French, German, Japanese, and United Kingdom debt and provided data on the amount of outstanding debt in instruments with time-to-maturity of two years or less issued by each relevant jurisdiction.¹¹¹

The Commission also analyzed the volatility of the Specified Foreign Sovereign Debt and observed, based on the available data, that the price risk of

the relevant foreign sovereign debt is comparable to that of U.S. Treasury securities. Specifically, using one-year sovereign debt instruments yield data for the period September 21, 2018 to September 20, 2023, the Commission notes that the standard deviation of daily yield change for one-year U.S. Treasury bills was 9 BPS, whereas the same measure for Canadian, French, German, Japanese, and United Kingdom one-year debt instruments ranged from 1 to 7 BPS.¹¹² The Commission also notes that holding high-quality foreign sovereign debt may pose less risk to Customer Funds than the credit risk of commercial banks through unsecured bank demand deposit accounts.¹¹³

Furthermore, the Commission believes that the proposed amendments would provide FCMs and DCOs with an investment option to manage the potential foreign exchange risk that may arise in their administration and investment of Customer Funds. Specifically, the Commission notes that absent the ability to invest Customer Funds in identically-denominated sovereign debt securities, an FCM or a DCO seeking to invest customer foreign currency deposits would need to convert the currencies to a U.S. dollar-denominated asset, which would introduce potential foreign currency fluctuation risk to the FCMs and DCOs.¹¹⁴

Based on these considerations, the Commission proposes to expand the list of Permitted Investments to include

Specified Foreign Sovereign Debt. To ensure that investments in Specified Foreign Sovereign Debt remain consistent with Regulation 1.25's general objectives of preserving principal and maintaining liquidity, and with the criteria specified in the 2011 Permitted Investments Amendment for adding foreign sovereign debt as a Permitted Investment, the Commission is proposing to permit the investment of Customer Funds in such debt subject to specified conditions, which are discussed below.

First, under the Proposal, an FCM or a DCO would be permitted to invest in the foreign sovereign debt of only Canada, France, Germany, Japan, and the United Kingdom.¹¹⁵ The five jurisdictions are among the seven largest economies in the International Monetary Fund's classification of advanced economies.¹¹⁶ Each country is also a member of the Group of 7 ("G7"), which represents the world's largest industrial democracies, and qualifies as a "money center country" as the term is defined in Regulation 1.49(a)(1).¹¹⁷ Additionally, the currencies of the five jurisdictions represent a material portion of the total amount of non-U.S. dollar-denominated obligations that FCMs owe to customers, and amount to approximately 10 percent of the total Customer Funds held by FCMs and DCOs.¹¹⁸

Second, an FCM or a DCO would be permitted to invest in the Specified Foreign Sovereign Debt of a country only to the extent that the FCM or a DCO has balances in accounts owed to customers denominated in the country's currency.¹¹⁹ Prior to the 2011 Permitted Investments Amendment, when Regulation 1.25 permitted the investment of Customer Funds in foreign sovereign debt, the regulation

¹⁰⁹ The \$490 billion represents the U.S. dollar equivalent of the total value of margin assets held by FCMs for futures customers, Cleared Swaps Customers, and 30.7 customers as reported to CME as of August 15, 2023. The breakdown by currency was as follows: CAD 14 billion; EUR 18 billion; GBP 3 billion; and JPY 16 billion. Some of these funds may have been posted by the FCMs to DCOs as margin collateral.

¹¹⁰ See Joint Petition at pp. 6–7.

¹¹¹ See Appendix A to Joint Petition and Supplement to Joint Petition at p. 1 (indicating that the outstanding debt in instruments with time-to-maturity of two years or less issued by Canada, France, Germany, Japan, and the United Kingdom, based on information available on Bloomberg as of July 11, 2023, was equal to the USD equivalence of \$447 billion, \$594 billion, \$557 billion, \$2.6 trillion, and \$534 billion, respectively). See also Bank of International Settlements' Debt Securities Statistics (including data as of the end of 2021), available here: <https://www.bis.org/statistics/secstats.htm?m=2615> and 2021 Survey on Liquidity in Government Bond Secondary Markets, Organization for Economic Co-operation and Development, available here: https://www.oecd-ilibrary.org/sites/b2d85ea7-en/1/4/2/index.html?itemId=/content/publication/b2d85ea7-en&_csp=e3b7b0a57d02c41c597306342c85c8b6&itemIGO=oecd&itemContentType=book (confirming that Specified Foreign Sovereign Debt instruments presented good liquidity characteristics in 2021).

¹¹² The Commission reviewed yield data available through Bloomberg, a proprietary financial data provider, for 1-year sovereign debt instruments issued by Canada, France, Germany, Japan, the United Kingdom, and the U.S.

¹¹³ The Commission discussed the preferability from a risk management perspective of investing foreign currency in high quality foreign sovereign debt relative to the credit risk posed by unsecured demand deposit accounts at commercial banks in issuing the 2018 Order permitting DCOs to invest futures customer funds and Cleared Swaps Customer Collateral in French and German sovereign debt. See 2018 Order at 35245–35246.

¹¹⁴ To reach this conclusion, the Commission considered, among other factors, the daily volatility of exchange rates of the relevant currency pairs. Specifically, based on data from the Federal Reserve Bank of St. Louis' FRED database, the Commission notes that for the period from September 2018 to September 2023, the standard deviation of the daily percentage change of exchange rate between the relevant currency pairs was 0.45 percent for the CAD/USD pair, 0.46 percent for the EUR/USD pair, 0.61 percent for the GBP/USD pair, and 0.55 percent for the JPY/USD pair, indicating a currency fluctuation that is an additional risk factor with respect to the return on investment of customer foreign currency deposits in U.S. dollar-denominated assets. The Commission also recognized foreign currency fluctuation risk in the 2000 Permitted Investments Amendment, which added foreign sovereign debt to the list of Permitted Investments for the first time. See 2000 Permitted Investments Amendment at 78003.

¹¹⁵ Proposed Regulation 1.25(a)(1)(vii).

¹¹⁶ See Statistical Appendix to the World Economic Outlook, April 2023, International Monetary Fund, available here: <https://www.imf.org/en/Publications/WEO/Issues/2023/04/11/world-economic-outlook-april-2023>.

¹¹⁷ 17 CFR 1.49(a). In the absence of customer instructions to the contrary, Regulation 1.49(c) limits permissible locations of depositories of Customer Funds to the U.S., the country of origin of the currency, and a "money center country." The concept of "money center country" is defined to mean Canada, France, Italy, Germany, Japan, and the United Kingdom, and is intended to correspond, together with the U.S., to the list of G7 countries. See *Denomination of Customer Funds and Location of Depositories*, 68 FR 5551 (Feb. 4, 2003) at 5546.

¹¹⁸ Based on data contained in the Segregation Investment Detail Reports filed by FCMs with the Commission as of August 15, 2023. The reports contain detailed listings of the Permitted Investments held by each FCM. See 17 CFR 1.32(f), 17 CFR 22.2(g)(5), and 17 CFR 30.7(l)(5).

¹¹⁹ Proposed Regulation 1.25(a)(1)(vii)(A) and (B).

included a similar restriction.¹²⁰ As noted above, the Commission explained that an FCM or a DCO seeking to invest deposits of foreign currencies, absent the ability to invest in identically-denominated sovereign debt securities, would need to convert the foreign currencies to a U.S. dollar-denominated asset, which would increase the FCM's or DCO's exposure to foreign currency fluctuation risk.¹²¹ The Commission believes the restriction is appropriate as it balances the need to ensure the safety of Customer Funds with the Commission's desire to provide a degree of investment flexibility to FCMs and DCOs.¹²²

Third, the Commission is proposing to permit FCMs and DCOs to invest in Specified Foreign Sovereign Debt provided that the two-year credit default spread of the issuing sovereign is 45 BPS or less.¹²³ This condition is consistent with the 45 BPS two-year credit default spread limit specified by the Commission in the 2018 Order permitting DCOs to invest futures customer funds and Cleared Swaps Customer Collateral in French and

German sovereign debt.¹²⁴ The Commission set the cap of 45 BPS in the 2018 Order based on a historical analysis of the two-year credit default spread of the U.S. ("U.S. Spread").¹²⁵ Forty-five BPS was, at the time, approximately two standard deviations above the mean U.S. Spread over the preceding eight years.¹²⁶

The Commission observed that over that eight-year period of July 3, 2009 to July 3, 2017, the U.S. Spread was 45 BPS or less approximately 95 percent of the time and exceeded 45 BPS approximately 5 percent of the time. During the same period, the two-year German spread exceeded 45 BPS approximately 6 percent of the time and the two-year French spread exceeded 45 BPS approximately 25 percent of the time, with all exceedances occurring between July 2009 and September 2012, in the aftermath of the 2008 financial crisis and the European sovereign debt crisis.¹²⁷

During the more recent period of September 21, 2018 to September 20, 2023, the U.S. Spread had a mean of approximately 16.4 BPS,¹²⁸ which was lower than the mean spread of 26.5 BPS for the July 3, 2009 to July 3, 2017 period. In that same time period, the two-year credit default swap spread of the sovereigns issuing the Specified Foreign Sovereign Debt did not exceed 45 BPS. Based on these more recent U.S. Spread and Foreign Sovereign Debt data, the Commission preliminarily believes that the cap of 45 BPS established in the 2018 Order continues to be set at an appropriate level.¹²⁹

Under the Proposal, if the credit default spread of a subject country were to exceed the 45 BPS cap, FCMs and

DCOs would not be permitted to make new investments in the country's Specified Foreign Sovereign Debt.¹³⁰ In addition, if the credit default spread exceeded the 45 BPS cap, FCMs and DCOs would be required to discontinue investing Customer Funds in that sovereign's debt through Repurchase Transactions as soon as practicable under the circumstances.¹³¹ The FCMs or DCOs would not, however, be required to immediately divest their current investments in Specified Foreign Sovereign Debt, given the risks associated with selling assets into a potentially volatile market or having to immediately locate depositories for funds that had been invested in a Repurchase Transaction with limited notice. The prohibition on new investments would reduce the exposure to Customer Funds by avoiding the risk of default on the Specified Foreign Sovereign Debt. In situations where the 45 BPS cap is exceeded, the Commission preliminarily believes that it would be more appropriate for FCMs and DCOs to hold Customer Funds denominated in foreign currency in cash or invest the foreign currency in U.S. dollar-denominated Permitted Investments instead of Specified Foreign Sovereign Debt. In addition, the length to maturity condition discussed immediately below would mitigate price risks to the Customer Funds that might arise from a country's two-year credit default spread exceeding the 45 BPS limit.

Fourth, the Commission is proposing to limit the time-to-maturity of investments in Specified Foreign Sovereign Debt. Specifically, under the Proposal, an FCM or a DCO would be required to ensure that the dollar-weighted average time-to-maturity of its portfolio of investments in the Specified Foreign Sovereign Debt, as the average is computed under Rule 2a-7 under the Investment Company Act of 1940 ("SEC Rule 2a-7")¹³² on a country-by-country basis, does not exceed 60 calendar days.¹³³ Consistent with the position taken in the 2018 Order,¹³⁴ if the portfolio includes Specified Foreign Sovereign Debt instruments that have been acquired under a reverse repurchase agreement, the FCM or DCO would be permitted to use the maturity

¹²⁰ See 2000 Permitted Investments Amendment at 65 FR 78010, which provided in paragraph (a)(1)(vii) of Regulation 1.25 that an FCM or a DCO could invest in debt of a foreign sovereign subject to certain conditions, including that the FCM or DCO had balances owed to customers denominated in that country's currency.

¹²¹ *Id.* at 78003.

¹²² As discussed *supra*, prior to 2011, the Commission permitted an FCM or a DCO to invest Customer Funds in foreign sovereign debt subject to the condition that the FCM or DCO held balances owed to customers denominated in the currency of the foreign country. In the wake of the 2008 financial crisis, the Commission eliminated foreign sovereign debt from the list of permitted investments noting at the time that "in many cases, the potential volatility of foreign sovereign debt in the current economic environment and the varying degrees of financial stability of different issuers make foreign sovereign debt inappropriate for hedging foreign currency risk." 2011 Permitted Investments Amendment at 78781. Yet it recognized that "the safety of sovereign debt issuances of one country may vary greatly from those of another, and that investment in certain sovereign debt might be consistent with the objectives of preserving principal and maintaining liquidity, as required by Regulation 1.25." *Id.* at 78782. For the reasons discussed above, the Commission is proposing to reinstate certain foreign sovereign debt consistent with the Commission's expressed statement in the 2011 Permitted Investments Amendment that it would consider permitting such investments provided that the investments: (i) are limited to balances owed to customers denominated in the currency of the applicable foreign sovereign, and (ii) serve to preserve the principal and maintain the liquidity of Customer Funds. See *id.* at 78782. The Proposal is also consistent with the Commission's approach in the 2018 Order of permitting DCOs to invest in the sovereign debt of France and Germany to the extent such foreign sovereign debt satisfies specific criteria demonstrating consistency with the credit, liquidity, and volatility of short-term U.S. Treasury securities.

¹²³ Proposed Regulation 1.25(f)(3).

¹²⁴ Condition 3(b) of the 2018 Order at 35245.

¹²⁵ See 2018 Order at 35243.

¹²⁶ In 2018, the Commission reviewed the daily U.S. Spread from July 3, 2009 to July 3, 2017. Over that time period, the U.S. Spread had a mean of approximately 26.5 BPS and a standard deviation of approximately 9.72 BPS. Forty-five BPS were approximately two standard deviations above the 26.5 mean.

¹²⁷ See 2018 Order at 35243.

¹²⁸ Based on an assessment conducted by CFTC staff on September 20, 2023.

¹²⁹ Using the daily U.S. Spread data from July 3, 2009 to July 3, 2017 and assuming the two-year credit default spread follows a normal distribution, the Commission estimated that there was less than 2.5 percent likelihood that the U.S. credit default spread would exceed 45 BPS over a two-year period. In addition, the Commission's estimate, based on the daily U.S. Spread data from September 21, 2018 to September 20, 2023, indicates that there is less than 1 percent likelihood, under both normal and empirical distributions, that the two-year credit default swap spread of the sovereigns issuing Specified Foreign Sovereign Debt would exceed 45 BPS. Therefore, the Commission preliminarily believes that 45 BPS represents an appropriate threshold for countries whose debt may qualify as a Permitted Investment under Regulation 1.25.

¹³⁰ Proposed Regulation 1.25(f)(3)(i).

¹³¹ Proposed Regulation 1.25(f)(3)(iii).

¹³² 17 CFR 270.2a-7.

¹³³ Proposed Regulation 1.25(f)(1). Under the Proposal, the dollar-weighted average of the time-to-maturity would be computed pursuant to SEC Rule 2a-7 (17 CFR 270.2a-7), consistent with the general time-to-maturity provision in Regulation 1.25(b)(4)(i).

¹³⁴ 2018 Order at 35244.

of the reverse repurchase agreement to compute the dollar-weighted average time-to-maturity of the portfolio.¹³⁵ This approach takes into account the expected resale of the instruments, which would be scheduled to occur within one business day or on demand as required by Regulation 1.25(d)(6).¹³⁶ Conversely, if the FCM or DCO sells Specified Foreign Sovereign Debt instruments under a repurchase agreement, the FCM or DCO would be required to include the instruments in the calculation of the dollar-weighted average based on the remaining time-to-maturity of each instrument sold, to account for the expected repurchase of such instruments.¹³⁷ In addition, an FCM or a DCO would not be permitted to make direct investments in any Specified Foreign Sovereign Debt instrument that had a remaining maturity greater than 180 calendar days.¹³⁸

Arguing that these restrictions, which are analogous to the restrictions in the 2018 Order, would be too limiting, the Petitioners requested that the Commission revise the regulations to provide a six-month dollar-weighted average time-to-maturity for the portfolio of foreign sovereign debt, and a maximum two-year remaining time-to-maturity for each foreign sovereign debt instrument.¹³⁹ The Commission, however, notes that the proposed restrictions are intended to ensure that an FCM's or DCO's portfolio of Specified Foreign Sovereign Debt is comprised of sovereign debt instruments that mature within a relatively short period of time. The short time-to-maturity requirement is expected to assist FCMs and DCOs in managing and mitigating potential market and/or credit risk by providing FCMs and DCOs with the option of holding the debt instruments to maturity during periods of market stress and price volatility rather than selling the debt instruments at potentially significant discounts. This option may be particularly valuable in periods of significant interest rate movements, which could exacerbate market risk in

sovereign debt markets. In that regard, the Commission preliminarily views the relatively short time-to-maturity as an essential risk-managing feature in the context of investments in Specified Foreign Sovereign Debt and preliminarily believes that the 60-day dollar-weighted average time-to-maturity restriction and the 180-day remaining maturity restriction are more appropriate than the six months and two years respective limits requested in the Joint Petition.

The Commission also believes that the proposed time-to-maturity requirements would not be as limiting as asserted in the Joint Petition given that the new issuance supply of the Specified Foreign Sovereign Debt meeting the proposed restrictions appears adequate to satisfy the demand for the investment of Customer Funds in the relevant instruments.¹⁴⁰ In addition, the use of the maturity of reverse repurchase agreements in the calculation of the dollar-weighted average of the portfolio of investments in Specified Foreign Sovereign Debt would reduce the average time-to-maturity of the portfolio as a whole. As noted in the request for comment below, the Commission is explicitly seeking comment on its preliminary analysis.

The Commission is also proposing to amend Regulation 1.25(b)(4)(i), which provides that except for investments in MMFs, the dollar-weighted average time-to-maturity of an FCM's or a DCO's portfolio of Permitted Investments, as computed under SEC Rule 2a-7, may not exceed 24 months. The proposed amendment would revise Regulation 1.25(b)(4)(i) to exclude Specified

Foreign Sovereign Debt from the calculation of the dollar-weighted average time-to-maturity of the portfolio.¹⁴¹ The Commission is proposing this amendment as Specified Foreign Sovereign Debt would be subject to its own dollar-weighted average time-to-maturity limit of 60 calendar days, which is substantially shorter than the two-year dollar-weighted average time-to-maturity requirement for the overall portfolio required by Regulation 1.25(b)(4)(i).

To allow Regulation 1.25(a)(2) to effectively incorporate Specified Foreign Sovereign Debt as a Permitted Investment that FCMs and DCOs would be able to buy or sell pursuant to Repurchase Transactions, the Commission also proposes to expand the permissible counterparties and depositories under Regulation 1.25(d)(2) and (7) to include certain foreign entities. Regulation 1.25(d)(2) limits counterparties with which an FCM or a DCO may enter into a Repurchase Transaction to a Section 3(a)(6)¹⁴² bank, a domestic branch of a foreign bank insured by the FDIC, a securities broker or dealer, or a government securities dealer registered with the SEC or which has filed a notice pursuant to Section 15C(a) of the Government Securities Act of 1986.¹⁴³ Regulation 1.25(d)(7) further requires an FCM and a DCO to hold the securities transferred to the FCM or DCO under a reverse repurchase agreement, in a safekeeping account held with a bank as referred to in Regulation 1.25(d)(2), a Federal Reserve Bank, a DCO, or the Depository Trust Company.

As a practical matter, absent amendment to these counterparty and depository provisions, an FCM's and DCO's ability to buy and sell Specified Foreign Sovereign Debt pursuant to Repurchase Transactions would be restricted given that participants in the foreign sovereign debt Repurchase Transactions market are predominantly non-U.S. entities. The Commission therefore proposes to add foreign banks and foreign brokers or dealers meeting certain requirements, as well as the European Central Bank and the central banks of Canada, France, Germany, Japan, and the United Kingdom, to the list of permitted counterparties.¹⁴⁴ To be deemed a permitted counterparty, a foreign bank would have to qualify as a depository under Regulation 1.49(d)(3)

¹³⁵ Consistent with SEC Rule 2a-7(i)(6), the reverse repurchase agreement would be deemed to have a maturity equal to the period remaining until the date on which the resale of the underlying instruments is scheduled to occur, or, where the agreement is subject to demand, the notice period applicable to a demand for the resale of the instruments. See proposed Regulation 1.25(f)(1).

¹³⁶ 17 CFR 1.25(d)(6).

¹³⁷ Proposed Regulation 1.25(f)(1).

¹³⁸ Proposed Regulation 1.25(f)(2).

¹³⁹ Joint Petition at pp. 5-6 (asserting that the new issuance supply of the Specified Foreign Sovereign Debt meeting the restrictions is limited and would be thinly traded/quoted).

¹⁴⁰ Data made available by the Bank of Canada, l'Agence France Trésor (the French Finance Agency), the Bundesrepublik Deutschland Finanzagentur (the German Finance Agency), the Japan Ministry of Finance, and the United Kingdom Debt Management Office indicate that the five jurisdictions issue a sizable amount of debt securities with time-to-maturity of less than 180 days on a frequent basis. Specifically, in July 2023, Canada auctioned approximately USD 22 billion, France auctioned approximately USD 18 billion, Germany auctioned approximately USD 10 billion, Japan auctioned approximately USD 15 billion, and the United Kingdom auctioned approximately USD 34 billion in debt instruments with time-to-maturity of six months or less (see Canadian Treasury bills auction results at <https://www.bankofcanada.ca/markets/government-securities-auctions/calls-for-tenders-and-results/regular-treasury-bills/>; French BTF auction history at <https://www.aft.gouv.fr/en/dernieres-adjudications>; German Bubills issuance results at <https://www.deutsche-finanzagentur.de/en/federal-securities/issuances/issuance-results> (refer to reopening of 12-month Bubills with residual maturities between three and six months); Japanese T-bills auction results at https://www.mof.go.jp/english/policy/jgbs/auction/past_auction_results/index.html; and United Kingdom Treasury Bill tender results at <https://www.dmo.gov.uk/data/treasury-bills/tender-results/>).

¹⁴¹ Proposed revised Regulation 1.25(b)(4)(i).

¹⁴² For a definition of Section 3(a)(6) bank, see *supra* note 51.

¹⁴³ Public Law 99-571, 100 Stat. 3208 (Oct. 28, 1986).

¹⁴⁴ Proposed Regulation 1.25(d)(2).

by holding regulatory capital in excess of \$1 billion, and would also have to be located in a money center country as defined in Regulation 1.49(a)(1) (*i.e.*, Canada, France, Italy, Germany, Japan, and the United Kingdom) or in another jurisdiction that has adopted the currency of the permitted foreign sovereign debt. Similarly, a foreign broker or dealer would have to be located in a money center country and be regulated by a foreign financial regulator. The proposed provisions are designed to ensure that the counterparties would be regulated entities comparable to those counterparties already permitted under Regulation 1.25(d)(2), and are consistent with the counterparty conditions set forth in the 2018 Order.¹⁴⁵

With respect to permitted depositories, the Commission proposes to permit Specified Foreign Sovereign Debt instruments transferred to an FCM or a DCO under a reverse repurchase agreement to be held with a foreign bank that qualifies as a permitted depository under Regulation 1.49.¹⁴⁶ The proposed provision is designed to ensure that any additional depositories would be comparable to those already permitted under Regulation 1.25(d)(7), and subject to the conditions for depositories in the 2018 Order.¹⁴⁷ The Commission notes that mandating the safekeeping of foreign securities purchased through reverse repurchase agreements with a U.S. custodian as required under the current regulation may be inefficient or impractical.

Request for Comment. The Commission seeks comment on all aspects of the Proposal relating to the expansion of the list of Permitted Investments to include Specified Foreign Sovereign Debt, including:

3. Under the Proposal, the list of Permitted Investments set forth in Regulation 1.25(a) would be expanded to include sovereign debt issued by Canada, France, Germany, Japan, and the United Kingdom, subject to specified conditions. Although these Specified Foreign Sovereign Debt instruments present credit and liquidity characteristics that are similar to those of currently Permitted Investments, such debt may also be less liquid than U.S. government securities. Do investments in Specified Foreign Sovereign Debt raise any liquidity issues or concerns? If so, please explain your responses and provide data if possible.

4. The Proposal would prohibit investments of Customer Funds in

Specified Foreign Sovereign Debt if the two-year credit default swap spread of the issuing sovereign exceeds 45 BPS. Should the Commission consider a higher or lower credit default spread limit? If so, please specify the appropriate credit default spread and explain why it is necessary and appropriate. Should the investment prohibition be contingent on the breach of the 45 BPS threshold occurring a certain number of times within a specified time period or for a particular duration within a specified time period? Should there be a “cooling-off” period before the Specified Foreign Sovereign Debt may be used again as a Permitted Investment under Regulation 1.25? For instance, should the Specified Foreign Sovereign Debt be subject to a requirement that the CDS spread be below 45 BPS for a minimum period of time (*e.g.*, 3 months) before it could be reinstated as an eligible Permitted Investment?

5. The Proposal would limit the time-to-maturity of investments in Specified Foreign Sovereign Debt to a 60-day maximum dollar-weighted average time-to-maturity of the portfolio of investments and a 180-day maximum remaining time-to-maturity of individual direct investments. The Petitioners requested that the limits be set at six months and two years, respectively. Should the Commission consider extending the time-to-maturity limits as requested? If yes, please provide analysis and appropriate market data supporting the extension.

3. Interests in U.S. Treasury Exchange-Traded Funds

ETFs are collective investment vehicles that issue redeemable securities that are also traded at the market price on national securities exchanges.¹⁴⁸ The Commission proposes to add interests in ETFs to the list of Permitted Investments under Regulation 1.25, subject to specified proposed conditions discussed below.

The SEC adopted Rule 6c–11¹⁴⁹ under the Investment Company Act of 1940 in 2019, creating a regulatory framework that allows ETFs meeting certain requirements to operate as investment companies under the Investment Company Act of 1940 without having to obtain an exemptive order from the SEC as previously required.¹⁵⁰ Like other investment companies, an ETF pools the assets of

multiple investors and invests those assets according to a set investment objective and principal investment strategies.¹⁵¹ Each share of an ETF represents an undivided fractional interest in the underlying assets of the ETF.¹⁵² Similar to indexed mutual funds, many ETFs are designed to passively track a particular market index, investing in all or a representative sample of the instruments included in the index and aiming to achieve the same return as the tracked index.¹⁵³ Other ETFs are actively managed, with portfolio managers buying and selling stocks in accordance with an investment strategy rather than passively tracking an index.¹⁵⁴

As an open-end management company,¹⁵⁵ similar to a mutual fund,¹⁵⁶ an ETF continuously offers its shares for sale. Unlike mutual funds, however, ETFs do not sell shares to, or redeem shares from, investors directly. Instead, ETFs issue (and redeem) shares to (and from) “authorized participants”—market intermediaries that have a contractual arrangement with the ETF (or its distributor) and are members or participants of a clearing agency registered with the SEC—in blocks called “creation units.”¹⁵⁷ Authorized participants play a key role for ETF shares as they are the only investors that are allowed to transact directly with the ETF.¹⁵⁸ Authorized participants must: (i) be an SEC-registered broker or dealer or other securities market participant (such as a bank or other financial institution that is not required to register as a broker or dealer to engage in securities transactions); (ii) be a full participating member of the National Securities Clearing Corporation and the Depository Trust Company; and (iii) have entered

¹⁵¹ Invesco Petition at p. 5. *See also*, SEC ETFs Release at 57164.

¹⁵² *Id.*

¹⁵³ *See* “Exchange-Traded Funds,” publication by FINRA, available at: <https://www.finra.org/investors/learn-to-invest/types-investments/investment-funds/exchange-traded-fund>.

¹⁵⁴ *Id.*

¹⁵⁵ Some ETFs may also be structured as unit-investment trusts. *See e.g.*, SPDR® S&P 500® ETF Trust and SPDR® Dow Jones Industrial Average ETF Trust. The regulatory framework set forth by SEC Rule 6c–11, however, applies only to ETFs that are organized as open-end management investment companies. *See* 17 CFR 270.6c–11.

¹⁵⁶ A “mutual fund” is a type of open-end management company, meaning that investors can purchase and redeem shares in the fund on a daily basis based on the NAV of their shares. Mutual funds pool the money of many investors to purchase a range of securities to meet specified investment objectives.

¹⁵⁷ *See* 17 CFR 270.6c–11 (defining “exchange-traded fund”).

¹⁵⁸ Invesco Petition at p. 5.

¹⁴⁵ *See* 2018 Order, Condition (e) at 35245.

¹⁴⁶ Proposed Regulation 1.25(d)(7).

¹⁴⁷ *See* 2018 Order, Condition (f) at 35245.

¹⁴⁸ Invesco Petition at p. 5. *See also*, *Exchange-Traded Funds*, 84 FR 57162 (Oct. 24, 2019) (“SEC ETFs Release”) at 57164.

¹⁴⁹ 17 CFR 270.6c–11 (“SEC Rule 6c–11”).

¹⁵⁰ *See generally* SEC ETFs Release.

into an authorized participant agreement with the ETF (and potentially other parties, such as the ETF's sponsor, distributor or transfer agent).¹⁵⁹

An authorized participant may act as a principal for its own account or as an agent for others when purchasing or redeeming creation units.¹⁶⁰ Purchases and redemptions of ETF shares by an authorized participant are referred to as "primary market transactions" and occur at the next-calculated NAV. As noted above, ETF shares can also be purchased and sold in the secondary market at market prices that may reflect a discount or premium to the ETF's NAV.

As part of its periodic reassessment of the list of Permitted Investments of Customer Funds and in consideration of industry input provided by the Joint Petition and the Invesco Petition, the Commission is proposing to include shares in U.S. Treasury ETFs to the list of Permitted Investments under Regulation 1.25. More specifically, in assessing the potential expansion of the list of Permitted Investments, the Commission has considered statements emphasizing the liquidity of U.S. Treasury ETF shares and the diversification opportunity that such ETFs provide for Customer Funds. In particular, as discussed in other parts of the Proposal, the Petitioners note that U.S. Treasury ETFs have characteristics that may be consistent with those of Permitted Investments and may provide FCMs and DCOs with an opportunity to further diversify their investments of Customer Funds.¹⁶¹ Similarly, the Invesco Petition focused on the fact that U.S. Treasury ETFs invest in a sub-set of the same high-quality liquid instruments that are Permitted Investments under Regulation 1.25 (*i.e.*, U.S. government securities).¹⁶² The Invesco Petition also notes that ETFs, as registered investment companies whose shares are registered under the Securities Act and Exchange Act, must comply with a number of SEC financial reporting requirements and liquidity risk management program requirements.¹⁶³ Finally, the Invesco

Petition asserts that the design and characteristics such as price and investment transparency, and intra-day trading and liquidity, are additional features that help make interests in U.S. Treasury ETFs a safe and efficient vehicle for investment of Customer Funds.¹⁶⁴

Further, the Commission has taken into consideration the limited range of investments that meet the requirements of Regulation 1.25. In that regard, the Commission notes that as a result of various regulatory reforms, discussed in this **Federal Register** release, several asset classes included in Regulation 1.25 no longer qualify as Permitted Investments. In particular, as discussed in Section III.A.2. above, the range of MMFs whose securities qualify as Permitted Investments has contracted, as only interests in Permitted Government MMFs currently meet the eligibility criteria of Regulation 1.25. In addition, as discussed in Section III.A.4. below, commercial paper and corporate notes and bonds no longer qualify as Permitted Investments with the expiration of the TLGP.

Also, due to certain regulatory reforms, there has been an increased demand for high quality collateral, including for assets that currently qualify as Permitted Investments under Regulation 1.25. For example, in the aftermath of the 2008 financial crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act,¹⁶⁵ which set forth a regulatory framework for swaps, requiring, among other things, the clearing of certain swaps or the margining of certain uncleared swaps. As a result, market participants dealing in swaps may be required to post to clearinghouses, or post and collect with swap counterparties, specified forms of liquid collateral, driving increased demand for assets that currently qualify as Permitted Investments.

The Commission believes expanding the range of available Permitted Investments to include interests in ETFs that meet specified conditions, as discussed below, would provide FCMs

and DCOs with greater flexibility and opportunities for capital efficiency in the investment of Customer Funds, without unacceptably increasing risk to customers. Consistent with the existing regulations limiting customer risk associated with the investment of Customer Funds by FCMs and DCOs, under the terms of the Proposal, FCMs and DCOs would be financially responsible for bearing any loss on an investment of Customer Funds in an ETF in the same manner as FCMs and DCOs are financially responsible for losses incurred from the investment of Customer Funds in Permitted Investments.¹⁶⁶

The Commission also believes that the proposed addition of interests in ETFs as Permitted Investments under Regulation 1.25(a) would foster innovation and promote competition in the ETF market and the financial services industry more generally, as the Proposal would permit the flow of Customer Funds into a new type of financial instrument that previously had been prohibited and, as discussed below, would offer the possibility for market participants to purchase a type of collateral that is already a Permitted Investment without having to purchase the securities directly or through a MMF.

As noted above, industry representatives and other market participants have also expressed interest in U.S. Treasury ETFs as Permitted Investments.¹⁶⁷ Both the Petitioners and Invesco highlight the similarity in characteristics between U.S. Treasury ETF securities and other instruments that qualify as Permitted Investments under Regulation 1.25.¹⁶⁸ Invesco further notes that ETFs investing in U.S. Treasury securities offer an indirect, yet simpler and more cost-efficient way, for FCMs to invest Customer Funds in such instruments, eliminating the need to identify, invest in, and administer

¹⁵⁹ *Id.*

¹⁶⁰ See SEC ETFs Release at 57164; see also David Abner, *The ETF Handbook: How to Value and Trade Exchange-Traded Funds*, 2nd ed. (2016).

¹⁶¹ See Joint Petition at pp. 8–9.

¹⁶² Invesco Petition at p. 2.

¹⁶³ *Id.* at pp. 6–7. Financial requirements include: (i) annual shareholder report, including audited financial statements (17 CFR 270.30e–1); (ii) semi-annual shareholder report, including unaudited financial statements (17 CFR 270.30e–1); (iii) monthly portfolio statistics and holdings filed quarterly (17 CFR 270.30b1–9); (iv) annual census report containing financial-related information (17 CFR 270.30a–1); and (v) periodic reports with

respect to portfolio liquidity and derivatives use (17 CFR 270.30b1–10). With respect to liquidity risk management, SEC regulations require open-ended management investment companies, including ETFs, to adopt and implement a liquidity risk management program that is reasonably designed to assess and manage liquidity risk, which is defined to mean the risk that the fund could not meet redemption requests to redeem shares issued by the fund without significant dilution of remaining investors' interests in the fund (17 CFR 270.22e–4).

¹⁶⁴ Invesco Petition at p. 2.

¹⁶⁵ The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111–203, H.R. 4173).

¹⁶⁶ See Regulation 1.29(b) (providing that an FCM or a DCO, as applicable, shall bear sole responsibility for any losses resulting from the investment of futures customer funds in Permitted Investments) and Regulations 22.2(e)(1) and 30.7(i) (providing that an FCM shall bear sole responsibility for any losses resulting from the investment of Cleared Swaps Customer Collateral and 30.7 funds, respectively, in Permitted Investments). As further discussed in Section III.C. below, the Commission is also proposing an amendment to Regulation 22.3(d) to clarify that DCOs are financially responsible for investments of Cleared Swaps Customer Collateral in Permitted Investments.

¹⁶⁷ They generally refer to short-term U.S. Treasury ETFs that invest at least 80 percent of their assets in U.S. Treasury securities with a remaining term to final maturity of 12 months or less.

¹⁶⁸ See Joint Petition at pp. 8–9 and Invesco Petition at pp. 9–10.

investments in individual U.S. Treasury securities.¹⁶⁹

The Commission also notes that CME accepts shares of short-term U.S. Treasury ETFs as performance bond from clearing members to margin customer and house trades.¹⁷⁰ The Commission believes that this represents an important consideration in determining whether to add interests of U.S. Treasury ETFs to the list of Permitted Investments given that interests in U.S. Treasury ETFs that qualify as a Permitted Investment under the Proposal could ultimately be accepted by DCOs, such as CME, as performance bond, and pledged by FCMs as margin collateral.

To ensure consistency with the requirements applicable to other Permitted Investments and the general objectives of Regulation 1.25 of preserving principal and maintaining liquidity of Permitted Investments, the Commission is proposing to impose the conditions discussed below on ETFs for their interests to qualify as a Permitted Investment. The Commission preliminarily believes that to the extent ETFs meet the proposed conditions, the ETFs would be comparable to Permitted Government MMFs whose interests currently qualify as Permitted Investments under Regulation 1.25(a).¹⁷¹ The Commission also notes that by allowing FCMs and DCOs to invest Customer Funds in ETFs that meet the specified proposed conditions,

it would provide FCMs and DCOs with a means for investing indirectly in Permitted Investments—U.S. Treasury securities, while allowing FCMs and DCOs to dispense with the expense and resources required to manage individual investments in such instruments.

One rationale for adding ETFs investing primarily in short-term U.S. Treasury securities to the list of Permitted Investments is the similarity of the ETFs to MMFs whose interests qualify as Permitted Investments under Regulation 1.25(a). As such, the Commission preliminarily believes that it is appropriate to propose to impose all pertinent requirements applicable to MMFs under Regulation 1.25 to such ETFs, subject to certain modification to address the unique characteristics of the ETFs. Therefore, under the terms of the Proposal, an ETF would be required to satisfy specified requirements, as discussed below, to be a qualified ETF (“Qualified ETF”) whose interests qualify as a Permitted Investment.

Consistent with Regulation 1.25(c), which sets forth provisions for MMFs whose interests qualify as Permitted Investments, a Qualified ETF would be required to be an investment company that is registered under the Investment Company Act of 1940 with the SEC and that holds itself out to investors as an ETF under SEC Rule 6c–11.¹⁷² The ETF would also be required to be sponsored by a federally regulated financial institution, a Section 3(a)(6) bank,¹⁷³ an investment adviser registered under the Investment Advisers Act of 1940, or a domestic branch of a foreign bank insured by the FDIC.¹⁷⁴

In addition, the Commission is proposing to limit Qualified ETFs to funds that are passively managed and seek to replicate the performance of a published short-term U.S. Treasury security index.¹⁷⁵ For purposes of the Proposal, short-term U.S. Treasury securities are bonds, notes, and bills with a remaining maturity of 12 months or less, issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury.¹⁷⁶

Consistent with this condition, the Commission is further proposing to require that the eligible U.S. Treasury securities represent at least 95 percent of the ETF’s investment portfolio. In that regard, the Commission notes that

pursuant to SEC requirements,¹⁷⁷ certain registered investment companies, including ETFs, must adopt a policy to invest at least 80 percent of the value of their assets in accordance with the investment focus suggested by the fund’s name.¹⁷⁸

The Commission, however, preliminarily believes that a stricter standard is necessary to help ensure that FCMs and DCOs invest Customer Funds in accordance with Regulation 1.25’s general objectives of preserving principal and maintaining liquidity. The Commission’s preliminary analysis indicates that short-term U.S. Treasury ETFs generally invest at least 95 percent of their assets in securities comprising the U.S. Treasury securities index whose performance the funds seek to replicate. As such, the Commission preliminarily believes that mandating that a Qualified ETF invest a minimum of 95 percent of its assets in eligible U.S. Treasury securities would not be overly restrictive.¹⁷⁹ To ensure compliance with the proposed condition, FCMs and DCOs would be required to monitor the Qualified ETF’s portfolio. If the portion of the ETF’s assets invested in eligible U.S. Treasury securities falls below 95 percent of the fund’s total assets, the FCM or DCO would not be permitted to make additional investments of Customer Funds in the ETF. The FCM or DCO would also be expected to take reasonable actions to divest interests in the fund, while managing Customer Funds in a manner consistent with Regulation 1.25’s general objectives of preserving principal and maintaining liquidity. Depending on the market conditions, such actions may include taking steps to progressively reduce the

¹⁶⁹ Invesco Petition at p. 11. Invesco states that an ETF would allow FCMs and DCOs to gain exposure to short-term U.S. Treasury securities without buying and selling Treasury securities on a periodic basis, such as each quarter, eliminating the costs associated with trading Treasury securities.

¹⁷⁰ CME Advisory Notice, *Modifications to Schedule of Acceptable Performance Bond—Addition of Short-Term U.S. Treasury ETFs* (Aug. 2, 2022) (“2022 CME Advisory Notice”), available at <https://www.cmegroup.com/notices/clearing/2022/08/Chadv22-293.pdf> (providing that acceptable ETFs must track a U.S. Treasury index and must have a minimum 80 percent investment in U.S. Treasury securities with a time to maturity of 1 year or less).

¹⁷¹ The Commission notes that SEC Rule 2a–7, which applies to MMFs, restricts the types of investments in which MMFs can invest their assets, limits the terms of the investments, and imposes liquidity requirements with respect to the investments, among other things. See 17 CFR 270.2a–7(d)(2) (providing that MMFs must limit their portfolio investments to U.S. dollar-dominated securities that at the time of acquisition are eligible securities), 17 CFR 270.2a–7(d)(1) (limiting the terms of maturity of MMFs’ investments), and 17 CFR 270.2a–7(d)(4) (providing that MMFs must hold securities that are sufficiently liquid to meet reasonably foreseeable shareholder redemptions and setting forth other liquidity requirements). Although SEC Rule 2a–7 does not apply to ETFs, as described below, this Proposal would admit as a Permitted Investment only ETFs providing investors with substantial protections that are comparable, though not identical, to those afforded to MMF investors.

¹⁷² Proposed Regulation 1.25(c)(1).

¹⁷³ For a definition of Section 3(a)(6) bank, see *supra* note 51.

¹⁷⁴ Proposed Regulation 1.25(c)(2), as applying to Qualified ETFs per proposed revised introductory text of paragraph (c) of Regulation 1.25.

¹⁷⁵ Proposed revised Regulation 1.25(a)(1)(vi).

¹⁷⁶ *Id.*

¹⁷⁷ SEC Rule 35d–1 under the Investment Company Act of 1940 (indicating that a fund name suggesting that the fund focuses its investments in a particular type of investments or in investments in a particular industry would be a materially deceptive and misleading name unless the fund has adopted a policy to invest, under normal circumstances, at least 80 percent of the value of its assets in the particular type of investments or in investments in the particular industry suggested by the fund’s name). 17 CFR 270.35d–1.

¹⁷⁸ Proposed Regulation 1.25(c)(8)(ii).

¹⁷⁹ The Commission considered proposing to require that Qualified ETFs invest at least 99.5 percent of their assets in eligible U.S. Treasury securities to reflect an analogous condition in SEC Rule 2a–7 requiring that government MMFs invest at least 99.5 percent of their assets in government securities. The Commission, however, preliminarily believes that such threshold would be more restrictive in the context of Qualified ETFs, given that an eligible U.S. Treasury security would be defined as a bond, note, or bill with a remaining maturity of 12 months or less, issued or unconditionally guaranteed by the U.S. Department of the Treasury, whereas a government security is broadly defined in SEC Rule 2a–7 (by reference to 15 U.S.C. 80a–2(a)(16)) to include U.S. government securities and U.S. agency obligations.

amount of Customer Funds invested in ETFs instead of immediately divesting the investments in a potentially volatile market.

The Commission preliminarily believes that limiting the investments of Qualified ETFs as proposed would increase the safety and resilience of the ETFs¹⁸⁰ and allow the funds to more closely match the risk profile of Permitted Investments, including Permitted Government MMFs. Also, Qualified ETFs that maintain portfolios primarily comprised of high-quality and liquid investments are better able to redeem interests without placing excessive downward pressure on the NAVs.

In addition, the agreement pursuant to which an FCM or a DCO acquires and holds its interest in the Qualified ETF would be prohibited from containing provisions that would prevent the pledging of the Qualified ETF's shares.¹⁸¹ FCMs and DCOs would be required to maintain confirmations relating to their purchase of interests in a Qualified ETF in their records in accordance with Regulation 1.31 and note the ownership of the interests (by book-entry or otherwise) in the FCMs' and DCOs' custody account in accordance with Regulation 1.26.¹⁸² FCMs and DCOs would be required to obtain the acknowledgment letter required by Regulation 1.26 from an entity that has substantial control over the ETF interests purchased with Customer Funds and that has the knowledge and authority to facilitate redemption and payment or transfer of the Customer Funds. Such entity may be the sponsor of the Qualified ETF or a depository acting as custodian for the ETF interests.

Also, the NAV for the Qualified ETF would be required to be computed by 9

a.m. of the business day following each business day and made available to FCMs or DCOs, as applicable, by that time.¹⁸³ The Commission notes that this proposed requirement is intended to allow for the valuation of the Qualified ETF's investment portfolio to be available by 9 a.m. the business day following an investment in the ETF, so that the valuation is available in time for FCMs to perform their daily segregation calculations, which are required to be completed by noon each business day, reflecting balances as of the close of business on the previous business day.¹⁸⁴

Further, the Qualified ETF would be required to be legally obligated to redeem its interests and make payment in satisfaction of the interests by the business day following a redemption request.¹⁸⁵ FCMs or DCOs, as applicable, would be required to retain documentation demonstrating compliance with this requirement.¹⁸⁶ Regulation 1.25(c)(5)(ii) currently provides an exception to the next-day redemption obligation for MMFs for defined extraordinary circumstances, such as the non-routine closures of the Fedwire or applicable Federal Reserve Banks, and any period during which the SEC by order restricts redemptions for the protection of security holders in the fund. Regulation 1.25(c)(5)(ii) was adopted by the Commission to be consistent with Section 22(e) of the Investment Company Act of 1940¹⁸⁷ and SEC Rule 22e-3,¹⁸⁸ which provides exceptions to MMFs for next-day redemptions.¹⁸⁹ The Commission is not

proposing to adopt next-day redemption exceptions for Qualified ETFs as no comparable provisions are provided under the rules of the SEC, and in recognition that the redemption process for ETFs involves the exchange of ETF share for cash by authorized participants. As noted below, the Commission is seeking comment on the potential existence of extraordinary circumstances that may warrant an exception to the proposed next-day redemption requirement.

The Commission preliminarily believes that limiting, as discussed above, Qualified ETFs to funds that track the performance of a published short-term U.S. Treasury security index would contribute to facilitating redemptions of Qualified ETFs' shares to be completed within one business day consistent with Regulations 1.25(c)(5)(i) and 1.25(b)(1).¹⁹⁰

As previously discussed, ETFs issue and redeem their shares with authorized participants in primary market transactions in blocks of shares or "creation units" at the NAV per share. Redemptions may be in cash or in kind. Authorized participants and the general public can also purchase and sell ETF shares in the secondary market at the market price per share. The Commission preliminarily believes that FCMs and DCOs are likely to purchase and redeem the shares of a Qualified ETF through primary market transactions intermediated by authorized participants rather than purchasing and selling the ETF shares in the secondary market, because the price of the shares in the secondary market may differ from the NAV, and the sale of the shares in the secondary market may delay the liquidation of the instruments.

The Commission notes that an FCM's or a DCO's purchase or redemption of Qualified ETF shares through intermediated transactions with authorized participants raises two concerns. First, if an FCM or a DCO invests Customer Funds in shares of a Qualified ETF by purchasing the shares through an authorized participant, the FCM or DCO would need to take Customer Funds out of the segregated account maintained in compliance with Section 4d of the Act and/or Part 30 of the Commission's regulations to

¹⁸⁰ The Commission notes that a preliminary analysis of ETFs investing primarily in short-term U.S. Treasury securities indicates that the funds have a risk profile and volatility characteristics that are comparable to that of the underlying U.S. Treasury security investments. Specifically, using data available on Bloomberg, the Commission notes that for the period June 2020–September 2023, the Invesco Collateral Treasury ETF, as well as four other short-term U.S. Treasury ETFs that CME accepts as performance bond—SPDR® Bloomberg 1–3 Month T-Bill ETF, Goldman Sachs Access Treasury 0–1 Year ETF, iShares 0–3 Month Treasury Bond ETF, and iShares Short Treasury Bond ETF—had a standard deviation for a two-day period of risk of approximately 6 BPS, whereas the one-year U.S. Treasury securities had a standard deviation of 8 BPS for the same period.

¹⁸¹ Paragraph (c)(6) of Regulation 1.25 as applying to Qualified ETFs per proposed revised introductory text of paragraph (c) of Regulation 1.25.

¹⁸² Paragraph (c)(3) of Regulation 1.25 as applying to Qualified ETFs per proposed revised introductory text of paragraph (c) of Regulation 1.25.

¹⁸³ Paragraph (c)(4) of Regulation 1.25 as applying to Qualified ETFs per proposed revised introductory text of paragraph (c) of Regulation 1.25.

¹⁸⁴ 2000 Permitted Investments Amendment at 78003.

¹⁸⁵ Paragraph (c)(5)(i) of Regulation 1.25 as applying to Qualified ETFs per proposed revised introductory text of paragraph (c) of Regulation 1.25.

¹⁸⁶ *Id.*

¹⁸⁷ 15 U.S.C. 80a–22(e).

¹⁸⁸ 17 CFR 270.22e–3.

¹⁸⁹ Regulation 1.25(c)(5)(ii) was originally adopted in 2005. See 2005 Permitted Investments Amendment at 28196. It codified a 2001 letter issued by the Commission's Division of Trading and Markets in response to an industry inquiry, stating that the division would raise no issue in connection with MMFs that provide for certain exceptions to the next-day redemption requirement. *Id.* As specified in the 2001 letter, the circumstances in which the next-day redemption could be excused overlapped to a certain extent with those contained in Section 22(e) of the Investment Company Act of 1940. See CFTC Staff Letter No. 01–31, [2000–2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) 28,521 (Apr. 2, 2001). In 2011, the Commission revised Regulation 1.25(c)(5)(ii) to more closely align the language of that regulation with Section 22(e) and to expressly incorporate SEC Rule 22e–3. See 2011 Permitted Investments Amendment at 78789.

¹⁹⁰ See 17 CFR 1.25(c)(5) (providing that MMFs must be legally obligated to redeem their interests and to make payment in satisfaction of the interests by the business day following a redemption request) and 17 CFR 1.25(b)(1) (providing that Permitted Investments must be "highly liquid" such that the investments have the ability to be converted into cash within one business day without material discount in value).

purchase the ETF shares.¹⁹¹ As a result, customer segregated accounts may not be fully funded, thus potentially violating Commission regulations that require FCMs to maintain, at all times, in the segregated account, money, securities and property in an amount that is at least sufficient in the aggregate to cover their total obligations to all customers.¹⁹² Also, the transfer of Customer Funds to the authorized participant may be in contravention of Commission regulations that provide that Customer Funds may only be deposited with a bank or trust company, a DCO, or another FCM.¹⁹³ Second, if an FCM or a DCO uses an unaffiliated authorized participant to redeem its Qualified ETF shares, the redemption of the ETF shares may be protracted, preventing the redemption and liquidation of the shares to occur within one business day, as required by Regulation 1.25.

To address these two concerns, the Commission proposes to require an FCM or a DCO that invests Customer Funds in the shares of a Qualified ETF to be an authorized participant of the ETF.¹⁹⁴ The Commission believes that this approach would permit Customer Funds to be maintained in a segregated account in accordance with Section 4d or Part 30, as applicable, with a permitted depository (*i.e.*, a bank, trust company, DCO, or another FCM), given that the Customer Funds would not need to be transferred to an authorized participant unaffiliated with the FCM or DCO. In addition, because an FCM or a DCO acting as an authorized participant would be able to redeem the shares without relying on a separate authorized participant, the Commission believes that the FCM or DCO would be able to better manage completing the

redemption and liquidation of the Qualified ETFs shares within one business day, as required by Regulation 1.25.

The Commission, however, understands that FCMs and DCOs may have access to other means of purchasing or liquidating interest in ETFs. For instance, an FCM or a DCO may be able to acquire interests in an ETF on a delivery-versus-payment basis through a securities broker or dealer at price equal to the next calculated NAV amount per share or another agreed-upon price that approximates the last calculated NAV. Similarly, an FCM or a DCO may be able to sell Qualified ETF shares to a broker or dealer willing to buy them at a price corresponding to the NAV amount per share and later redeem them from the fund. To be able to assess the feasibility of such arrangements and the potential associated risks, the Commission requests additional information on the availability and functioning of alternative mechanisms of purchasing and liquidating Qualified ETF interests in a manner compliant with Regulation 1.25 and compliant with the segregation requirements for Customer Funds.

The Commission is also proposing that Qualified ETFs be required to redeem their shares in cash.¹⁹⁵ The Commission understands that ETFs typically redeem interests in kind, although they may also redeem in cash or both in kind and in cash. The Commission also notes that CME, in announcing its acceptance of short-term U.S. Treasury ETFs as performance bond, stated that it would accept short-term U.S. Treasury ETFs that redeem their shares in cash or in kind.¹⁹⁶ As discussed above, the Commission is requiring that Qualified ETFs redeem their shares within one business day following the submission of the redemption request, consistent with the time limit for redemptions applicable to MMFs under Regulation 1.25(c)(5). In addition, under Regulation 1.25(c)(1), the shares of Qualified ETFs, as a Permitted Investment, would be required to be convertible into cash within one business day without material discount in value. As such, given these time limits for the redemption and liquidation of Qualified ETF shares, the Commission is proposing to require Qualified ETFs to redeem their shares in cash because in-cash redemptions may allow for a more expeditious liquidation of the shares than in-kind redemptions.

In this regard, the Commission notes that in-kind redemptions may introduce a time lag between the redemption of the ETF shares and the ultimate liquidation of the shares, as the assets received in in-kind redemptions would need to be sold or otherwise converted into cash to complete the liquidation of the ETF shares, hindering the ability to liquidate the ETF shares within one business day, as required by Regulation 1.25(b)(1). As such, the Commission is proposing to require that Qualified ETFs redeem their shares only in cash. The Commission, however, is requesting information on the availability and functioning of potential mechanisms or arrangements that may allow FCMs and DCOs to liquidate a Qualified ETF's shares in a manner compliant with Regulation 1.25 and the segregation requirements if the fund's interests were redeemed in kind.

The Commission is also proposing to require, as a condition for qualification as a Permitted Investment, that Qualified ETFs be acceptable by a DCO as performance bond from clearing members to margin customer trades.¹⁹⁷ Although qualification as acceptable collateral by a DCO is not determinative of qualification as a Permitted Investment, the Commission preliminarily believes that limiting Qualified ETFs to funds that have met a DCO's criteria of eligibility as performance bond represents an additional safeguard. In addition, as noted above, the possibility that ETF shares could be pledged by an FCM as margin collateral is an important consideration for the Commission in determining whether to add the interests of ETFs to the list of Permitted Investments.

In order to add the interests of Qualified ETFs to the list of Permitted Investments under Regulation 1.25, the Commission is proposing to add paragraph (vi) to Regulation 1.25(a)(1), as redesignated to accommodate other amendments to the list of Permitted Investments pursuant to this Proposal. Paragraph (vi) would identify interests in U.S. Treasury exchange-traded funds as a Permitted Investment. The Commission also proposes further conforming changes throughout Regulation 1.25. Section III.A.2. above provides for the replacement of "money market mutual fund" or "money market mutual funds" with "government money market fund" or "government money market funds" throughout Regulation 1.25. The Commission proposes, unless otherwise discussed below, to insert next to the term

¹⁹¹ See 7 U.S.C. 6d (setting forth segregation requirements for FCMs' futures customer funds); see also 17 CFR 1.20(a) (providing that FCMs must separately account for futures customer funds and segregate such funds as belonging to their futures customers) and 17 CFR 1.20(g) (providing that DCOs must separately account for and segregate futures customer funds as belonging to futures customers); 17 CFR 22.2 (providing that FCMs must segregate Cleared Customer Collateral) and 17 CFR 22.3 (requiring that DCOs segregate Cleared Customer Collateral); and 17 CFR 30.7(b) (providing that FCMs must deposit 30.7 funds under an account name that clearly identifies the funds as belonging to 30.7 customers).

¹⁹² 17 CFR 1.20(a), 17 CFR 22.2(f), and 17 CFR 30.7(a).

¹⁹³ 17 CFR 1.20(b), 17 CFR 22.2(b) and 17 CFR 30.7(b). With respect to 30.7 customer funds, Regulation 30.7(b) also permits funds to be deposited with the clearing organization of any foreign board of trade, a member of any foreign board of trade, or such member's or clearing organization's designated depositories. 17 CFR 30.7(b).

¹⁹⁴ Proposed paragraph (c)(8) of Regulation 1.25.

¹⁹⁵ Proposed Regulation 1.25(c)(8)(i).

¹⁹⁶ 2022 CME Advisory Notice at 1.

¹⁹⁷ Proposed Regulation 1.25(c)(8)(iii).

“government money market fund” or “government money market funds,” the term “U.S. Treasury exchange-traded fund” or “U.S. Treasury exchange-traded funds,” as appropriate, preceded by an appropriate conjunction (*i.e.*, “or” or “and”), as necessary.

To incorporate the condition that a Qualified ETF must be an investment company that is registered under the Investment Company Act of 1940 with the SEC and holds itself out to investors as an ETF under SEC Rule 6c–11, the Commission proposes to revise Regulation 1.25(c)(1) to provide that, “The fund must be an investment company that is registered under the Investment Company Act of 1940 with the Securities and Exchange Commission and that holds itself out to investors as a government money market fund, in accordance with 270.2a–7 of this title, or an exchange-traded fund, in accordance with 270.6c–11 of this title.”

Moreover, to incorporate the requirement that an FCM or a DCO investing in a Qualified ETF must be an authorized participant, the Commission proposes to revise Regulation 1.25(c) to add paragraph (8), which would provide, “Interests in U.S. Treasury exchange-traded funds will qualify as a Permitted Investment under Regulation 1.25(a) if the interests are redeemable in cash by a futures commission merchant or derivatives clearing organization in its capacity as an authorized participant pursuant to an authorized participant agreement, as defined in § 270.6c–11, at a price based on the net asset value in accordance with the Investment Company Act of 1940 and regulations thereunder, and on a delivery versus payment basis.”

To account for the possibility that, as part of their investment strategy and within the limits of applicable SEC rules, Qualified ETFs may engage in derivatives transactions, the Commission is also proposing to amend Regulation 1.25(b)(2)(i) to indicate that the prohibition of investments containing embedded derivatives would not apply to Qualified ETFs.

Finally, the Commission is proposing to amend Regulation 1.25(b)(4)(i), which provides that except for investments in MMFs, the dollar-weighted average time-to-maturity of an FCM’s or a DCO’s portfolio of Permitted Investments, as computed under SEC Rule 2a–7, may not exceed 24 months. The proposed amendment would revise Regulation 1.25(b)(4)(i) to exclude Qualified ETFs from the calculation of the dollar-weighted average time-to-maturity of the

portfolio of Permitted Investments.¹⁹⁸ The Commission is proposing this amendment as interests in Qualified ETFs do not have maturity dates, as the Qualified ETF manages the rolling of maturing U.S. Treasury securities into new investments.

Request for Comment: The Commission seeks comment on all aspects of the Proposal relating to the expansion of the list of Permitted Investments to include interests in ETFs subject to the specified conditions discussed above, including:

6. For the interests of ETFs to be deemed a Permitted Investment, the ETFs would have to satisfy requirements similar to the requirements that apply to Government MMFs whose interests qualify as Permitted Investments. Is it appropriate to apply the regulatory framework that applies to Government MMFs to ETFs for determining whether an ETF would be deemed a Qualified ETF and interests in the ETF be deemed a Permitted Investment? To the extent some aspects of the regulatory framework applicable to MMFs is not appropriate for ETFs, please specify and explain why.

7. The Proposal to add interests in Qualified ETFs to the list of Permitted Investments provides that only the interests of ETFs that are passively managed and seek to replicate the performance of a published short-term U.S. Treasury security index by investing in a limited set of instruments would qualify as Permitted Investments. The Commission notes that the types of investments in which Qualified ETFs and Permitted Government MMFs would be permitted to invest under the Proposal would differ in that Qualified ETFs’ investments would be determined by its investment strategy seeking to replicate the performance of a public short-term U.S. Treasury index and a requirement that the Qualified ETFs invest 95 percent or more of their assets in U.S. Treasury securities that are components of the index, whereas government MMFs would be required to invest 99.5 percent or more of their assets in cash, government securities (defined in 15 U.S.C. 80a–2(a)(16) to broadly include U.S. Treasury securities and U.S. agency securities), and/or Repurchase Transactions that must be collateralized fully, consistent with the definition of government money market funds under SEC Rule 2a–7. Should the Commission further limit the types of underlying instruments in which a Qualified ETF would be permitted to invest? If so, what criteria should be applied to determine the appropriate

limitations? Should the Commission permit Qualified ETFs to invest a lower or higher percentage of their assets in short-term U.S. Treasury securities that are components of the index than the proposed 95 percent? If so, what percentage should the Commission consider and why? Also, should the Commission reconcile the types of investments in which Qualified ETFs and Permitted Government MMFs would be permitted to invest by allowing Qualified ETFs to invest in the same investments as Permitted Government MMFs?

8. Under the Proposal, Qualified ETFs would not be precluded from undertaking Repurchase Transactions. Does an ETF engaging in Repurchase Transactions with fund assets have the potential to adversely impact an authorized participant’s ability to redeem interest in the fund in exchange for cash? Does an ETF engaging in Repurchase Transactions present other issues that would delay the ability of an authorized participant to redeem interest in the fund in cash? Could the potential delay prevent completing redemptions and liquidation of the ETF shares within one business day, as required by Regulation 1.25? Should Qualified ETFs be prohibited from undertaking Repurchase Transactions given the possible risk of delay in redemptions?

9. The Proposal would require that FCMs or DCOs that invest Customer Funds in interests of Qualified ETFs be authorized participants in order to address concerns that during purchase or redemption of ETF shares, Customer Funds might be moved to an account not held by an appropriate depository of customer segregated funds (*i.e.*, a bank, trust company, DCO or FCM) without a contemporaneous deposit of ETF shares or cash in customer segregated accounts, resulting in the FCM or DCO being undersegregated. Are there alternative approaches other than requiring FCMs or DCOs to be authorized participants that could address or mitigate the Commission’s concerns? Can DCOs be authorized participants of Qualified ETFs? If not, are there alternatives that would permit DCOs to invest Customer Funds in Qualified ETFs consistent with the requirements of Regulation 1.25 and the Commission’s segregation requirements?

10. The Commission understands that interests in short-term U.S. Treasury ETFs may be redeemed in cash or in kind. The Commission is proposing to require that the shares of a Qualified ETF be redeemable only in cash given the concern that in-kind redemptions may not permit the liquidation of the

¹⁹⁸ Proposed revised Regulation 1.25(b)(4)(i).

ETF shares within one business day, as required by Regulation 1.25(b)(1). If the Commission were to allow shares of Qualified ETFs to be redeemable in kind, would the Qualified ETF's interests have the ability to be liquidated within one business day as required by Regulation 1.25(b)(1)? What mechanisms or arrangements exist that may allow FCMs and DCOs to convert Qualified ETF shares into cash within one business day without material discount in value if redemptions occur in kind? Are there any potential risks associated with such mechanisms and arrangements that the Commission should consider? Is there an alternative approach to address the Commission's concerns that would permit the use of in-kind redemptions and also provide FCMs and DCOs with access to cash for the redemptions within one business day? Does the proposed requirement that the Qualified ETF invest 95 percent or more of its total assets in short-term U.S. Treasury securities help ensure that FCMs and DCOs will be able to liquidate securities received from an in-kind redemption within one business day? Does the proposed requirement that an FCM or a DCO must be an authorized participant help ensure that the FCM or DCO has the internal operational capability and resources to liquidate in-kind redemptions in a manner and time-frame compliant with Regulation 1.25 requirements?

11. As noted, the Commission is proposing to require that interests in Qualified ETFs be redeemable in cash within one business day. Are there any extraordinary circumstances, similar to the events listed in Regulation 1.25(c)(5)(ii) with respect to MMFs, that may justify an exception to the proposed next-day redemption requirement? If so, please specify what redemption exceptions are necessary, and explain why the exceptions are necessary. Also address potential impacts to customers if Qualified ETFs do not redeem within one business if exceptions were provided.

12. Does the Proposal to add Qualified ETFs to the list of Permitted Investments under Regulation 1.25, along with the continued inclusion of MMFs, have the potential to reduce the availability of funds from the banking system in a manner that would raise any financial stability concerns? Could the use of Repurchase Transactions by MMFs and ETFs exacerbate any financial stability issues that may exist?

13. The Proposal would require that a Qualified ETF must be a passively managed fund that seeks to replicate the performance of a published short-term U.S. Treasury security index composed

of bonds, notes, and bills with a remaining maturity of 12 months or less, issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury. Should the Commission impose conditions or requirements that a publisher of an ETF index must meet or satisfy in order for the ETF to be a Qualified ETF? If so, what conditions or requirements should the Commission impose, and why?

14. Regulation 1.25(b)(5)(ii) currently provides that an FCM or a DCO may invest Customer Funds in a fund affiliated with that FCM or DCO. Should the Commission revise Regulation 1.25(b)(5)(ii) to prohibit an FCM or a DCO from investing Customer Funds in affiliated funds? Are there other Commission or SEC rules that mitigate any potential conflicts of interest that may arise from an FCM or a DCO investing Customer Funds in affiliated funds?

4. Investments in Commercial Paper and Corporate Notes or Bonds

The Commission originally approved commercial paper and corporate notes as Permitted Investments for FCMs and DCOs in 2000.¹⁹⁹ The Commission subsequently revised the list of Permitted Investments in 2005 to include corporate bonds.²⁰⁰

In 2007, the Commission's Division of Clearing and Intermediary Oversight conducted a review of the use of Permitted Investments by FCMs and DCOs.²⁰¹ The review indicated that commercial paper and corporate notes and bonds were not widely used by FCMs and DCOs. In 2011, in an effort to simplify Regulation 1.25 by eliminating rarely-used instruments and in consideration of the Commission's concerns that corporate debt securities posed credit, liquidity and market risks, the Commission revised Regulation 1.25 to provide that an FCM or a DCO may invest Customer Funds in commercial paper and corporate notes and corporate bonds only if the debt instruments were guaranteed by the TLGP.²⁰²

The TLGP expired in 2012, and, therefore, commercial paper, corporate notes, and corporate bonds are no longer Permitted Investments under the terms of Regulation 1.25.²⁰³ Accordingly, the

Commission is proposing to remove commercial paper, corporate notes, and corporate bonds from the list of Permitted Investments.

5. Investments in Permitted Investments With Adjustable Rates of Interest

Regulation 1.25(b)(2)(iv)(A) provides that Permitted Investments may contain variable or floating rates of interest provided, among other things, that: (i) the interest payments on variable rate securities correlate closely, and on an unleveraged basis, to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the one-month or three-month LIBOR, or the interest rate of any fixed rate instrument that is a listed Permitted Investment under Regulation 1.25(a);²⁰⁴ and (ii) the interest rate, in any period, on floating rate securities is determined solely by reference, on an unleveraged basis, to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the one-month or three-month LIBOR,²⁰⁵ or the interest rate of any fixed rate instrument that is a listed Permitted Investment under Regulation 1.25(a).²⁰⁶

LIBOR has been used extensively as a reference rate in various commercial and financial contracts, including corporate and municipal bonds, commercial loans, floating rate mortgages, asset-backed securities, consumer loans, and interest rate swaps and other derivatives.²⁰⁷ The U.K. Financial Conduct Authority, however, announced on March 5, 2021 that LIBOR would cease to be published and would effectively be discontinued.²⁰⁸

[Guarantee Program], the FDIC guaranteed in full, through maturity or June 30, 2012, whichever came first, the senior unsecured debt issued by a participating entity between October 14, 2008, and June 30, 2009. In 2009, the issuance period was extended through October 31, 2009. The FDIC's guarantee on each debt instrument was also extended in 2009 to the earlier of the stated maturity date of the debt or December 31, 2012.”).

²⁰⁴ 17 CFR 1.25(b)(2)(iv)(A)(1).

²⁰⁵ For simplicity, subsequent references to “one-month or three-month LIBOR rate” will be referred to as LIBOR unless otherwise required by the context of the discussion.

²⁰⁶ 17 CFR 1.25(b)(2)(iv)(A)(2).

²⁰⁷ *Staff Statement on LIBOR Transition*, SEC Division of Corporation Finance, Division of Investment Management, Division of Trading and Markets, and Office of the Chief Accountant (July 12, 2019), available at <https://www.sec.gov/news/public-statement/libor-transition>.

²⁰⁸ See CFTC Staff Letter No. 21–26, *Revised No-Action Positions to Facilitate an Orderly Transition of Swaps from Inter-Bank Offered Rates to Alternative Benchmarks* (Dec. 20, 2021) (“Staff Letter 21–26”), (More specifically, the U.K. Financial Conduct Authority, which regulates ICE Benchmark Administration Limited, the administrator of ICE LIBOR, confirmed that LIBOR

¹⁹⁹ See 2000 Permitted Investments Amendment at 78010.

²⁰⁰ See 2005 Permitted Investments Amendment at 28200.

²⁰¹ 2011 Permitted Investments Amendment at 78776.

²⁰² *Id.* at 78779.

²⁰³ *Temporary Liquidity Guarantee Program*, available at <https://www.fdic.gov/Regulations/resources/tlgp/index.html> (“Under the [Debt

This announcement had been anticipated given the loss of confidence in LIBOR as a reliable benchmark following a number of enforcement actions concerning attempts to manipulate the benchmark.²⁰⁹

The Federal Reserve Bank of New York convened the Alternative Reference Rate Committee (“ARRC”) in 2014 to identify best practices for U.S. alternative reference rates and best practices for contract robustness, to develop an adoption plan, and to create an implementation plan with metrics of success and a timeline.²¹⁰ In June 2017, the ARRC identified SOFR, a broad Treasury repurchase agreements financing rate, as the preferred alternative benchmark to USD LIBOR for certain new USD derivatives and financial contracts.²¹¹ SOFR is a broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities in the Repurchase Transaction market used by financial institutions, governments, and corporations.²¹² SOFR is calculated as a volume-weighted median of transaction-level triparty repo data collected from the Bank of New York Mellon as well as data on bilateral U.S. Treasury Repurchase Transactions cleared through the Fixed Income Clearing Corporation.²¹³ The Federal Reserve Bank of New York, in cooperation with the U.S. Office of Financial Research, publishes SOFR by 8:00 a.m. each business day.²¹⁴

In response to the anticipated termination of the publication of LIBOR and the increasing acceptance and use of SOFR as a benchmark interest rate, MPD issued Staff Letter 21–02 on January 4, 2021.²¹⁵ Staff Letter 21–02 provides that MPD would not

would either cease to be provided by any administrator or would no longer be representative for the 1-week and 2-month USD LIBOR settings, immediately after December 31, 2021, and for all other USD LIBOR settings immediately after June 30, 2023). As noted *supra*, CFTC Staff Letters are available at the Commission’s website, www.cftc.gov.

²⁰⁹ See e.g., *In re Barclays PLC*, CFTC Docket No. 12–25 (June 27 2012); *In re UBS AG*, CFTC Docket No. 13–09 (Dec. 19, 2012).

²¹⁰ Staff Letter 21–26 at p. 3.

²¹¹ ARRC, “The ARRC Selects a Broad Repo Rate as its Preferred Alternative Reference Rate,” June 22, 2017, available at <https://www.newyorkfed.org/medialibrary/microsites/arrc/files/2017/ARRC-press-release-jun-22-2017.pdf>.

²¹² See Secured Overnight Financing Rate Data, published by the Federal Reserve Bank of New York (“FRBNY”) and available at <https://apps.newyorkfed.org/markets/autorates/sof>.

²¹³ *Id.*

²¹⁴ See Additional Information about the Treasury Repo Reference Rates, published by the FRBNY and available at <https://www.newyorkfed.org/markets/treasury-repo-reference-rates-information>.

²¹⁵ See *supra* note 60.

recommend enforcement action to the Commission if an FCM invested Customer Funds in Permitted Investments that contain adjustable rates of interest benchmarked to SOFR. Staff Letter 21–02 was a time-limited no-action position that was to expire on December 31, 2022. MPD and DCR, however, subsequently issued a joint letter, Staff Letter 22–21, extending the effective date of the no-action position to December 31, 2024, and expanding the scope of the no-action position to include Permitted Investments made by DCOs.²¹⁶

Given the discontinuation of the publishing of LIBOR and the increasing use of SOFR, the Commission is proposing to amend Regulation 1.25(b)(2)(iv)(A) by replacing LIBOR with SOFR as a permitted benchmark for Permitted Investments that contain an adjustable rate of interest. To give effect to this revision, paragraphs (b)(2)(iv)(A)(1) and (2) of Regulation 1.25 would be amended to replace the phrase “one-month or three-month LIBOR rate” with the phrase “SOFR rate.” These proposed amendments would be consistent with the Commission’s intent of providing FCMs and DCOs with a certain degree of flexibility in selecting Permitted Investments with adjustable rates of interest, while also recognizing changes in the market.²¹⁷ The Commission preliminarily believes that the replacement of LIBOR with SOFR advances the objective of Regulation 1.25 of preserving principal and maintaining liquidity by requiring the use of reliable benchmarks in the qualification as Permitted Investments.

Request for Comment: The Commission seeks comment on all aspects of the Proposal to eliminate LIBOR as a permitted benchmark, including:

15. The ARRC has identified SOFR as a preferred alternative reference interest rate to LIBOR. Should the Commission consider other additional interest rates beyond SOFR as permitted benchmarks for adjustable rate securities under Regulation 1.25? If so, please explain why such interest rates would be appropriate benchmarks.

16. The Commission is proposing to amend Regulation 1.25(b)(2)(iv) to permit SOFR as a benchmark for interest payments on variable rate securities or floating rate securities that are otherwise

²¹⁶ See *id.*

²¹⁷ See 2005 Permitted Investments Amendment at 28192, where the Commission stated that it is appropriate to afford latitude in establishing benchmarks for Permitted Investments to enable FCMs and DCOs to more readily respond to changes in the market.

Permitted Investments under Regulation 1.25. Should the Commission reference a particular SOFR rate to provide greater certainty and clarity as to the acceptable benchmark? For instance, should the reference be to the overnight SOFR rate published by the Federal Reserve Bank of New York, to a CME Term SOFR Rate, or to another published SOFR rate? Please explain your answer.

6. Investments in Certificates of Deposit Issued by Banks

Regulation 1.25(a)(1)(iv) permits FCMs and DCOs to invest Customer Funds in certificates of deposit (“CDs”) issued by a Section 3(a)(6) bank or a domestic branch of a foreign bank that carries deposits insured by the FDIC (“bank CDs”). To qualify as a Permitted Investment under Regulation 1.25, a bank CD must be redeemable at the issuing bank within one business day, with any penalty for early withdrawal limited to accrued interest earned according to the written terms of the CD agreement.²¹⁸

The Commission’s experience has been, however, that FCMs and DCOs do not select bank CDs as an investment option. In addition to the Commission’s general experience in overseeing DCOs and FCMs, Commission staff also reviewed Segregation Investment Detail Reports (“SIDR Reports”) filed by FCMs for the period September 15, 2022 through February 15, 2023 and noted no FCMs reporting investment of Customer Funds in bank CDs.²¹⁹

The Commission believes that bank CDs are consistent with the overall objective of Regulation 1.25 that all Permitted Investments must preserve principal and maintain liquidity of the Customer Funds. In this regard, and as noted above, Regulation 1.25(b)(2)(v) provides that in order to qualify as a

²¹⁸ Regulation 1.25(b)(2)(v); 17 CFR 1.25(b)(2)(v).

²¹⁹ Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5) require each FCM to submit a SIDR Report to the Commission and the FCM’s designated self-regulatory organization (“DSRO”) listing the names of all banks, trust companies, FCMs, DCOs, and any other depositories or custodians holding futures customer funds, Cleared Swaps Customer Collateral, or 30.7 customer funds, respectively. FCMs are required to submit the SIDR Report as of the 15th day of each month (or the next business day if the 15th day of the month is not a business day) and the last business day of the month. 17 CFR 1.32(f), 17 CFR 22.2(g)(5), and 17 CFR 30.7(l)(5). Proposed amendments to the SIDR Report to reflect the proposed revisions to the list of Permitted Investments discussed in this Proposal are discussed in Section III.D. below.

With respect to an FCM, a DSRO is the self-regulatory organization that has been delegated the responsibility under a formal plan approved by the Commission pursuant to Regulation 1.52 to monitor and examine the FCM for compliance with Commission and self-regulatory organization minimum financial and related financial reporting requirements. 17 CFR 1.52.

Permitted Investment, a CD must be redeemable at the issuing bank within one business day, with any penalty for early withdrawal limited to any accrued interest earned according to its written terms.²²⁰

Request for Comment:

Notwithstanding that bank CDs currently qualify as Permitted Investments, the Commission is seeking comment on whether Regulation 1.25 should be amended to remove bank CDs from the list of Permitted Investments. As noted above, the Commission's experience and the staff's review of the SIDR reports indicate that FCMs and DCOs generally have not invested Customer Funds in bank CDs. Specifically, the Commission seeks comment on the following issues:

17. Notwithstanding the Commission's experience and staff's review of the SIDR Reports discussed above, do FCMs and/or DCOs invest Customer Funds in bank CDs? If so, would the elimination of bank CDs as a Permitted Investment have a material adverse impact on FCMs' and DCOs' ability to invest Customer Funds pursuant to the proposed revisions to Regulation 1.25?

18. Are there provisions contained in current Regulation 1.25 or other regulations of the Commission that hinder or prevent FCMs or DCOs from investing Customer Funds in bank CDs? If so, please identify which provisions of Regulation 1.25 are at issue and explain why.

19. Are there legal or operational issues associated with bank CDs that hinder or prevent FCMs or DCOs from investing Customer Funds in such instruments? If so, please identify the legal or operational issues, and explain how such issues hinder or prevent the investment in bank CDs.

20. Would FCMs or DCOs elect to invest Customer Funds in bank CDs with the current rising interest rate environment? Are there other factors that may lead FCMs or DCOs to increase their use of bank CDs as Permitted Investments?

21. What factors should the Commission consider before removing bank CDs from the list of Permitted Investments?

Based on comments received and the Commission's further consideration of this issue, the Commission may determine to revise the Permitted Investments by removing bank CDs in the final rulemaking. If the Commission were to remove bank CDs from the list of Permitted Investments, the Commission would delete paragraph

(a)(1)(iv) of Regulation 1.25 and redesignate the paragraphs of Regulation 1.25(a)(1) as appropriate to reflect the revised list of Permitted Investments. In addition, the Commission would delete paragraph (b)(2)(v) of Regulation 1.25, which sets forth restrictions on the features of permitted bank CDs, and revise and/or delete, as appropriate in light of other amendments, paragraphs (b)(3)(i)(C) and (b)(3)(ii)(B) of Regulation 1.25, which set forth asset-based and issuer-based concentration limits for certain instruments currently included in the list of Permitted Investments, to reflect the elimination of bank CDs from that list. The Commission would also make conforming amendments to Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5), which define the content of the SIDR Reports described in Section III.D. below, to reflect the removal of bank CDs from the list of Permitted Investments in Regulation 1.25. Specifically, the Commission would delete the requirement for an FCM to report the balances invested in bank CDs in the SIDR Report.

B. Asset-Based and Issuer-Based Concentration Limits for Permitted Investments

Regulation 1.25 establishes asset-based and issuer-based concentration limits for an FCM's and a DCO's investment of Customer Funds in Permitted Investments.²²¹ The asset-based and issuer-based concentration limits are set at the same levels for investments of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds.²²² An FCM or a DCO is also required to calculate the asset-based and issuer-based concentration limits separately for futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds based on the total amount of funds held by the FCM or DCO in each respective segregation classification.²²³

²²¹ 17 CFR 1.25(b)(3).

²²² The asset-based and issuer-based concentration limits for futures customer funds are set forth in Regulation 1.25(b)(3). 17 CFR 1.25(b)(3). With respect to 30.7 customer funds, Regulation 30.7(h)(1) provides that an FCM may invest 30.7 customer funds subject to, and in compliance with the terms and conditions of Regulation 1.25, which includes the asset-based and issuer-based concentration limits. 17 CFR 30.7(h)(1). With respect to Cleared Swaps Customer Collateral, Regulations 22.2(e)(1) and 22.3(d) provide that an FCM or a DCO, respectively, may invest Cleared Swaps Customer Collateral in accordance with Regulation 1.25, which includes the asset-based and issuer-based concentration limits. 17 CFR 22.2(e)(1) and 17 CFR 22.3(d).

²²³ See 2011 Permitted Investments Amendment at 78787, where the Commission stated that concentration limits are to be calculated on a fund-by-fund basis (*i.e.*, based on separate segregation classifications).

An FCM or a DCO is currently permitted to directly invest futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds in each of the Permitted Investments up to the following asset-based limits: (i) U.S. government securities—100 percent; (ii) U.S. agency obligations—50 percent; (iii) for each investment asset class of bank CDs, commercial paper, and corporate notes and bonds—25 percent; and (iv) municipal securities—10 percent.²²⁴

With respect to MMFs, an FCM or a DCO may invest up to 100 percent of the total futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds that it holds in MMFs that invest only in U.S. government securities, provided that the size of the funds' portfolio is at least \$1 billion and the funds' management company has at least \$25 billion of assets under management.²²⁵ If a fund has less than \$1 billion of assets under management, or if the manager of the fund has less than \$25 billion of assets under management, the FCM or DCO may invest up to 10 percent of its total futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds in such MMFs; however, the asset-based concentration is limited to 10 percent if a fund has less than \$1 billion in assets under management or if the fund's manager has less than \$25 billion of assets under management.²²⁷

With respect to issuer-based concentration limits, an FCM or a DCO is permitted to invest up to 100 percent of the total futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds that it holds in U.S. government securities.²²⁸ An FCM or a DCO also may invest futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds directly in qualifying Permitted Investments, other than U.S. government securities, subject to the following issuer-based concentration limits: (i) obligations of any single issuer of U.S. agency obligations—25 percent;

²²⁴ Regulation 1.25(b)(3)(i)(A)–(D); 17 CFR 1.25(b)(3)(i)(A)–(D). U.S. government securities refers to general obligations of the U.S. and obligations fully guaranteed as to principal and interest by the U.S. See 17 CFR 1.25(a)(1)(i).

²²⁵ 17 CFR 1.25(b)(3)(i)(E).

²²⁶ 17 CFR 1.25(b)(3)(i)(G).

²²⁷ 17 CFR 1.25(b)(3)(i)(F) and (G).

²²⁸ See 17 CFR 1.25(b)(3)(ii), which excludes U.S. government securities from the issuer-based concentration limits. See also, 2011 Permitted Investments Amendment at 78788.

²²⁰ 17 CFR 1.25(b)(2)(v).

(ii) obligations of any single issuer of municipal securities, bank CDs, commercial paper, or corporate notes or bonds—5 percent.²²⁹

With respect to MMFs, an FCM or a DCO may invest up to 100 percent of the total futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds in a single MMF that invests only in U.S. government securities.²³⁰ With respect to MMFs that maintain investment portfolios that hold instruments other than U.S. government securities, an FCM or a DCO is subject to the following issuer-based concentration limits: (i) interest in any single MMF family may not exceed 25 percent of customer funds held; and (ii) interest in any individual MMF may not exceed 10 percent of customer funds held.²³¹

The Commission is proposing to amend the asset-based and issuer-based concentration limits in Regulation 1.25(b)(3) to reflect the proposed revisions to the list of Permitted Investments discussed in this Proposal and to adjust the limits based on the Commission's experience administering Regulation 1.25. In that regard, as discussed in Section III.A.2. above, the Commission is proposing to limit the scope of MMFs whose interests qualify as Permitted Investments to Permitted Government MMFs. A Permitted Government MMF would be defined by reference to SEC Rule 2a–7 as an MMF that invests at least 99.5 percent or more of its total assets in cash, government securities, and/or Repurchase Transactions that are collateralized fully.²³² The Commission notes that the scope of underlying instruments in which a Permitted Government MMF would be allowed to invest is broader than that of the MMFs currently excluded from the concentration limits of Regulation 1.25(c) (*i.e.*, MMFs investing solely in U.S. government securities). To account for the potential increase in risk associated with such broader scope and in the interest of proposing a simple and consistent approach to concentration limits, the Commission is proposing to establish a single concentration limit of 50 percent for all Permitted Government MMFs of a certain size, without distinguishing between funds investing solely in U.S. government securities and those whose portfolio may also include U.S. agencies

securities and/or other instruments within the limits of SEC Rule 2a–7.

More precisely, under the Proposal, an FCM's or a DCO's investment of Customer Funds in interests in Permitted Government MMFs with at least \$1 billion in assets and whose management company manages at least \$25 billion in assets would be limited to no more than 50 percent of the total Customer Funds computed separately for each of the segregated funds classifications of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds.²³³ The proposed asset-based concentration limits are consistent with the concentration limits applicable to U.S. agency obligations, which along with U.S. Treasury securities, are a permitted underlying instrument for Permitted Government MMFs.²³⁴

More generally, the Commission is proposing these asset-based concentration limits for Permitted Government MMFs to ensure that Customer Funds are invested in a manner that limits risks arising from a high concentration in any particular Permitted Investment asset class. In particular, based on its experience administering the CFTC's customer protection rules, the Commission preliminarily believes that it is not prudent to allow FCMs and DCOs to invest up to 100 percent of segregated Customer Funds in any category of MMFs. For the reasons discussed below in connection with the proposed issuer-based concentration limits, the Commission is of the view that holding U.S. government securities through an MMF gives rise to risks that are different from those associated with holding U.S. government securities directly, including operational and cybersecurity risks. As such, the Commission preliminarily believes that even large MMFs that invest solely in U.S. government securities should be subject to a concentration limit. The Commission is also proposing to maintain the current 10 percent asset-based concentration limit on investments in MMFs that hold less than \$1 billion in assets or have a management company with less than \$25 billion in assets under management.²³⁵ For purposes of clarity, the Commission is proposing to delete the conjunction “and” in that provision to indicate that the fund size threshold and the management company size threshold are to be construed as

alternative prongs triggering the 10 percent limit.

In addition, to mitigate the potential risks arising from concentration in any particular fund or family of funds, the Commission is proposing issuer-based concentration limits for investments in Permitted Government MMFs. Specifically, the Commission is proposing to limit investments of Customer Funds in any single family of Permitted Government MMFs to 25 percent and investments of Customer Funds in any single issuer of Permitted Government MMFs to 5 percent of the total assets held in each of the segregated classifications of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds.²³⁶

In adopting the 2011 Permitted Investment Amendment, the Commission decided not to introduce concentration limits for MMFs of a certain size investing solely in U.S. government securities. This determination was made in consideration of comments received from the public, including in particular a comment asserting that if FCMs and DCOs are permitted to invest all customer segregated funds in U.S. government securities directly, an FCM or a DCO should be able to make the same investment indirectly via an MMF.²³⁷ Based on its experience administering CFTC's customer protection rules and in consideration of certain recent marketplace events, however, the Commission preliminarily believes that introducing concentration limits for Permitted Government MMFs is warranted. In particular, the Commission is concerned that MMFs, like any institution relying on electronic communications, are susceptible to cyber-attacks and operational incidents that may adversely impact their normal operating capabilities, including delaying or otherwise preventing them from processing redemption requests of FCMs and DCOs in a timely manner.²³⁸ FCMs and DCOs may need to redeem

²³⁶ Proposed Regulations 1.25(c)(3)(ii)(C) and (D), respectively.

²³⁷ 2011 Permitted Investments Amendment at 78787.

²³⁸ The cyber-attack against ION Cleared Derivatives, a third-party provider of cleared derivatives order management, order execution, trading, and trade processing, demonstrated that an incident affecting a single entity may disrupt the operations of other market participants and have ripple effects across the industry. The incident impacted certain FCMs' operations, including by preventing such FCMs from submitting timely and accurate positions data to the CFTC. See CFTC Statement on ION and the Impact on the Derivatives Markets, available here: <https://www.cftc.gov/PressRoom/SpeechesTestimony/cftcstatement020223>.

²²⁹ 17 CFR 1.25(b)(3)(ii)(A) and (B).

²³⁰ See 17 CFR 1.25(b)(3)(ii) which excludes MMFs that invest only in U.S. government securities from the issuer-based concentration limits.

²³¹ 17 CFR 1.25(b)(3)(ii)(C) and (D).

²³² See *supra* notes 120 and 121.

²³³ Proposed revised Regulation 1.25(c)(3)(i)(E).

²³⁴ 17 CFR 1.25(b)(3)(i)(B).

²³⁵ Proposed Regulation 1.25(c)(3)(i)(F).

their interest in Permitted Government MMFs to provide customers with cash that is needed to meet, for example, margin calls at other FCMs or DCOs, or variation or initial margin requirements for uncleared swap transactions, or to cover cash market losses or purchases. More generally, the concentration of Customer Funds in any single MMF creates vulnerabilities that may affect FCMs' and DCOs' ability to meet their regulatory obligations, including providing customers with prompt access to their funds.²³⁹

Although cyber-attacks and other operational incidents may impact transactions in any Permitted Investment, including U.S. government securities, the Commission believes that the potential risk of Customer Funds becoming unavailable is elevated when access to such funds depends on the operations of a third party such as an MMF. For instance, to the extent a fund experiences an operational issue, such incident may result in a redemption suspension for all participants in the fund. Thus, by imposing issuer-based concentration limits, the Commission intends to facilitate the preservation of principal and maintenance of liquidity of Customer Funds through sound diversification standards and to mitigate the potential risk of access to a large portion of Customer Funds becoming unavailable due to cybersecurity or operational incidents, among other events. Given the large number of SEC-registered Government MMFs available on the market and likely to meet the Permitted Investments' eligibility criteria, the Commission preliminarily believes that diversifying an FCM's or DCO's portfolio of MMF investments would not be burdensome.²⁴⁰

²³⁹ For instance, as discussed in the 2011 Permitted Investments Amendment, the Reserve Primary Fund's "breaking the buck," in September 2008, called attention to the risk to principal and potential lack of sufficient liquidity of Prime MMF investments. See 2011 Permitted Investments Amendment at 78785. In connection with the events affecting the Reserve Primary Fund, staff of the CFTC's Division of Clearing and Intermediary Oversight, intervened and issued guidance indicating that FCMs holding shares of the fund, either as a proprietary investment or as an investment of customer segregated funds, could include these investments in the calculations required for purposes of compliance with capital, segregation, and secured amount reporting requirements (with the condition that the NAV be reduced appropriately) even though the fund had suspended redemptions. See CFTC Staff Letter No. 08-17, available here: <https://www.cftc.gov/csl/08-17/download>.

²⁴⁰ As of August 17, 2023, there are 183 government MMFs registered with the SEC (of which 49 are "Treasury-only" MMFs). See U.S. Securities and Exchange Commission, Money Market Funds Statistics, available here: <https://www.sec.gov/divisions/investment/mmf-statistics>. The government MMFs currently registered with

In addition, as part of the proposed amendments to the concentration limits in Regulation 1.25,²⁴¹ the Commission is proposing to revise the asset-based and issuer-based concentration limits set forth in paragraphs (b)(3)(i)(F) and (b)(3)(ii)(C) and (D), respectively, to reflect the removal of Prime MMFs from the list of Permitted Investments.

As discussed in Section III.A.3 above, the Commission is also proposing to permit FCMs and DCOs to invest Customer Funds in Qualified ETFs.²⁴² The Commission is proposing to impose conditions on Qualified ETFs that are similar to the conditions that are imposed on Permitted Government MMFs whose interests qualify as Permitted Investments.²⁴³ Among other things, similar to Government MMFs, which can invest in a limited set of instruments, including government securities and cash, Qualified ETFs would be required to limit their investments to instruments that are consistent with their investment strategy of seeking to replicate the performance of a public short-term U.S. Treasury security index.²⁴⁴ For purposes of the Proposal, short-term U.S. Treasury securities are bonds, notes, and bills with a remaining maturity of 12 months or less, issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury. Consistent with this condition, the Commission is also proposing to require that the eligible U.S. Treasury securities represent at least 95 percent of the ETF's investment portfolio. Given the similarity of the terms that would apply to Permitted Government MMFs and Qualified ETFs under the Proposal, and the comparable credit, market, and liquidity risk associated with these types of funds comprising instruments generally recognized as safe and highly liquid, the Commission preliminarily believes that it is appropriate for Qualified ETFs to have the same asset-based and issuer-based concentration limits as those proposed for Permitted Government MMFs. Specifically, under the Proposal, an FCM's or a DCO's investment of Customer Funds in Qualified ETFs with at least \$1 billion in assets and whose management company manages at least \$25 billion in assets would be limited to an asset-based concentration limit of 50 percent of total funds held in each of the

the SEC generally do not elect to apply liquidity fees and/or redemption gates.

²⁴¹ See discussion in Section III.A.2 above.

²⁴² Proposed Regulation 1.25(a)(1)(vi).

²⁴³ See Section III.A.3. above.

²⁴⁴ Proposed Regulation 1.25(a)(1)(vi).

segregated classifications of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds.²⁴⁵ The current 10 percent asset-based concentration limit for investments in MMFs that hold less than \$1 billion in assets or whose management company manages less than \$25 billion in assets under management would also be extended to Qualified ETFs. In addition, for the reasons described *supra* in connection with Permitted Government MMFs, the Commission is proposing to limit investments of Customer Funds in any single family of Qualified ETFs to 25 percent and investments of Customer Funds in any single issuer of Qualified ETFs to 5 percent of the total assets held in each of the segregated classifications of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds.²⁴⁶ Given that there may be at least five U.S. Treasury ETFs that could potentially qualify as Permitted Investments, the Commission preliminarily believes that the proposed issuer-based concentration limits would not be overly restrictive.²⁴⁷

The Commission is also proposing revisions to the asset-based and issuer-based concentration limits to remove commercial paper, and corporate notes and bonds from the limits.²⁴⁸ As noted in Section III.A.4. above, the Commission is proposing to remove commercial paper and corporate notes and bonds from the list of Permitted Investments due to the termination of the TLGP by the FDIC in 2012, which resulted in such investments no longer qualifying as Permitted Investments. In addition, as discussed in Section III.A.6. above, the Commission is requesting public comment on the elimination of bank CDs as a Permitted Investment due to the apparent lack of interest by FCMs and DCOs in such instruments. Therefore, if bank CDs are removed from the list of Permitted Investments in a final rulemaking after considering

²⁴⁵ Proposed Regulation 1.25(b)(3)(i)(E).

²⁴⁶ Proposed Regulations 1.25(b)(3)(ii)(C) and (D).

²⁴⁷ See 2022 CME Advisory Notice, *supra* note 170 (announcing that CME has added five Short-Term U.S. Treasury ETFs to the list of accepted margin collateral). The five ETFs would meet the proposed condition of being accepted as performance bond by a DCO. For purposes of clarity, the Commission notes, however, that should the Commission proceed with adding Qualified ETFs to the list of Permitted Investments, FCMs and DCOs would need to assess ETFs' eligibility in light of all applicable conditions.

²⁴⁸ See proposed Regulation 1.25(b)(3)(i)(C) removing commercial paper and corporate notes and bonds from the 25 percent asset-based concentration limit and proposed Regulation 1.25(b)(3)(ii)(B) removing commercial paper and corporate notes and bonds from the 5 percent issuer-based concentration limit.

comments, specifying asset-based and issuer-based concentration limits on investments in commercial paper, corporate notes and bonds, and bank CDs would no longer be necessary and would be removed from Regulation 1.25.

Finally, as noted in Section III.A.1., the Commission is proposing to expand the types of investments that would qualify as Permitted Investments to include Specified Foreign Sovereign Debt. The Commission, however, is not proposing to impose asset-based or issuer-based concentration limits on FCM or DCO investments in Specified Foreign Sovereign Debt.

Not imposing concentration limits on the Specified Foreign Sovereign Debt would be consistent with the current exclusion of U.S. government securities from the asset-based and issuer-based concentration limits. As discussed in Section III.A.1. above, the relative strength of the economies and limited default risk of Canada, France, Germany, Japan, and the United Kingdom are demonstrated by such countries being ranked among the seven largest economies in the International Monetary Fund's classification of advanced economies,²⁴⁹ and by the countries being members of the G7, which represents the world's largest industrial democracies. In addition, as discussed in Section III.A.1. above, the Commission has preliminarily determined that the two-year debt instruments that would qualify as Specified Foreign Sovereign Debt have credit, liquidity, and volatility

characteristics that are consistent with two-year U.S. Treasury securities. Furthermore, the proposed condition in Regulation 1.25(a)(1)(vii) that permits an FCM or a DCO to invest Customer Funds in Specified Foreign Sovereign Debt only to the extent that the DCO or FCM has balances owed to customers denominated in the currency of the applicable country is expected to effectively limit the amount of Customer Funds that an FCM or a DCO may invest in the Specified Foreign Sovereign debt.²⁵⁰ The proposed condition that an FCM or a DCO must stop making direct investments, or engaging in reverse repurchase agreements, involving the Specified Foreign Sovereign Debt of a country whose credit default spread on two-year debt instruments exceeds 45 BPS would be expected to further preserve the principal of customers' foreign currency deposits held by FCMs and DCOs.²⁵¹ Lastly, not imposing asset-based or issuer-based concentration limits on an FCM's or a DCO's investments in Specified Foreign Sovereign Debt is consistent with the Commission's 2018 Order, which did not impose concentration limits on a DCO's investment of futures customer funds or Cleared Swaps Customer Collateral in the sovereign debt of France or Germany. Accordingly, based on the above, the Commission preliminarily believes that asset-based and issuer-based concentration limits are not necessary for investments in Specified Foreign Sovereign Debt.

The Commission also notes that the concentration limits in Regulation 1.25 are minimum requirements. Pursuant to Regulation 1.11, an FCM is required to

monitor and manage market, credit, liquidity, foreign currency, legal, operational, settlement, segregation, capital, and any other applicable risks associated with its activity, as part of the FCM's risk management program.²⁵² If, based on its independent risk assessment, an FCM determines that stricter concentration limits with respect to Permitted Investments of Customer Funds are appropriate, the FCM is required to implement such stricter limits, in accordance with Regulation 1.11. Similarly, Regulation 39.13(g)(10) requires a DCO to limit the assets it accepts as initial margin to those that have minimal credit, market, and liquidity risks, while Regulation 39.13(g)(13) requires the DCO to apply appropriate limitations or charges on the concentration of assets posted as initial margin, as necessary, in order to ensure its ability to liquidate such assets quickly with minimal adverse price effects.

In addition, if as a result of market events or extraneous circumstances, such as a change in an MMF's size, the FCM or DCO inadvertently breaches the concentration thresholds, the FCM or DCO would be expected to undertake prompt actions to restore compliance with the concentration limits, while managing the investments of Customer Funds in a manner consistent with the general objectives of preserving principal and maintaining liquidity. Depending on the market conditions, such actions may include taking steps to progressively reduce the amount of Customer Funds invested in a particular asset class instead of immediately divesting the investments in a potentially volatile market.

²⁴⁹ See Statistical Appendix to the World Economic Outlook, April 2023, International Monetary Fund, available here: <https://www.imf.org/en/Publications/WEO/Issues/2023/04/11/world-economic-outlook-april-2023>.

²⁵⁰ Proposed Regulation 1.25(a)(1)(vii).

²⁵¹ Proposed Regulation 1.25(f)(3).

²⁵² 17 CFR 1.11.

The foregoing discussion of concentration limits can be summarized as follows:

Instrument	Size	Current concentration limits		Proposed concentration limits	
		Asset-based	Issuer-based	Asset-based	Issuer-based
U.S. government securities	N/A	No limit	No limit	No limit	No limit.
Municipal Securities	N/A	10%	5%	10%	5%.
U.S. agency obligations	N/A	50%	25%	50%	25%.
Bank CDs	N/A	25%	5%	25%	5%.
Government MMFs investing solely in U.S. government securities (i.e., securities issued or fully guaranteed by the U.S. government).	>\$1B assets and/or management company with >25B in assets.	No limit	No limit	50%	25% per family 5% per fund.
	<\$1B assets and/or management company with <\$25B in assets.	10%	10% (<i>de facto</i> limit based on asset-based limit).	10%	
Government MMFs as defined in SEC Rule 2a-7 (including MMFs whose portfolio includes U.S. agency obligations and other instruments).	>\$1B assets and/or management company with >25B in assets.	50%	25% per family 10% per fund	50%	
	<\$1B assets and/or management company with <\$25B in assets.	10%		10%	
Qualified ETFs	>\$1B assets and/or management company with >25B in assets.	N/A	N/A	50%	25% per family 5% per fund.
	<\$1B assets and/or management company with <\$25B in assets.	N/A	N/A	10%	

Request for Comment: The Commission requests comment on all aspects of its Proposal relating to concentration limits, including the proposed asset-based and issuer-based concentration limits for Permitted Government MMFs and Qualified ETFs. The Commission requests specific comment with respect to the following:

22. Should the Commission adopt different asset-based and issuer-based concentration limits for Permitted Government MMFs and/or Qualified ETFs than the limits proposed? Are the proposed limits sufficiently conservative to ensure that Customer Funds are adequately protected and liquid?

23. Should the Commission revise any of the asset-based concentration limits that are not proposed to be revised as part of this Proposal? For instance, FCMs and DCOs are permitted to invest up to 50 percent of their Customer Funds in U.S. agency obligations and up to 10 percent in municipal securities. Should the Commission consider revising these or other asset-based concentration limits? If so, how should the asset-based concentration limits be revised? Please explain, and provide data if possible.

24. Should the Commission revise any of the issuer-based concentration limits that are not proposed to be revised as part of this Proposal? For instance, FCMs and DCOs are permitted to invest up to 25 percent of their Customer Funds in obligations of a single issuer of U.S. agency obligations and up to 5 percent in obligations of any single issuer of municipal securities. Should the Commission consider revising these or other issuer-based concentration limits? If so, how should the issuer-

based concentration limits be revised? Please explain, and provide data to support your comment, if possible.

25. Should the Commission impose asset-based and/or issuer-based concentration limits on Specified Foreign Sovereign Debt? If so, please explain why such concentration limits are necessary. Please provide data to support your comment, if possible.

26. Given the similarities between Permitted Government MMFs and Qualified ETFs discussed above, the Commission is proposing to apply the same asset-based and issuer-based concentration limits to both asset classes. Is there any reason to distinguish between Permitted Government MMFs and Qualified ETFs with respect to the application of concentration limits? If so, please explain.

C. Futures Commission Merchant Capital Charges on Permitted Investments

Although FCMs and DCOs may invest Customer Funds in Permitted Investments, as discussed *supra*, Commission regulations provide that FCMs and DCOs are also financially responsible for any losses resulting from such investments, and are explicitly prohibited from allocating investment losses to customers or clearing FCMs, respectively. Specifically, Regulation 1.29 provides that FCMs or DCOs, as applicable, shall bear sole responsibility for any losses resulting from the investment of futures customer funds, and further provides that no investment losses shall be borne or otherwise allocated to FCM customers or to FCMs

clearing customer accounts at DCOs.²⁵³ In addition, Regulation 22.2(e)(1)²⁵⁴ provides that an FCM shall bear sole responsibility for any losses resulting from the investment of Cleared Swaps Customer Collateral and may not allocate investment losses to Cleared Swaps Customers of the FCM and Regulation 30.7(i) provides that an FCM shall bear sole financial responsibility for any losses resulting from the investment of 30.7 customer funds, and further provides that no investment losses may be allocated to the 30.7 customers of the FCM.²⁵⁵ Additionally, the Commission is proposing an amendment to Regulation 22.3(d) to clarify that DCOs are financially responsible for any losses resulting from investments of Cleared Swap Customer Collateral in Permitted Investments, consistent with Regulation 1.29, which addresses financial responsibility for losses resulting from investment of futures customer funds, and the Commission's original intent to permit investments of Cleared Swaps Customer Collateral within the parameters applicable to investments of futures customer funds.²⁵⁶

To reserve liquidity for potential losses resulting from investments of Customer Funds, Regulation 1.17(c)(5)(v) requires an FCM to take capital charges in computing the firm's regulatory capital.²⁵⁷ The capital

²⁵³ 17 CFR 1.29(b).

²⁵⁴ 17 CFR 22(e)(1).

²⁵⁵ 17 CFR 30.7(i).

²⁵⁶ See *supra* note 42.

²⁵⁷ 17 CFR 1.17(c)(5). Although capital charges do not apply to DCOs, a DCO is required under Regulation 39.11(a)(2) to maintain financial resources sufficient to enable it to cover its

charges are designed to reflect potential market risk associated with the FCM's holding of Permitted Investments, and to ensure that the firm has sufficient liquid financial resources to cover potential investment losses. Regulation 1.17(c)(5)(v) further provides that an FCM must apply the capital charges set forth in Rule 15c3-1 under the Securities Exchange Act ("SEC Rule 15c3-1")²⁵⁸ and Appendix A to SEC Rule 15c3-1²⁵⁹ to the Permitted Investments.

As discussed in Section III.A.1. above, the Commission is proposing to revise the Permitted Investments to include Specified Foreign Sovereign Debt (*i.e.*, the sovereign debt of Canada, France, Germany, Japan, and the United Kingdom). Under the Proposal, each Specified Foreign Sovereign Debt instrument must have a remaining time-to-maturity of 180 calendar days or less. Given the proposed remaining time-to-maturity limit of 180 calendar days for each Specified Foreign Sovereign Debt instrument, an FCM investing Customer Funds in qualifying sovereign debt of Canada would have no capital charge for instruments with a remaining time to maturity of less than 3 months and a capital charge of 0.5 percent of the market value for instruments with a remaining time to maturity of 3 to 6 months under SEC Rule 15c3-1.²⁶⁰ The capital charge for the sovereign debt of France, Germany, Japan, and the United Kingdom, is determined under SEC rules by reference to nonconvertible debt securities with a fixed interest rate, fixed maturity date, and minimal credit risk. Such nonconvertible debt securities that have a remaining time to maturity of one year or less are subject to a capital charge of 2 percent of the market value of the security under SEC Rule 15c3-1(c)(2)(F)(1).²⁶¹

operating costs for a period of at least one year, calculated on a rolling basis. Investment losses would be included in the DCO's operating costs.

²⁵⁸ 17 CFR 240.15c3-1.

²⁵⁹ 17 CFR 240.15c3-1a.

²⁶⁰ SEC Rule 15c3-1(c)(2)(vi)(C) provides that the capital charges on the sovereign debt of Canada is the same as the capital charges set forth in SEC Rule 15c3-1(c)(2)(vi)(A) for debt obligations of the U.S., debt obligations fully guaranteed as to principal and interest by the U.S., or debt obligations of U.S. agencies. SEC Rule 15c3-1(c)(2)(vi)(A) provides that a broker or dealer must take a 0.5 percent capital charge on U.S. Treasury and U.S. agency debt instruments that have a remaining time to maturity of between 3 months and 6 months, and no capital charge on U.S. Treasury and U.S. agency debt instruments having a remaining time to maturity of less than 3 months.

²⁶¹ SEC Rule 15c3-1(c)(2)(F)(1) specifies the capital charges for nonconvertible debt securities with a fixed interest rate, fixed maturity date, and minimal credit risk, which includes the sovereign debt of France, Germany, Japan, and the United Kingdom. The capital charge for the sovereign debt

With respect to Qualified ETFs, neither SEC Rule 15c3-1 nor Appendix A to SEC Rule 15c3-1 explicitly addresses capital charges for ETFs primarily comprised of U.S. Treasury securities. SEC Rule 15c3-1(c)(2)(vi)(D)(1) does specify a 2 percent capital charge for a broker-dealer's net position in redeemable securities of a Prime MMF or a Permitted Government MMF.

SEC staff, however, has provided guidance to registered securities brokers or dealers stating that staff would not recommend an enforcement action to its Commission if a broker or dealer applied a capital charge of 2 percent of the market value of ETF's shares held in the size of a creation units.²⁶² The SEC staff's guidance was applicable to a U.S. Treasury ETF that: (i) is an open-ended management company registered with the SEC under the Investment Company Act of 1940 that issues securities redeemable at the net asset value; and (ii) invests solely in cash and government securities that are eligible securities under paragraph (a)(11) of Rule 2a-7, limited to U.S. Treasury floating and fixed rate bills, notes, and bonds with a remaining term to final maturity of 12 months or less, government money market funds as defined in Rule 2a-7, and/or Repurchase Transactions with a remaining term to final maturity of 12 months or less collateralized by U.S. Treasury securities or other government securities with a remaining term to final maturity of 12 months or less. The SEC staff position was subject to the following conditions: (i) the broker or dealer is not aware of any substantial operational problem that the U.S. Treasury ETF may be experiencing; (ii) the U.S. Treasury ETF shares can be redeemed by a broker or dealer through an authorized participant, the redemption of the U.S. Treasury ETF's shares can be settled in exchange for a basket of the ETF's underlying securities and/or cash by T+1, and the U.S. Treasury ETF has committed in its registration statement to permit shareholders, except in extraordinary circumstances, to settle transactions within that timeframe; and (iii) the U.S.

of these countries that have a remaining time-to-maturity of no more than one year is 2 percent of the market value of debt instrument.

²⁶² See Letter titled *Net Capital Treatment of Certain U.S. Treasury Exchange-Traded Funds*, issued by the Division of Trading and Markets to Ms. Kris Dailey, Vice President, Risk Oversight & Operational Regulations, Financial Industry Regulatory Authority, June 2, 2022 ("SEC ETF Letter"). The SEC ETF Letter is available at the SEC's website: <https://www.sec.gov/divisions/marketreg/mr-noaction/2022/finra-060222-15c3-1.pdf>.

Treasury ETF's shares are listed for trading on a national securities exchange and trades of such shares are settled in accordance with the standard cycle prescribed by SEC Rule 15c6-1²⁶³ under the Securities Exchange Act of 1934.

Based on the SEC's guidance regarding the capital charges for U.S. Treasury ETFs, the Commission is specifying that FCMs would be required to apply a capital charge equal to 2 percent of the fair market value of the shares of a Qualified ETF that invests in the instruments specified in the SEC ETF Letter.

Request for Comment:

27. The Commission requests comment on the proposed capital charges for Specified Foreign Sovereign Debt and Qualified ETFs.

28. The Proposal would apply a 2 percent capital charge on the value of Qualified ETF shares that invests solely in cash and government securities that are eligible securities under paragraph (a)(11) of SEC Rule 2a-7, limited to U.S. Treasury floating and fixed rate bills, notes, and bonds with a remaining term to final maturity of 12 months or less, government money market funds as defined in SEC Rule 2a-7, and/or Repurchase Transactions with a remaining term to final maturity of 12 months or less collateralized by U.S. Treasury securities or other government securities with a remaining term to final maturity of 12 months or less. Does the limitation on the investments that the Qualified ETF may hold in order to apply the 2 percent capital charge raise any issues for FCMs investing in Qualified ETFs? Would Qualified ETFs hold investments not covered by the SEC ETF Letter? If so, what different investments could a Qualified ETF hold? How would such additional investments impact the capital charge that should be applied to Qualified ETFs?

D. Segregation Investment Detail Report

Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5) require each FCM to submit a SIDR Report to the Commission and the FCM's DSRO listing the names of all banks, trust companies, FCMs, DCOs, and other depositories or custodians holding futures customer funds, Cleared Swaps Customer Collateral, or 30.7 customer funds. The FCM is further required to identify in the SIDR Report the amount of futures customer funds, Cleared Swaps Customer Collateral, or 30.7 customer funds invested in each of the following categories of Permitted Investments: (i) U.S. Treasury securities;

²⁶³ 17 CFR 240.15c6-1.

(ii) municipal securities; (iii) government sponsored enterprise securities (*i.e.*, U.S. agency obligations); (iv) bank CDs; (v) commercial paper; (vi) corporate notes or bonds; and (vii) interests in MMFs. The SIDR Report is required to be filed twice each month with the Commission and the firm's DSRO, with balances reported as of the fifteenth day of each month, or the first business day thereafter if the fifteenth day of the month is not a business day, and as of the last business day of each month.

The Commission is proposing to amend Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5), which define the content of the SIDR Report, by deleting the requirement for an FCM to report the balances invested in commercial paper and corporate notes and bonds as such investments would no longer be Permitted Investments under the Proposal, for the reasons articulated *supra*.²⁶⁴

The Commission is also proposing to amend Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5) to require each FCM to report the total amount of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds invested in Specified Foreign Sovereign Debt of each country that is included within the Specified Foreign Sovereign Debt (*i.e.*, individual reporting for Canada, France, Germany, Japan, and the United Kingdom). The Commission is also proposing to amend Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5) to require an FCM to include in the SIDR Report the total amount of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds invested in Qualified ETFs as such investments would be Permitted Investments under the Proposal. In addition, the Commission is proposing to amend the above regulations by revising the requirement to report balances invested in interests in MMFs to reflect that such investments are limited to interests in Government MMFs consistent with the Proposal.

Request for Comment:

29. The Commission requests comment on the proposed amendments to Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5) and the proposed revisions to the SIDR Reports, including whether

additional revisions would be necessary.

E. Read-Only Electronic Access to Customer Funds Accounts Maintained by Futures Commission Merchants

Commission regulations require depositories holding Customer Funds for FCMs to provide the Commission with direct, read-only electronic access to the Customer Fund accounts ("Read-only Access Provisions"). The Read-only Access Provisions are set forth in Regulation 1.20, Appendix A to Regulation 1.20, and Appendix A to Regulation 1.26, for futures customer funds; Regulation 22.5 for Cleared Swaps Customer Collateral; and, Regulation 30.7 and appendices E and F to Part 30 of the Commission's regulations for 30.7 customer funds.

The Commission adopted the Read-only Access Provisions in 2013 as part of a regulatory reform seeking to enhance the CFTC's customer protection regime.²⁶⁵ In particular, the Commission sought to strengthen the customer fund protections in response to the failure of two FCMs that violated customer fund segregation laws, which resulted in shortfalls in Customer Funds balances.²⁶⁶ The Commission noted that the FCM failures raised questions concerning the adequate functioning and capacity of the oversight system to monitor FCM activities, verify Customer Funds balances, and detect fraud.²⁶⁷

By adopting the Read-only Access Provisions, the Commission sought to establish, among other measures, a mechanism that would enable Commission staff to review and identify discrepancies between an FCM's daily segregation reports²⁶⁸ and customer fund balances on deposit at various depositories.²⁶⁹ To that effect, the Commission amended Regulations 1.20 and 30.7 to include provisions requiring FCMs to deposit Customer Funds only with depositories that agree to provide the Commission with direct, read-only electronic access to allow Commission

staff to review account balance information and transactions.

The Commission also adopted template acknowledgment letters set forth in Appendix A to Regulation 1.20 and Appendix E to Part 30 of the Commission's regulations to require, among other things,²⁷⁰ that the depository acknowledge and agree, pursuant to authorization granted by the FCM, to provide the appropriate Commission staff with "the technological connectivity, which may include provision of hardware, software, and related technology and protocol support, to facilitate direct, read-only electronic access to transaction and account balance information."²⁷¹ The template acknowledgment letters set forth in Appendix A to Regulation 1.26 and Appendix F to Part 30 contain similar provisions with respect to MMF accounts in which FCMs hold customer segregated funds.²⁷²

In adopting the Read-only Access Provisions, the Commission noted that it did not anticipate that staff would access FCM accounts on a regular basis to monitor account activity, but, rather, that staff would make use of the Read-only Access Provision only when necessary to obtain account balances and other information that staff could not obtain via the CME and NFA automated daily segregation confirmation system or otherwise directly from the depositories.²⁷³ Specifically, the Commission explained that CME and NFA had adopted rules requiring FCMs to instruct each depository holding Customer Funds to report balances on a daily basis to CME or NFA, respectively.²⁷⁴

²⁷⁰ These appendices are intended to be used by depositories that accept Customer Funds from FCMs to acknowledge that the funds belong to the FCM customer and cannot be used to offset obligations of the FCM.

²⁷¹ 17 CFR Appendix A to 1.20, 17 CFR Appendix E to Part 30.

²⁷² 17 CFR Appendix A to 1.26, 17 CFR Appendix F to Part 30.

²⁷³ 2013 Protections of Customer Funds Release at 68537 and 68592 (noting in footnote 662 that the Commission generally expected that it would seek to obtain account information from the CME and NFA automated daily segregation confirmation system and/or from depositories directly prior to requesting a depository to activate electronic access).

²⁷⁴ *Id.*, at 68512. CME Rule 971.C. provides that in order for an FCM clearing member's account held at a depository to qualify as a segregated account for Customer Funds, the FCM clearing member must provide CME with access to account information, in a form and manner prescribed by CME, and the depository must allow the FCM clearing member to provide CME with access to the account information, in a form and manner prescribed by CME. NFA Financial Requirements Section 4, paragraph (b), provides that each member FCM must instruct each depository, as required by

²⁶⁴ As discussed in Section III.A.6. above, the Commission notes that no FCMs or DCOs currently invest Customer Funds in bank CDs and has requested public comment regarding the elimination of bank CDs from the list of Permitted Investments. If the Commission were to eliminate bank CDs in the final rulemaking, the Commission would also amend Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5) to remove references to bank CDs.

²⁶⁵ See generally 2013 Protections of Customer Funds Release.

²⁶⁶ *Id.* at 68509.

²⁶⁷ *Id.* at 68510.

²⁶⁸ Regulations 1.32 (for futures customer funds), 22.2(g) (for Cleared Swaps Customer Collateral) and 30.7(l) (for 30.7 customer funds) require an FCM to prepare, among other records, a daily record as of the close of each business detailing the total amount of funds on deposit in customer segregated accounts and the total amount of funds owed to customers. The purpose of the daily record is for the FCM to demonstrate compliance with its obligation to hold a sufficient amount of funds in segregated accounts to pay the full account balance of each customer.

²⁶⁹ See 2013 Protections of Customer Funds Release at 68537 and 68580.

In practice, CME and NFA receive account information from all depositories holding Customer Funds on a daily basis pursuant to CME Rule 971.C. and NFA Financial Requirements Section 4, respectively. Furthermore, CME and NFA have developed programs that compare the daily balances reported by each of the depositories with balances reported by the FCMs in their daily segregation reports that are filed with CME and/or NFA.²⁷⁵ Under these programs, an alert is generated for discrepancies that exceed defined thresholds. In the event of such alerts, CME/NFA staff conduct appropriate analysis and follow-up actions, which may involve communications with an FCM to clarify or remedy the situation, and document the outcome.

The Commission's experience with overseeing the administration of the CME and NFA daily segregation confirmation and verification processes for several years has afforded sufficient assurances that the system provides adequate access to relevant information and is capable of detecting discrepancies in account balances in a timely manner. Moreover, the establishment of an efficient method for obtaining and verifying FCM balances of Customer Funds at each depository supports the Commission's initial expectation that the direct, read-only electronic access would not be the Commission's principal tool for obtaining account information at depositories.²⁷⁶ The Commission also is retaining the current requirement that FCMs deposit Customer Funds only with depositories that agree that accounts may be examined by Commission or DRSO staff at any reasonable time, and that further agree to reply promptly and directly to any

request from Commission or DSRO staff for confirmation of account balances or provision of any other information regarding or related to an account, in order to ensure that staff have timely access information concerning Customer Funds from depositories.²⁷⁷

In addition, in implementing the Read-only Access Provisions, the Commission has encountered various practical challenges. Specifically, given the number of depositories with which FCMs establish relationships and the total number of accounts that FCMs maintain with various depository institutions, the Commission must obtain and keep a current log of credentials to access the depository accounts, and in some instances, must obtain and store physical devices required as part of a multi-factor authentication process, for thousands of different depository accounts.²⁷⁸ Frequently, Commission staff must be trained to navigate the various account access systems and work regularly with depositories' technology staff to ensure that the systems' security features do not prevent the Commission's access to the accounts.²⁷⁹ Furthermore, due to lack of appropriate infrastructure, some foreign depository institutions are unable to provide direct electronic access to the customer segregated accounts, offering instead to send end-

of-day accounts statements by email. These operational challenges put an undue burden on the Commission's resources, particularly considering that the Commission contemplated that the use of real-time access would be limited, and prevent Commission staff from using the Read-only Access Provisions as intended.²⁸⁰

Thus, in light of the practical challenges of maintaining direct read-only access to depository accounts and the availability of efficient alternative methods for verifying customer segregated account balances, the Commission is proposing to eliminate the Read-only Access Provisions in Regulations 1.20 and 30.7, and Appendix A to Regulation 1.20, Appendix A to Regulation 1.26, and appendices E and F to Part 30 of the Commission's regulations.²⁸¹

The Commission notes that under the Proposal, FCMs would not need to obtain new acknowledgment letters for existing accounts at depositories holding Customer Funds. Should the Commission proceed with the proposed amendments after notice and comment, the revised acknowledgment letters would have to be obtained for accounts opened following the effective date of the revisions or in the event the FCM is required to obtain a new acknowledgment letter for reasons unrelated to the elimination of the Read-only Access Provisions. For the avoidance of doubt, the Commission confirms that even if an FCM had not obtained revised acknowledgment letters for accounts existing prior to the effective date of the proposed revisions, but keeps instead such letters in the currently applicable template form, the depositories would not be required to provide direct, read-only access to accounts holding Customer Funds.

Request for Comment: The Commission seeks comment on all

NFA, holding segregated Customer Funds to report balances in the FCM's customer segregated accounts to NFA or a third party designated by NFA in the form and manner prescribed by NFA. CME and NFA Rules are available at the following websites: <https://www.CMEGroup.com>, and <https://www.NFA.Futures.Org>.

²⁷⁵ At the time the Commission issued the 2013 Protections of Customer Funds Release, CME and NFA had just recently launched the programs. See 2013 Protections of Customer Funds Release at 68512. The verification programs have been further developed in the years that followed. FCMs report on the daily segregation records total funds held in segregation with banks, clearing organizations, and net equities with other FCMs in addition to other balances.

²⁷⁶ See 2013 Protections of Customer Funds Release at 68537 (noting that the Commission anticipated that the combination of receipt of daily account balances reported by depositories to CME and NFA, and the Commission's ability to confirm account balances and transactions directly with depositories via direct communications would diminish the need to rely upon direct electronic access to account information at depositories).

²⁷⁷ See Regulations 1.20(d)(5) and (6), 1.26(b), 22.5(a) and (b), and 30.7(d)(5) and (6). 17 CFR 1.20(d), 1.26(b), 22.5, and 30.7(d). For example, Regulation 1.20(d)(5) provides that an FCM must deposit futures customer funds only with a depository that agrees that accounts may be examined at any reasonable time by specified Commission or DSRO staff. Regulation 1.20(d)(6) provides that an FCM must deposit futures customer funds only with a depository that agrees to reply promptly and directly to any request from specified Commission staff or DSRO staff for confirmation of account balances or provision of any other information regarding or related to the FCM's account. Regulation 1.20(d)(5) and (6) further provide that the written acknowledgment required from the depository must contain the FCM's authorization to the depository to reply promptly and directly to the Commission or DSRO without further notice or consent from the FCM. Regulation 22.5 provides that an FCM must obtain a written acknowledgment letter in accordance with Regulation 1.20 and Regulation 1.26 from each depository holding Cleared Swaps Customer Collateral, except an acknowledgment letter is not required of a DCO that has adopted rules providing for the segregation of Cleared Swaps Customer Collateral.

²⁷⁸ Based on information provided by CME, as of March 7, 2023, FCM registrants maintained over 3,600 active accounts with approximately 200 banks, other registered FCMs, foreign broker-dealers, foreign exchanges, and DCOs.

²⁷⁹ In this regard, depositories often require Commission staff to revise user-ids and passwords on a regular basis otherwise the access is interrupted and must be reset by the depositories. Some depositories also require the use of additional security devices beyond user-IDs and passwords, including key fobs or other forms of multi-factor authentication.

²⁸⁰ Commission staff has not had a regulatory need to attempt to use read-only access for any FCM's depository accounts in the approximately 10 years since the Regulation was implemented.

²⁸¹ If adopted, the proposed amendments would extend to Regulation 22.5, which requires FCMs to obtain an acknowledgment letter from depositories before depositing Cleared Swaps Customer Collateral with a depository, in accordance with Regulations 1.20 and 1.26. 17 CFR 22.5(a). Regulation 22.5(b) further requires FCMs to adhere to all requirements specified in Regulation 1.20 and 1.26 regarding retaining, permitting access to filing, or amending the written acknowledgment letters. 17 CFR 22.5.

Separately, the Commission is proposing to redesignate appendices A and B to Regulation 1.20 as appendices C and D to Part 1, and appendices A and B to Regulation 1.26 as appendices F and G to Part 1, to address a change in the rules of the Office of the Federal Register regarding the structure of regulatory text to be codified in the Code of Federal Regulations.

aspects of the Proposal relating to the elimination of the Read-only Access Provisions, including:

30. The existing Read-only Access Provisions currently afford the Commission with direct access to depository accounts holding Customer Funds. Given the challenges depositories and Commission staff are encountering in implementing and administering the provisions and the availability of alternative means of obtaining transaction and account balance information, what practical implications should the Commission consider prior to deciding whether to eliminate the requirement for depositories to provide Commission's staff with direct, read-only electronic access?

F. Proposed Conforming Amendments

Regulation 1.26 requires each FCM or DCO that invests futures customer funds in financial instruments that are Permitted Investments, including qualifying MMFs, to separately account for such instruments and to segregate the instruments from its own funds. The FCM or DCO also must obtain and retain in its files a written acknowledgment from the depository holding the instruments stating that the depository was informed that the instruments belong to futures customers and are being held in accordance with the provisions of the Act and Commission regulations. Regulation 1.26 also specifies how direct investments in MMFs must be held and sets forth the template acknowledgment letter to be used with respect to direct investments in MMFs.²⁸²

To account for the proposed change in the scope of MMFs that qualify as Permitted Investments and the proposed addition of Qualified ETFs to the list of Permitted Investments, the Commission proposes revisions to paragraphs (a) and (b) of Regulation 1.26 to replace the term "money market mutual fund" with "government money market fund and U.S. Treasury exchange-traded fund" or "government money market fund or U.S. Treasury exchange-traded fund," as appropriate. To address the adoption of appendices H and I, as discussed below, paragraph (b) of Regulation 1.26 would be further revised to replace the reference to "appendix A or B to this

section" with "appendix F, G, H or I to this part."²⁸³

The Commission also proposes to amend Appendices A and B to Regulation 1.26 (to be redesignated appendices F and G to Part 1) to replace the term "Money Market Mutual Fund" with "Government Money Market Fund."

To account for the proposed addition of Qualified ETFs to the list of Permitted Investments, the Commission also proposes to adopt new appendices H and I to Part 1. The appendices would set forth template acknowledgment letters for Qualified ETFs and would be modeled on appendices A and B to Regulation 1.26 (to be redesignated appendices F and G to Part 1), which currently address money market mutual funds. Appendices H and I to Part 1 would mostly replicate appendices A and B to Regulation 1.26, except that the term "money market mutual fund" would be replaced with "U.S. Treasury exchange-traded fund;" condition (1) will read "To qualify as a Permitted Investment, interests in U.S. Treasury exchange-traded funds must be redeemable in cash by a futures commission merchant or derivatives clearing organization in its capacity as an authorized participant pursuant to an authorized participant agreement, as defined in § 270.6c-11 of this title, at a price based on the net asset value in accordance with the Investment Company Act of 1940 and regulations thereunder, and on a delivery versus payment basis;" and references relating to money market mutual funds would be eliminated.

In addition, Regulation 30.7(d) requires that FCMs obtain written acknowledgment letters from each depository with which they maintain 30.7 customer funds. Appendices E and F to Part 30 of the Commission's regulations set forth the template acknowledgment letters. The Commission is proposing conforming changes to Regulation 30.7(d)(2) to replace the term "money market mutual fund" with "government money market fund and U.S. Treasury exchange-traded fund" or "government money market fund or U.S. Treasury exchange-traded fund," as appropriate. The Commission is also proposing changes to Appendix F to Part 30, to replace the term "money market mutual fund" with "government

money market fund." In addition, the Commission is also proposing to revise Regulation 30.7(d)(2) to add "or Appendix G to this part, respectively" after "Appendix F to this part" to address the adoption of new Appendix G to Part 30, which would set forth a template acknowledgment letter modeled on proposed Appendix C to Regulation 1.26 but addressing 30.7 customer funds.

Request for Comment: The Commission seeks comment on all aspects of the Proposal relating to the conforming amendments. The Commission also invites comments on any other aspect of the Proposal. The Commission also specifically requests comment on the following question:

31. Are there any risks associated with the Proposal that the Commission has not considered? What measures could the Commission take to mitigate such risks?

IV. Section 4(c) of the Act

With respect to investment of futures customer funds, the proposed amendments to Regulation 1.25 would be promulgated under Section 4d(a)(2) of the Act.²⁸⁴ Section 4d(a)(2) provides that customer money may be invested in U.S. government securities and municipal securities. It further provides that such investments must be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

Pursuant to its authority under Section 4(c) of the Act, the Commission proposes to expand the range of instruments in which FCMs and DCOs may invest futures customer funds beyond those listed in Section 4d(a)(2) of the Act to enhance the yield available to FCMs, DCOs and their customers, without compromising the safety of futures customer funds.

Section 4(c)(1) of the Act empowers the Commission to "promote responsible economic or financial innovation and fair competition" by exempting any transaction or class of transactions (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), from any of the provisions of the Act, subject to certain exceptions.²⁸⁵ The Commission's authority under Section 4(c) extends to transactions covered by Section 4d(a)(2) and to FCMs and DCOs that offer, enter into, render advice, or render other services with respect to such

²⁸² For purposes of clarification, an FCM or a DCO that holds shares of an MMF in a custodial account at a depository (not directly with the MMF or its affiliate) is required to execute the template acknowledgment letter set forth in Appendix A or B of Regulation 1.20 (to be redesignated Appendix C and Appendix D to Part 1), as applicable. 17 CFR 1.20.

²⁸³ Regulation 1.26 currently refers to "appendix A or B to this section." As noted *supra*, Appendix A and Appendix B to Regulation 1.26 would be redesignated Appendix F and Appendix G to Part 1 to address a change in the rules of the Office of the Federal Register regarding the structure of regulatory text to be codified in the Code of Federal Regulations.

²⁸⁴ 7 U.S.C. 6(c).

²⁸⁵ 7 U.S.C. 6(c)(1).

transactions. In enacting Section 4(c), Congress noted that its goal “is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.”²⁸⁶ The Commission may grant such an exemption by rule, regulation, or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative.

Section 4(c)(2) of the Act provides that the Commission may grant exemptions under Section 4(c)(1) only when it determines that the requirements for which an exemption is being provided should not be applied to the agreements, contracts, or transactions at issue; that the exemption is consistent with the public interest and the purposes of the Act; that the agreements, contracts, or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory responsibilities under the Act. The Proposal would provide FCMs and DCOs with a limited exemption from the restrictions in Section 4d(a) and (b) of the CEA pertaining to the safeguarding and investment of Customer Funds. As such, the Commission’s preliminary analysis below focuses on how the proposed expansion of the list of Permitted Investments meets the conditions in Section 4(c)(2)(A) as they apply to an exemption with respect to an FCM or a DCO. More specifically, the discussion below describes how the proposed expansion is, in the Commission’s view, consistent with the public interest and the purposes of the CEA.²⁸⁷ In that regard, the Commission notes that when Section 4(c) was enacted, the Conference Report accompanying the Futures Trading Practices Act of 1992²⁸⁸ stated that the “public interest” in this context would “include the national public interests noted in the Act, the prevention of fraud and the preservation of the financial integrity of the markets, as well as the promotion of responsible economic or financial innovation and fair competition.”²⁸⁹

To qualify as Permitted Investments, the instruments subject to this Proposal would need to meet strict conditions to ensure that investments of futures customer funds in these instruments are consistent with the objective of preserving principal and maintaining liquidity, as provided by Regulation 1.25. The Commission’s preliminary analysis, presented above, indicates that the instruments proposed herein to be included as Permitted Investments meeting the specified proposed conditions present credit and volatility characteristics that are comparable to instruments that already qualify as Permitted Investments. As such, the Commission is of the view that the proposed expansion of the list of Permitted Investments would provide FCMs and DCOs with an opportunity to diversify their investments of Customer Funds, mitigating the risks that can arise from concentrating Customer Funds in a smaller set of Permitted Investments, without compromising the safety of such investments.

The expanded selection of Permitted Investments is expected to also permit FCMs and DCOs to remain competitive globally and domestically and maintain safeguards against systemic risk. A wider range of alternatives to invest futures customer funds may provide more profitable investment options, allowing FCMs and DCOs to generate more income for themselves and their customers. This, in turn, may motivate FCMs and DCOs to increase their presence in the futures market and other relevant markets, thus increasing competition. Increased revenue to FCMs and DCOs from the investment of Customer Funds also may benefit customers in the form of lower commission charges or direct interest payments on funds on deposit with the FCM or DCO, which may lead to greater market participation by customers and increased market liquidity. In light of the foregoing, the Commission believes that the adoption of the proposed amendments would promote responsible economic and financial innovation and fair competition, and would be consistent with the objective of Regulation 1.25 and with the “public interest,” as that term is used in Section 4(c) of the Act. Specifically, permitting FCMs and DCOs to invest Customer Funds in Specified Foreign Sovereign Debt to the extent they hold balances owed to customers denominated in the

applicable currency reduces potential currency risk to DCOs, FCMs, and customers that would result from investing such foreign currencies in U.S.-dollar denominated assets. In addition, permitting investments in Qualified ETFs, subject to the proposed conditions, including that the ETF is passively managed with the investment objective of replicating the performance of a published short-term U.S. Treasury security index composed of U.S. Treasury bonds, notes, and bills with a remaining maturity of 12 months or less, provides an opportunity for greater diversification of the types of investment options that FCMs and DCO may use to manage the risk of holding Customer Funds. Proposed Qualified ETFs also provide potential benefits to FCMs, particularly smaller FCMs, that don’t have the internal operations and resources to effectively manage direct investments in other Permitted Investments, such as U.S. government securities, U.S. agency obligations, and municipal securities. Both Specified Foreign Sovereign Debt and Qualified ETFs have the potential to reduce costs to FCMs, DCOs, and customers while remaining consistent with the requirement in Regulation 1.25 for the preservation of principal and liquidity of Permitted Investments. The Commission solicits public comment on whether the Proposal satisfies the requirements for exemption under Section 4(c) of the Act.

The Commission notes that with respect to investments of Cleared Swaps Customer Collateral and 30.7 customer funds, the Commission would be acting pursuant to its plenary authority under Sections 4d(f)²⁹⁰ and 4(b)²⁹¹ of the Act, respectively, and would not need to apply Section 4(c) to effectuate the proposed amendments.

V. Administrative Compliance

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) requires Federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the

²⁹⁰ 7 U.S.C. 6d(f)(4) (providing that Cleared Swaps Customer Collateral may be invested in certain specified investments and “in any other investment that the Commission may by rule or Regulation prescribe, and such investments shall be made in accordance with such rules and Regulations and subject to such conditions as the Commission may prescribe.”)

²⁹¹ 7 U.S.C. 6(b)(2)(A) (providing that the Commission may adopt rules and Regulations requiring, among other things, the safeguarding of customer’s funds, by any person located in the U.S. who engages in foreign futures trading).

²⁸⁶ House Conf. Report No. 102–978, 1992 U.S.C.A.N. 3179, 3213.

²⁸⁷ The analysis does not include a discussion of Section 4(c)(2)(B)’s conditions because the exemption in this instance does not implicate or affect a futures agreement, contract, or transaction.

²⁸⁸ Public Law 102–546, 106 Stat. 3590 (1992).

²⁸⁹ H.R. Conf. Rep. No. 102–978 (1992). The Conference Report also states that the reference in

Section 4(c) to the “purposes of the Act” is intended to “underscore [the Conferees’] expectation that the Commission will assess the impact of a proposed exemption on the maintenance of the integrity and soundness of markets and market participants.” *Id.*

impact.²⁹² Whenever an agency publishes a general notice of proposed rulemaking for any rule, pursuant to the notice-and-comment provisions of the Administrative Procedure Act,²⁹³ a regulatory flexibility analysis or certification typically is required.²⁹⁴ The Commission has previously determined that registered FCMs and DCOs are not small entities for purposes of the RFA.²⁹⁵ Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the Proposal will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (“PRA”)²⁹⁶ imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget (“OMB”).²⁹⁷ The PRA is intended, in part, to minimize the paperwork burden created for individuals, businesses, and other persons as a result of the collection of information by federal agencies, and to ensure the greatest possible benefit and utility of information created, collected, maintained, used, shared, and disseminated by or for the Federal Government.²⁹⁸ The PRA applies to all information, regardless of form or format, whenever the Federal Government is obtaining, causing to be obtained, or soliciting information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.²⁹⁹

The regulation to be amended under this proposal contains a collection of information for which the Commission has previously received control numbers from OMB. The titles for this collection of information are OMB Control No. 3038–0024, Regulations and

Forms Pertaining to Financial Integrity of the Market Place; Margin Requirements for SDs/MSPs and OMB Control No. 3038–0091, Disclosure and Retention of Certain Information Relating to Cleared Swaps Customer Collateral.³⁰⁰

As discussed in Section III.D. above, among other reporting items, FCMs are required to report in the SIDR Reports the amount of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds invested in each of the current categories of Permitted Investments. The Commission is proposing to amend Regulations 1.32(f), 22.2(g)(5), and 30.7(l)(5), which define the content of the SIDR Report, by deleting the requirement for an FCM to report the balances invested in commercial paper and corporate notes and bonds as such investments would no longer be Permitted Investments under the Proposal; to require each FCM to report the total amount of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds invested in Specified Foreign Sovereign Debt of each country that is included within the Specified Foreign Sovereign Debt; and to require an FCM to include in the SIDR Report the total amount of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds invested in Qualified ETFs as such investments would be Permitted Investments under the Proposal. As such, the proposed changes to the content of the SIDR Reports would reflect the proposed revisions to the list of Permitted Investments discussed in Section III.A. of the Proposal. The Commission does not expect these proposed changes to result in an increase in the number of burden hours required for the completion of the reports. Accordingly, the Commission is retaining its existing burden estimates associated with this collection of information.³⁰¹

In addition, the Commission is proposing to revise Regulation 1.26,

which requires each FCM or DCO investing futures customer funds in MMFs that are Permitted Investments to obtain and retain in its files a written acknowledgment from the depository holding the funds stating that the depository was informed that the funds belong to customers and are being held in accordance with the provisions of the Act and Commission regulations. Regulation 1.26 also specifies the form of the written acknowledgment letter that each FCM or DCO must obtain from an MMF, in the event futures customer funds are held directly with the MMF. Regulations 22.5 and 30.7(d) set forth similar requirements with respect to Cleared Swaps Customer Collateral and 30.7 customer funds. The proposed amendments to Regulation 1.26 would require FCMs and DCOs segregating Customer Funds in a Permitted Government MMF or Qualified ETF account to obtain and maintain in their files an acknowledgment letter from the fund in which Customer Funds are held and to file such acknowledgment letter electronically with the Commission. The Commission is proposing an analogous amendment to Regulation 30.7(d)(2) with respect to investments of 30.7 customer funds by FCMs.³⁰² The Commission notes that the proposed revisions to Regulations 1.26 and 30.7(d) would reduce the scope of MMFs from which FCMs and DCOs, as applicable, would be required to obtain an acknowledgment letter by limiting the requirement to Permitted Government MMFs, a smaller set of MMFs. The proposed revisions to Regulations 1.26 and 30.7(d) would also impose a new requirement on FCMs and DCOs, as applicable, to obtain an acknowledgment letter from Qualified ETFs. The requirement would also apply under Regulation 22.5, which cross-references Regulation 1.26. To the extent that the new collection requirement would apply only to FCMs and DCOs that are APs and invest in Qualified ETFs in such capacity, the Commission estimates that the proposed requirement would affect no more than 15 registrants (*i.e.*, approximately 10 FCMs and five DCOs). Using the Commission’s prior estimates of the number of burden hours necessary to comply with the requirement to obtain an acknowledgment letter pursuant to Regulations 1.26 and 30.7(d) (*i.e.*, 0.75 burden hours per response), the Commission estimates that the new requirement would result in 0.75 annual burden hours per registrant per category

²⁹² 5 U.S.C. 601 *et seq.*

²⁹³ 5 U.S.C. 553. The Administrative Procedure Act is found at 5 U.S.C. 500 *et seq.*

²⁹⁴ See 5 U.S.C. 601(2), 603, 604, and 605.

²⁹⁵ See 47 FR 18618, 18619 (Apr. 30, 1982) and 66 FR 45604, 45609 (Aug. 29, 2001).

²⁹⁶ 44 U.S.C. 3501 *et seq.*

²⁹⁷ See 44 U.S.C. 3507(a)(3); 5 CFR 1320.5(a)(3).

²⁹⁸ See 44 U.S.C. 3501.

²⁹⁹ See 44 U.S.C. 3502(3).

³⁰⁰ For the previously approved PRA estimates under OMB Control No. 3038–0024, see ICR Reference No. 202101–3038–001, at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202207-3038-001. For previously approved PRA estimated under OMB Control No. 3038–0091, see ICR Reference No. 202009–3038–007, at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202009-3038-007.

³⁰¹ The Commission has previously estimated that compliance with the requirements under Regulations 1.32(f) and 1.32(g) to file SIDR reports requires 59 covered FCMs to expend 2,832 burden hours annually. The Commission has estimated that each FCM will file 24 reports per year requiring approximately 48 burden hours per respondent. This yields a total of 2,832 burden hours annually (59 FCM respondents × 48 burden hours annually = 2,832 hours).

³⁰² The Commission notes that an amendment to Regulation 22.5 would not be necessary as this regulation cross-references Regulation 1.26.

of Customer Funds, as applicable, assuming that a registrant would obtain one acknowledgement letter per year from a Qualified ETF with which it holds Customer Funds.³⁰³

The Commission also notes that, in connection with the proposed revisions related to the elimination of the Read-only Access Provisions, an FCM would need to obtain the revised acknowledgment letter only for accounts opened following the effective date of the proposed revisions or if the FCM is required to obtain a new acknowledgment letter for reasons unrelated to the elimination of the Read-only Access Provisions. The opening of a new depository account triggers a requirement to obtain an acknowledgment letter in all circumstances, regardless of the proposed revisions related to the elimination of the Read-only Access Provisions. For these reasons, the Commission is retaining its existing estimate of the burden that covered FCMs and DCOs incur to obtain, maintain, and electronically file the acknowledgment letters with the Commission, as currently provided in the approved collection of information.³⁰⁴

³⁰³ The Commission has previously estimated that an FCM or a DCO, as applicable, spends 0.75 hours per acknowledgement letter required under Regulation 1.26 or Regulation 30.7(d). See ICR Reference No. 202101-3038-001, at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202207-3038-001. The Commission therefore estimates that to obtain an acknowledgement letter from Qualified ETFs, 15 registrants would have to extend 30 burden hours annually. Specifically, the Commission estimates that FCMs would have to spend a total of 22.5 hours (10 FCMs × 1 report × 0.75 burden hours × 3 categories of Customer Funds = 22.5 hours) and DCOs would have to spend a total of 7.5 hours (5 DCOs × 1 report × 0.75 burden hours × 2 categories of Customer Funds = 7.5 hours). The Commission notes that investments by DCOs are only relevant with respect to futures customer funds and Cleared Swaps Customer Collateral.

³⁰⁴ The Commission has estimated that 36 covered FCMs incur an estimated 216 burden hours annually to file required acknowledgment letters pursuant to Regulation 1.20(d). The Commission has estimated that each respondent will file 3 reports per year requiring an estimated 2 burden hours per report, for a total of 6 burden hours per respondent. This yields a total of 216 burden hours annually (36 respondents × 6 burden hours annually = 216 burden hours). Under Regulation 1.26, the Commission has estimated that 74 covered respondents incur an estimated 111 burden hours annually to obtain and maintain required acknowledgement forms (74 respondents × 1.5 hours annually = 111 burden hours). Under Regulation 30.7, the Commission has estimated that 42 covered respondents incur an estimated 252 burden hours annually (42 respondents × 6 burden hours annually = 252 burden hours) and under Regulation 22.5, the Commission has estimated that 78 covered respondents incur an estimated 390 burden hours annually (78 respondents × 5 burden hours annually = 390 burden hours) to obtain and maintain the required acknowledgment letters.

The Commission welcomes public comment on all aspects of its analysis of the PRA requirements. In particular, the Commission invites comment on its estimates of additional burden hours in connection with the proposed requirement for FCMs and DCOs that invest Customer Funds in Qualified ETFs to obtain an acknowledgment letter from such ETFs.

C. Cost-Benefit Considerations

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the Act.³⁰⁵ Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) considerations, and seeks comments from interested persons regarding the nature and extent of such costs and benefits.

As described in more detail above, the Commission is proposing to revise the list of Permitted Investments in Regulation 1.25(a) to: (i) add the foreign sovereign debt of certain jurisdictions and interests in certain ETFs that invest primarily in short-term U.S. Treasury securities; (ii) limit the scope of MMFs whose interests qualify as Permitted Investments to certain Government MMFs; and (iii) eliminate commercial paper, corporate notes or bonds. The Commission is further specifying the capital charges that FCMs would be required to take on investments of Customer Funds in foreign sovereign debt and ETFs. The Commission is also proposing to replace LIBOR with SOFR as a permitted benchmark under Regulation 1.25(b)(2)(iv)(A)(1) and (2), as well as to adopt certain conforming changes consistent with the proposed amendments, and is requesting public comment on the possible removal of bank CDs from the list of Permitted Investments. Finally, the Commission is proposing to revise relevant provisions in Parts 1 and 30 of the Commission's regulations to eliminate the requirement for depositories to provide read-only electronic access to accounts maintained by FCMs that hold Customer Funds.

³⁰⁵ 7 U.S.C. 19(a).

The baseline for consideration of the benefits and costs associated with the Proposal are the benefits and costs that FCMs, DCOs, and the public would realize if the Commission does not proceed with the proposed amendments, or in other words, the status quo.

The Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving U.S. firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of these proposed amendments on all activity subject to the proposed amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with activities in, or effect on, U.S. commerce under Section 2(i) of the Act.³⁰⁶

The Commission recognizes that the Proposal may result in some additional, incremental costs for FCMs and DCOs. However, the Commission lacks the data necessary to reasonably quantify all of the costs and benefits considered below. Additionally, any initial and recurring compliance costs for any particular FCM or DCO will depend on its size, existing infrastructure, practices, and cost structures. The Commission welcomes comments on any such incremental costs, especially by DCOs and FCMs, who may be better able to provide quantitative costs data or estimates, based on their respective experiences relating to Commission's regulations governing the investment of Customer Funds and related requirements.

The Commission is also including a number of questions for the purpose of eliciting cost and benefit estimates from public commenters wherever possible. Quantifying other costs and benefits, such as the effects of potential changes in the behavior of FCMs and DCOs resulting from the proposed amendments are inherently harder to measure. Thus, the Commission is similarly requesting comment through questions to help it better quantify these impacts. Due to these quantification

³⁰⁶ 7 U.S.C. 2(i).

difficulties, for this NPRM, the Commission offers the following qualitative discussion of its costs and benefits.

a. Foreign Sovereign Debt, Interests in Exchange-Traded Funds, and Associated Capital Charges

The Proposal would expand the list of Permitted Investments to add two new categories of instruments. Specifically, the Proposal would add: (i) the sovereign debt of Canada, France, Germany, Japan, and the United Kingdom, and (ii) interests in certain ETFs that invest in primarily short-term U.S. Treasury securities, to the list of Permitted Investments in which FCMs and DCOs may invest customer segregated funds pursuant to Regulation 1.25. The Proposal would also require an FCM to apply capital charges on any investments of Customer Funds in the Specified Foreign Sovereign Debt and Qualified ETFs to account for potential market risk associated with such investments. The Proposal would further expand the universe of permitted counterparties and depositories that can be used to buy and sell permitted foreign sovereign debt pursuant to Repurchase Transactions to include certain non-U.S. entities.

1. Benefits

The Commission preliminarily believes that expanding the list of Permitted Investments to include Specified Foreign Sovereign Debt and interests in Qualified ETFs would provide FCMs and DCOs with a wider range of alternatives to invest Customer Funds, and as a result, FCMs and DCOs might have more investment options, some of which might be more profitable than the existing Permitted Investments, such that FCMs and DCOs may be able to generate more income for themselves and their customers. This may motivate FCMs or DCOs to increase their presence in the futures market and other relevant markets, thereby increasing competition, which might lead to a reduction in charges to customers and an increase trading activity and liquidity.

Also, the ability to use Specified Foreign Sovereign Debt as a Permitted Investment would facilitate FCMs' and DCOs' management of foreign currencies that customers deposit to margin their trades and enable FCMs and DCOs to avoid certain risks and practical challenges in the handling of foreign currencies. For example, providing FCMs and DCOs with the opportunity to invest customer foreign currencies in identically-denominated assets would help manage the foreign

currency risk that FCMs and DCOs face if they seek to invest foreign currencies in the currently permitted, U.S. dollar-denominated investments. In addition, in their Joint Petition, the Petitioners asserted that as a matter of risk management policy, or due to regulatory requirements, many clearing organizations located outside of the United States impose strict cut-off times for cash withdrawal by clearing members, while allowing later cut-off times for withdrawal of other types of collateral.³⁰⁷ Also, for reasons such as capital requirements and balance sheet management, banks may not accept foreign currencies at all or may place limits on the accepted amount. Banks may also charge higher rates for holding foreign currencies. As such, FCM customers depositing foreign currencies might potentially absorb those costs. The Petitioners also argued that it may be preferable to hold foreign currencies in the form of high-quality sovereign debt than keeping the funds in unsecured bank demand deposit accounts that might expose the funds to the credit risk of commercial banks.

Similarly, for reasons related to balance sheet management, custodian institutions may impose higher fees for accepting cash deposits denominated in USD or limit the amounts of USD cash that they are willing to safeguard.

Expanding the list of Permitted Investments to instruments that meet the overall required standards of preserving principal and maintaining liquidity, while also providing the potential for greater diversification or higher returns for FCMs, DCOs and customers, would give FCMs and DCOs more flexibility in the management of Customer Funds. This might be particularly important given the narrower range of assets that currently qualify as Permitted Investments under Regulation 1.25.

In addition, Qualified ETFs, in particular, may offer an opportunity to invest in U.S. Treasury securities, which qualify as a Permitted Investment, without devoting the resources required to purchase, monitor, and roll over such securities when they mature.

³⁰⁷ Joint Petition at p. 3 (citing, as an example of regulatory requirements, Article 45 of the regulatory technical standards on requirements for central counterparties (Commission Delegated Regulation (EU) No. 153/2013) ("CCP RTS"), which supplements provisions in the EU Market Infrastructure Regulation (Regulation (EU) No 648/2012) ("EMIR") governing the investment policies of EU central counterparties. Per Article 45(2) of the CCP RTS, not less than 95 percent of cash deposited other than with a central bank and maintained overnight must be deposited through arrangements that ensure its collateralization with highly liquid financial instruments).

The Commission also preliminarily believes that requiring an FCM to apply capital charges on investments of Customer Funds in Specified Foreign Sovereign Debt and Qualified ETFs helps ensure that the FCM maintains a sufficient level of readily available liquid funds that would be available to transfer into the FCM's futures accounts, Cleared Swaps Customer Accounts, and/or 30.7 accounts to cover decreases in value of the investments to help ensure continue compliance with Customer Funds segregation requirements.³⁰⁸ Requiring an FCM to maintain regulatory capital to cover potential decreases in the value of the Permitted Investments benefits the FCM by helping to ensure that such firms have sufficient, liquid financial resources to meet 100 percent of their obligations to futures customers, Cleared Swaps Customers, and 30.7 customers at all times as required by Regulations 1.20, 22.2, and 30.7. Capital charges on Permitted Investments also benefit FCM customers as the charges help ensure an FCM maintains capital in an amount sufficient to cover investment losses and to prevent such losses from being passed on to customers in violation of Regulations 1.29(b), 22.2(e)(1), and 30.7(i).

In addition, the Commission also notes that the proposed amendment to Regulation 22.3(d), seeking to clarify that DCOs are responsible for losses resulting from their investments of Customer Funds, would provide legal certainty with respect to the Commission's customer protection regulations.

2. Costs

Although the Proposal would increase the range of permissible investments in which DCOs and FCMs may invest customer funds, facilitating their management of investments and capital, the Proposal may result in customer segregated funds being invested in instruments that may be less liquid and have increased exposure to credit and market risks than those currently permitted under Regulation 1.25. Such risks could result in an increased exposure for FCMs and DCOs, who pursuant to Regulations 1.29(b), 22.2(e)(1), 22.3(d), and 30.7(i), as applicable, are responsible for losses resulting from investments of Customer Funds. A heightened risk exposure may also indirectly impact customers if the

³⁰⁸ The terms "futures account," "Cleared Swap Customer Account," and "30.7 account" are defined in Regulations 1.3, 22.1, and 30.1, respectively. 17 CFR 1.3, 17 CFR 22.1, and 17 CFR 30.1.

losses compromise the FCM's or DCO's ability to return Customer Funds.

To account for these potential risks and ensure that the proposed Permitted Investments are consistent with the general objectives of Regulation 1.25 of preserving principal and maintaining liquidity, the Commission is proposing several conditions for foreign sovereign debt and interests in U.S. Treasury ETFs to qualify as Permitted Investments. Specifically, for the Specified Foreign Sovereign Debt, the proposed conditions include a cap of 45 BPS on the two-year credit default spread of the issuing sovereign, a 60-day limit on the dollar-weighted average of the time to maturity of the FCM's or DCO's portfolio of investments in each type of Specified Foreign Sovereign Debt, and a 180-day limit on the time-to-maturity of any individual Specified Foreign Sovereign Debt instrument. For interests in Qualified ETFs to be deemed Permitted Investments, the Commission proposes to require, among other conditions, that the ETF is passively managed and seeks to replicate the performance of a published short-term U.S. Treasury security index. For purposes of the Proposal, short-term U.S. Treasury securities are bonds, notes, and bills with a remaining maturity of 12 months or less, issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury. Under the Proposal, the eligible U.S. Treasury securities must represent at least 95 percent of the Qualified ETF's investment portfolio. In addition, to be able to invest in a Qualified ETF, an FCM or a DCO would have to qualify as an authorized participant such that it would be able to redeem interests in the ETF directly from the fund. Moreover, as discussed above, the Proposal would require FCMs to take capital charges based on the current market value of the Specified Foreign Sovereign Debt and Qualified ETFs to address potential market risk of such investments. The capital charges are intended to ensure that an FCM has sufficient financial resources in the form of cash and other readily marketable collateral to adequately cover potential market risk of the investments, consistent with the FCM's obligation to bear any losses resulting from such investments.

Requiring an FCM to apply capital charges in connection with the proposed new categories of Permitted Investments would result in costs associated with reserving capital. The FCM may not be able to use the amounts reserved as capital to maximize the profit of its business operations, thus potentially reducing its income. The

Commission notes, however, that capital requirements are an essential risk-management feature of the FCM's regulatory regime and the amounts reserved as capital would be necessary and expected costs associated with operating a business as an FCM.

In addition, the Commission preliminarily believes that the proposed clarifying amendment to Regulation 22.3(d) would not result in increased costs for DCOs. The proposed amendment seeks to expressly state a regulatory obligation that is consistent with the Commission's original intent to permit DCOs to invest Cleared Swaps Customer Collateral within the parameters applicable to investments of futures customer funds.³⁰⁹ As such, the Commission preliminarily believes that DCOs already reserve financial resources to account for their responsibility for such investments.

Finally, as discussed above, the Commission has slightly adjusted its existing burden estimates associated with the approved collection of information. As such, the Commission preliminarily believes that FCMs and DCOs would not incur material costs relating to the collection of information as a result of this Proposal.

3. Section 15(a) Considerations

In light of the foregoing, the Commission has evaluated the costs and benefits of the Proposal pursuant to the five considerations identified in Section 15(a) of the Act as follows:

(a) Protection of Market Participants and the Public

The Proposal would expand the list of permitted instruments set forth in Regulation 1.25(a) to include instruments that may be less liquid and may be more exposed to credit and market risks than some of the currently Permitted Investments under Regulation 1.25, resulting in Customer Funds being invested in potentially illiquid and risky instruments. To address these potential risks with respect to Specified Foreign Sovereign Debt and Qualified ETFs, the Proposal would include strict conditions for the relevant instruments to qualify as Permitted Investments, and would require FCMs to reserve regulatory capital to cover potential decreases in the market value of the Specified Foreign Sovereign Debt and Qualified ETFs and not pass such losses on to customers. The Commission's preliminary analysis indicates that instruments meeting the specified conditions present credit and volatility characteristics that are comparable to

those of instruments that already qualify as Permitted Investments.³¹⁰ As such, the Commission believes that the current level of protection provided to Customer Funds would be maintained under the terms of the proposal.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

Having a greater selection of Permitted Investments may provide FCMs or DCOs with the ability to generate more income from their investment of Customer Funds. This may motivate FCMs or DCOs to increase their presence in the futures and other relevant markets increasing competition, which might lead to lower charges for customers. The increase in revenue may also increase earnings to customers as DCOs and FCMs often pay a return on customer deposited funds, and FCMs may otherwise share some or all of the income to customers.

The increased range of Permitted Investments is expected to provide investment flexibility to FCMs and DCOs and an opportunity to realize cost savings. More specifically, by being able to invest in Specified Foreign Sovereign Debt, FCMs and DCOs may be able to avoid practical challenges, such as having to meet clearing organizations' strict cut-off times for cash withdrawal, or the additional fees for holding foreign currencies, imposed by some institutions. In addition, investing in Specified Foreign Sovereign Debt could be a safer alternative than holding cash at a commercial bank. It may also help avoid the foreign currency risk to which FCMs and DCOs may be exposed absent the ability to invest customer foreign currencies in identically-denominated assets.

In addition, Qualified ETFs may provide a simpler and cost-efficient way of investing in U.S. Treasury securities, saving the resources that would otherwise be required to roll over such securities at their maturity.

(c) Price Discovery

The Proposal would increase the selection of Permitted Investments and may lead FCMs and DCO to generate more income from their investments of

³¹⁰ See *supra* note 77 (using one-year sovereign debt instruments yield data to demonstrate that the price risk of the Specified Foreign Sovereign Debt instruments is comparable to that of U.S. government securities), Section III.A.1 and note 94 (using credit default swap data to demonstrate that the Specified Foreign Sovereign Debt instruments have a risk profile comparable to that of U.S. government securities) and note 180 (using yield data to demonstrate that five ETFs currently available on the market, which invest in short-term U.S. Treasury securities, are at least as stable as one-year U.S. Treasury securities).

³⁰⁹ See *supra* note 42.

Customer Funds. This might lead to a reduction in charges for customers, or provide customers with additional revenue, and potentially motivate customers to increase their trading in the futures market and other relevant markets, which might increase liquidity in those markets and enhance price discovery.

(d) Sound Risk Management

Increasing the range of Permitted Investments would provide FCMs and DCOs with a broader selection of investment options to invest Customer Funds, enabling FCMs and DCOs to have more diversified portfolios and reduce the potential concentration in a few instruments. Providing safe alternative investment options may be particularly beneficial for FCMs and DCOs in light of the limited range of instruments that meet the eligibility criteria of Regulation 1.25 and the competing demand for high quality forms of collateral driven by the regulatory reforms implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

By making available Specified Foreign Sovereign Debt as a Permitted Investment, the Commission would provide FCMs and DCOs with an opportunity to better manage risks associated with holding foreign currencies deposited by customers. As noted above, the Commission recognizes that investing customer segregated funds in Specified Foreign Sovereign Debt provides an alternative to taking on the exposure of holding cash at a commercial bank. The Commission notes also that absent the ability to invest Customer Funds in identically-denominated sovereign debt securities, an FCM or a DCO seeking to invest customer foreign currency deposits would need to convert the currencies to a U.S. dollar-denominated asset, which would increase the potential foreign currency risk. In addition, by limiting the investment of foreign currency to foreign sovereign debt that meets certain requirements, the Proposal is expected to further promote sound risk management. Lastly, requiring an FCM to reserve capital to cover potential decreases in the value of the Specified Foreign Sovereign Debt and Qualified ETFs would help ensure that an FCM has the financial resources to meet its regulatory obligations of bearing 100 percent of the losses on the investment of Customer Funds.

(e) Other Public Interest Considerations

Although the four factors mentioned above are considered to be the primary cost-benefit considerations, other public

interest considerations may also be relevant. For instance, in addition to the potential benefits that may accrue to FCMs, DCOs, and customers, benefits associated with the addition of Qualified ETFs to the list of Permitted Investments may also accrue to the general public, as allowing FCMs and DCOs to invest Customer Funds in such instruments may contribute to a more vibrant and robust market for ETFs. In addition, the expansion of Permitted Investments to include Specified Foreign Sovereign Debt may ease access to futures and cleared swaps markets for entities domiciled in non-U.S. jurisdictions that can now more easily transact in foreign currency with potentially lower costs and risk. This may provide additional hedging opportunities for entities and enhance market liquidity.

b. Government Money Market Funds, Commercial Paper and Corporate Notes or Bonds, and Certificates of Deposit Issued by Banks

The Proposal would limit the scope of MMFs whose interests qualify as Permitted Investments to certain Government MMFs as defined by SEC Rule 2a-7, revise the asset-based concentration limits applicable to such funds, and add issuer-based concentration limits. The Proposal would also remove from the list of Permitted Investments commercial paper and corporate notes or bonds guaranteed as to principal and interest by the United States under the TLGP. The Proposal would also request public comment as to whether bank CDs should be removed from the list of Permitted Investments due to a lack of use by FCMs and DCOs.

1. Benefits

The Proposal would remove interests in certain MMFs, including Prime MMFs and Electing Government MMFs, from the list of Permitted Investments set forth in Regulation 1.25, limiting the scope of MMFs whose interests qualify as Permitted Investments to Permitted Government MMFs, as further discussed above. The Commission believes that interests in Prime MMFs and Electing Government MMFs are unsuitable as Permitted Investments under Regulation 1.25 because such MMFs are subject to the SEC MMF Reforms pursuant to which liquidity fees to stem redemptions may be imposed, which could hinder the liquidity of the MMFs and adversely impact customers' access to their funds, which may be needed to meet margin calls on open positions or cash market transaction. The Proposal would therefore prevent investments of

Customer Funds in MMFs that might pose unacceptable levels of liquidity risk.

The Proposal would impose asset-based concentration limits according to the size of the Permitted Government MMFs and their management companies. A 50 percent concentration limit would apply to Government MMFs with at least \$1 billion in assets and with management companies with more than \$25 billion in assets under management. The current 10 percent concentration limit for MMFs with less than \$1 billion in assets and/or which have a management company managing less than \$25 billion in assets would be maintained. These concentration limits recognize that larger Government MMFs may be a safer investment alternative given that they may be better positioned to withstand times of significant financial stress and to manage high levels of redemptions. As such, the concentration limits, as proposed, ensure that FCMs' and DCOs' investments in Permitted Government MMFs account for the level of liquidity, market, and credit risk posed by a fund in light of its capital base, portfolio of holdings, and capacity to handle market stress.

The proposed concentration limits would promote investments of Customer Funds in Permitted Government MMFs of different sizes subject to different concentration limits, leading to diversification in FCMs' and DCOs' portfolios, while encouraging investments in safer larger Government MMFs. The proposed concentration limits might also reduce the potential concentration in certain Permitted Government MMFs, fostering competition across the funds, which might lead to better terms and reduced costs for FCMs and DCOs. In addition, the Commission is proposing issuer-based limits with the goal of mitigating potential risks associated with concentrating investments of Customer Funds in any single fund or family of Government MMFs such as the risk that access to Customer Funds may become restricted due to a cybersecurity or an operational incident affecting the fund. Specifically, the Commission is proposing to limit investments of Customer Funds in any single family of Government MMFs to 25 percent and investments of Customer Funds in any single issuer of Government MMFs to 5 percent of the total assets held in each of the segregated classifications of futures customer funds, Cleared Swaps Customer Collateral, and 30.7 customer funds. In establishing these concentration limits, the Commission acknowledges that there are no precise

limits that can guarantee absolute protection against market volatility. The Commission's preliminary assessment indicates, however, that these proposed limits represent a practical approach that effectively balances the need to support the viability of FCMs' and DCOs' business model while safeguarding the principal and liquidity of the Customer Funds.

The Proposal would also eliminate commercial paper and corporate notes or bonds guaranteed under the TLGP as Permitted Investments given that the TLGP expired in 2012. This proposed rule amendment will streamline the CFTC rules, facilitating their implementation and administration, and is consistent with the Commission's earlier determination that commercial paper and corporate notes or bonds are rarely used and pose unacceptable levels of credit, liquidity, and market risk.³¹¹ The Proposal is also requesting public comment on whether to remove bank CDs from the list of Permitted Investments, in light of the Commission's experience that FCMs and DCOs do not invest Customer Funds in these instruments.³¹²

2. Costs

As the Proposal would limit the scope of MMFs whose interests qualify as Permitted Investments to Permitted Government MMFs, the Proposal may lead to less diversification in the investment of Customer Funds by FCMs and DCOs. FCMs' and DCOs' portfolios may be concentrated in the Permitted Government MMFs, increasing exposure to risks associated with the funds, which might heighten the risk of loss of Customer Funds. Also, given that fewer MMFs would be available as Permitted Investments, FCMs and DCOs would have less flexibility in investing Customer Funds. FCMs and DCOs might thus generate less income and may pass on additional operational costs to customers by increasing their fees.

The Commission notes, however, that the potential risk of concentration of investments in Permitted Government MMFs would be mitigated by the proposed asset-based and issuer-based concentration limits, which are designed to promote diversification among different categories of Permitted

Investments and among different individual Permitted Government MMFs.

To meet the proposed concentration limits, FCMs and DCOs may be required to liquidate Government MMFs held in their portfolios and might incur losses. The Commission notes that the risk of loss is likely to be mitigated given that the Government MMFs in which FCMs and DCOs have been permitted to invest Customer Funds since the issuance of Staff Letter 16–68 and Staff Letter 16–69 are presumably highly liquid.³¹³

In the Commission's view, the elimination of commercial paper and corporate notes or bonds guaranteed under the TLGP would not result in any costs as the instruments have not been available as Permitted Investments since the 2012 when the TLGP expired. Similarly, the Commission believes that were it to remove bank CDs at a later time, there would be no immediate potential cost because in the Commission's experience FCMs and DCOs do not currently invest Customer Funds in this type of instrument. Eliminating this investment option, however, may lead to potential long-term costs if this option becomes valuable.

3. Section 15(a) Considerations

In light of the foregoing, the Commission has evaluated the costs and benefits of the Proposal pursuant to the five considerations identified in Section 15(a) of the Act as follows:

(a) Protection of Market Participants and the Public

The Proposal would remove from the list of Permitted Investments interests in MMFs whose redemptions may be subject to liquidity fees, including Prime MMFs and Electing Government MMFs. In the Commission's view, the imposition of a liquidity fee is in conflict with provisions in Regulation 1.25 that are designed to reduce Customer Funds' exposure to liquidity risk and to preserve the principal of investments purchased with Customer Funds. As a result, by preventing investments in instruments that pose unacceptable levels of liquidity risk, the Proposal would provide greater protection to customer segregated funds and promote the efficient and safe investment of Customer Funds by FCMs and DCOs.

The Proposal would limit the scope of MMFs whose interests qualify as Permitted Investments to Government MMFs as defined by SEC Rule 2a–7. The Commission notes that these types of

funds are less susceptible to runs and have seen inflows during periods of market instability.³¹⁴ As such, the Proposal, by limiting the scope of eligible MMFs to Government MMFs, would reduce the potential that funds in which Customer Funds are invested may be impacted by run risk and other associated risks. However, given that there would be fewer MMFs available as Permitted Investments, FCMs' and DCOs' investments may be concentrated in fewer MMFs and the investments may be more susceptible to risk associated with the fewer available funds.

The proposed asset-based concentration limits for Government MMFs would ascribe limits according to the size of the funds, with larger funds being subject to a 50 percent limit and smaller funds to a 10 percent limit. These limits recognize that larger funds have capital bases better capable of handling a high volume of redemptions in times of stress. Accordingly, the concentration limits would promote investments in larger funds, which represent a safer investment alternative, while providing for diversification by permitting investments in smaller Government MMFs subject to concentration limits to ensure the safety of Customer Funds. In addition, the proposed issuer-based concentration limits would promote diversification among different individual Government MMFs, thus mitigating the potential risks associated with concentrating investments of Customer Funds with a single fund or family of funds.

The implementation of the proposed concentration limits may require FCMs and DCOs to liquidate their fund holdings, which could lead to losses. The Commission believes that the potential for losses would be mitigated because since the issuance in 2016 of Staff Letter 16–68 and Staff Letter 16–69, FCMs and DCOs have been allowed to invest only in Government MMFs meeting the liquidity standards of Regulation 1.25.

By removing commercial paper and corporate notes or bonds guaranteed under the TLGP from the list of

³¹¹ Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 75 FR 67642, 67644 (Nov. 3, 2010).

³¹² In addition to the Commission's general experience in overseeing DCOs and FCMs, Commission staff also reviewed how FCMs invested customer funds as reported in the SDR Report for the period September 15, 2022 to February 15, 2023 and noted that no FCMs reported investing customer funds in bank CDs.

³¹³ See 17 CFR 1.25(b)(1).

³¹⁴ See SEC MMF Reforms at 51417 (noting that investors typically view government MMFs, in contrast to Prime MMFs, as a relatively safe investment during times of market turmoil). See also Money Market Fund Reforms, 87 FR 7248 (Feb. 8, 2022) ("SEC MMF Reforms Proposing Release") at 7250 (recounting that during the 2008 financial crisis there was a run primarily on institutional Prime MMFs after an MMF "broke the buck" and suspended redemptions, which motivated many fund sponsors to step in and provide financial support to their funds. The events led to general turbulence in the financial markets and contributed to severe dislocations in short-term credit markets.

Permitted Investments under Regulation 1.25, the Proposal would eliminate instruments that are no longer available given the expiration of the TLGP in 2012. This would streamline the CFTC rules and facilitate their implementation, removing a potential source of confusion and allowing FCMs and DCOs to focus their efforts on more immediate regulatory concerns. If the Commission were to proceed with the removal of bank CDs, a type of instruments that is not used by FCMs and DCOs as an investment of Customer Funds, the elimination would similarly contribute to the effort of streamlining Commission's regulations.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

By eliminating interests in Prime MMFs and Electing Government MMFs from the list of Permitted Investments, the Proposal would prevent investments of Customer Funds in instruments that might be less liquid in light of the SEC MMF Reforms, thus advancing the objectives of Regulation 1.25 of preserving principal and maintaining liquidity.

As discussed earlier, the elimination of commercial paper and corporate notes or bonds guaranteed under the TLGP would remove instruments that are either no longer available given the expiration of the program or not used as an investment of Customer Funds, allowing FCMs and DCOs to more efficiently allocate their resources and address more immediate regulatory concerns.

(c) Price Discovery

The Proposal, by reducing the selection of Permitted Investments, would lead to fewer investment options available to FCMs and DCOs. As such, FCMs and DCOs might generate less income from their investment of Customer Funds and might pass onto customers the costs of operations by increasing fees. Facing increased costs, customers might cut back on their trading, reducing liquidity, which might hinder price discovery.

(d) Sound Risk Management

By eliminating from the list of Permitted Investments interests in Prime MMFs and Electing Government MMFs, the Proposal would prevent investments of customers funds in certain MMFs, which might be susceptible to increased liquidity risk in light of the SEC MMF Reforms, thus promoting sound risk management. Also, the concentration limits that would apply to the Permitted Government MMFs would foster

adequate diversification in FCMs' and DCOs' portfolios by encouraging investments of Customer Funds in larger funds expected to have the capacity to withstand significant market stress and increasing redemptions, while making available smaller funds subject to specified concentration limits.

(e) Other Public Interest Considerations

The Commission believes that the relevant cost-benefit considerations are captured in the four factors above.

c. SOFR as a Permitted Benchmark

In March 2021, the U.K. Financial Conduct Authority announced that LIBOR would be effectively discontinued.³¹⁵ The Commission is therefore proposing to replace LIBOR with SOFR as a permitted benchmark for variable and floating rate securities that qualify as Permitted Investments under Regulation 1.25.

1. Benefits

Under Regulation 1.25(b)(2)(iv)(A), variable and floating securities qualify as Permitted Investments if, among other things, the interest payments on the securities correlate to specified benchmarks, including LIBOR.³¹⁶ As discussed in more detail above, a number of enforcement actions concerning attempts to manipulate the LIBOR benchmark led to a loss of confidence in the reliability and robustness of LIBOR and to the benchmark's discontinuation. The Commission therefore proposes to remove LIBOR as a permitted benchmark and replace it with SOFR. The Commission believes that the unreliability of LIBOR could undermine the value of variable and floating rate securities that reference the benchmark. Accordingly, the replacement of LIBOR with SOFR, which has been identified as a preferred benchmark alternative by the ARRC,³¹⁷ would ensure that Customer Funds are invested in securities that reference a reliable and robust benchmark providing greater protection to Customer Funds.

2. Costs

The Commission notes that given the widespread use of LIBOR as a benchmark, FCMs and DCOs that invest Customer Funds in variable and fixed rate securities might incur costs as a result of the transition to SOFR. To the extent that FCMs and DCOs already invest in variable and fixed rate securities benchmarked to LIBOR, they

would need to amend the terms of their agreements to incorporate the new benchmark. FCMs and DCOs may also need to adjust their systems and processes to implement and recognize SOFR as a benchmark. However, the Commission believes that transitioning to a more reliable benchmark offsets these associated costs by enhancing security for Customer Funds and removing a potential source of risk to the financial system overall.

3. Section 15(a) Considerations

In light of the foregoing, the Commission has evaluated the costs and benefits of the Proposal pursuant to the five considerations identified in Section 15(a) of the Act as follows:

(a) Protection of Market Participants and the Public

As previously discussed, LIBOR is no longer deemed a reliable and robust benchmark. As such, it could negatively impact the value of variable and floating rate securities that reference the benchmark. By eliminating LIBOR as a permitted benchmark, the Proposal would prevent investments of Customer Funds in securities referencing an unreliable benchmark and would promote the use of a safer benchmark alternative.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

By formalizing the use of SOFR as a permitted benchmark for Permitted Investments in which Customer Funds may be invested, the Proposal would promote the transition to SOFR and facilitate the phasing out of LIBOR, a widely used benchmark that is now deemed to be unreliable, removing a potential source of risk to the financial system.³¹⁸

In addition, SOFR is an essential benchmark that helps ensure the stability and integrity of financial markets. As such, formalizing the use of SOFR as a permitted benchmark for permitted investments may enhance the financial integrity of markets.

³¹⁵ Staff Letter 21–26 at p. 1.

³¹⁶ 17 CFR 1.25(b)(2)(iv)(A).

³¹⁷ See Staff Letter 21–26 at p. 3.

³¹⁸ The replacement of LIBOR as a benchmark for Permitted Investments represents another step in the Commission's efforts to facilitate the transition away from LIBOR, as illustrated by a recent amendment to the clearing requirements. See Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps to Account for the Transition from LIBOR and Other IBORs to Alternative Reference Rates, 87 FR 52182 (Aug. 24, 2022) (replacing the requirement to clear interest rate swaps referencing LIBOR and certain other interbank offered rates with the requirement to clear interest rate swaps referencing overnight, nearly risk-free reference rates).

(c) Price Discovery

The proposed amendment to replace LIBOR with SOFR as a permitted benchmark would have no negative impact on price discovery. Permitting SOFR as a benchmark for Customer Funds investments would benefit FCMs and DCOs and their customers. This might increase liquidity in the futures markets and enhance the process of price discovery.

(d) Sound Risk Management

By eliminating LIBOR as a permitted benchmark and replacing it with SOFR, the Proposal would ensure that to the extent FCMs and DCOs select variable and floating rate securities as Permitted Investments to invest Customer Funds, these instruments would reference benchmarks that are, in the Commission's view, sound and reliable, thus fostering sound risk management.

(e) Other Public Interest Considerations

The Commission believes that the relevant cost-benefit considerations are captured in the four factors above.

d. Revision of the Read-Only Access Provisions

The Proposal would eliminate the Read-only Access Provisions in parts 1 and 30 of the Commission's regulations,³¹⁹ which require depositories to provide the Commission with direct, read-only electronic access to accounts maintained by FCMs that hold Customer Funds.

1. Benefits

Eliminating the Read-only Access Provisions would streamline the CFTC rules, facilitating their implementation and administration, and is consistent with the Commission's anticipation that the existence of alternative methods for obtaining and verifying account balance information would diminish the need to rely on the direct read-only access to accounts. More specifically, by relying on the CME's and NFA's daily segregation confirmation and verification process, the Commission would be able to allocate resources to focus on more immediate regulatory

concerns within its jurisdictional purview. In that regard, the Commission notes, as discussed above, that it has encountered numerous practical challenges in the administration of direct access to depository accounts, which unduly burden the Commission's resources, particularly considering that the Commission contemplated that the use of real-time access would be limited, and prevent Commission staff from using the Read-only Access Provisions as intended.

In addition, eliminating the requirement to provide the Commission with direct, read-only access to accounts maintained by FCMs, would reduce costs for depositories, which may motivate these institutions to more readily take FCM Customer Funds on deposit. The Proposal may thus foster competition in the futures market and ultimately reduce costs for FCMs and their customers.

Furthermore, the deletion of the Read-only Access Provisions would eliminate the need for the Commission to keep a log of access credentials and physical authentication devices, thereby reducing the potential cybersecurity risk associated with the maintenance of such credentials and devices.

2. Costs

Withdrawing the requirement that depositories provide the Commission with direct, read-only electronic access to depository accounts holding Customer Funds would deprive the Commission from ongoing, instantaneous access to the accounts for purposes of identifying potential discrepancies between the account balance information reported by the FCMs and the account balance information available directly from the depositories.

The Commission believes, however, that more efficient means for identifying discrepancies in the account balance information exist, namely by obtaining account balance and transaction information through the CME's and NFA's automated daily segregation confirmation system or by requesting the information directly from the depositories.

3. Section 15(a) Considerations

In light of the foregoing, the Commission has evaluated the costs and benefits of the Proposal pursuant to the five considerations identified in Section 15(a) of the Act as follows:

(a) Protection of Market Participants and the Public

As previously noted, if the Commission is no longer required to administer the direct, read-only access

to depository accounts, the Commission would eliminate the potential cybersecurity risk associated with the maintenance of access credentials and authentication devices, thus limiting risk for market participants and the public.

The Commission further notes that the CME's and NFA's automated daily segregation confirmation system provides an efficient and effective method for verifying customer accounts balances, which, in conjunction with the Commission's right to request information from the depositories, would ensure an adequate degree of protection for market participants and the public.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

By eliminating the Read-only Access Provisions, the Commission would dispense with a method for verifying account balance information that imposes technological challenges in its implementation and administration, allowing for Commission staff to direct its efforts to more effective alternative means for verifying the information.

In addition, as noted, the elimination of the requirement to provide the Commission with direct, read-only access to accounts maintained by FCMs would reduce costs for depositories, which may motivate them to more readily take FCM Customer Funds on deposit, potentially fostering competition in the futures market and ultimately reducing costs for FCMs.

(c) Price Discovery

The Proposal, by eliminating the requirement for depositories to provide the Commission with read-only access to accounts maintained by FCMs, may reduce operational costs for depositories, which may ultimately lead to cost reductions that benefit both depositories and FCMs. The FCMs may, in turn, pass those benefits to customers via reduced charges.

(d) Sound Risk Management

As previously noted, CME and NFA have developed a sophisticated system—the automated daily segregation confirmation system—which provides DSROs and the Commission with an efficient tool for detection of potential discrepancies between FCMs' reports and the balances on deposit at various depositories. If the Commission proceeds with the proposed amendment to delete the Read-only Access Provisions, the Commission would continue to rely on CME's and NFA's automated system for

³¹⁹ More specifically, the relevant provisions appear in Regulation 1.20, Appendix A to Regulation 1.20, Appendix A to Regulation 1.26, Regulation 30.7 and appendices E and F to Part 30 of CFTC's Regulations. If adopted, the proposed amendments would extend to Regulation 22.5, which requires FCMs and DCOs, before depositing Cleared Swaps Customer Collateral with a depository, to obtain an acknowledgment letter from each depository in accordance with Regulations 1.20 and 1.26. 17 CFR 22.5(a). Regulation 22.5 further requires FCMs and DCOs to adhere to all requirements specified in Regulation 1.20 and 1.26 regarding retaining, permitting access to filing, or amending the written acknowledgment letters. 17 CFR 22.5(a).

oversight purposes. As such, the Commission believes that the proposed amendment would not be detrimental to sound risk management practices.

Furthermore, as noted above, the deletion of the Read-only Access Provisions would eliminate a potential cybersecurity risk associated with the maintenance by the Commission of periodically updated access credentials and physical authentication devices, thus promoting sound risk management.

(e) Other Public Interest Considerations

The Commission believes that the relevant cost-benefit considerations are captured in the four factors above.

Request for Comments on Cost-Benefit Considerations

The Commission invites public comment on its cost-benefit considerations, including the Section 15(a) factors described above. Commenters are also invited to submit any data or other information they may have quantifying or qualifying the costs and benefits of the proposed amendments. In particular, the Commission seeks specific comment on the following:

1. Has the Commission accurately identified all the benefits of this Proposal? Are there other benefits to the Commission, market participants, and/or the public that may result from the adoption of this Proposal that the Commission should consider? Please provide specific examples and explanations of any such benefits.

2. Has the Commission accurately identified all the costs of this Proposal? Are there additional costs to the Commission, market participants and/or the public that may result from the adoption of this Proposal that the Commission should consider? Please provide specific examples and explanations of any such costs.

3. Are the regulatory safeguards that are included in the Proposal adequate to address the potential risks that may arise from the Proposal? Are there other regulatory safeguards that the Commission should consider?

4. Does this Proposal impact the Section 15(a) factors in any way that is not described above? Please provide specific examples and explanations of any such impact.

D. Antitrust Laws

Section 15(b) of the Act requires the Commission to “take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of this Act, in issuing any order or adopting any

Commission rule or regulation (including any exemption under Section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule or regulation of a contract market or registered futures association established pursuant to Section 17 of this Act.”³²⁰

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether the Proposal implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered the Proposal to determine whether it is anticompetitive, and has preliminarily identified no anticompetitive effects. The Commission requests comment on whether the Proposal is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that the Proposal is not anticompetitive and has no anticompetitive effects,³²¹ the Commission has not identified any less competitive means of achieving the purposes of the Act. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the Act that would otherwise be served by adopting the proposed amendments.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 22

Brokers, Clearing, Consumer protection, Reporting and recordkeeping, Swaps.

17 CFR Part 30

Consumer protection.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR chapter I as follows:

³²⁰ 7 U.S.C. 19(b).

³²¹ In this regard, the Commission has considered whether the proposed concentration limits might have an anti-competitive effect. The Commission is preliminarily of the view that, on balance, issuer-based concentration limits enhance competition by preventing any one MMF or ETF from having too great market power, and thereby fostering competition. Although the asset-based concentration limits might theoretically have an anti-competitive impact, the limits are set at a relatively high level and therefore the Commission preliminarily believes that they are unlikely to have a significant market impact. The Commission invites comments on this analysis.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24 (2012).

§ 1.20 [Amended]

■ 2. Amend § 1.20 by:

■ a. Revising in paragraph (d)(2), the cross-reference to “appendix A to this part” to read “Appendix C to this part”;
■ b. Removing and reserving paragraph (d)(3);

■ c. Revising in paragraph (g)(4)(ii), the cross-reference to “appendix B to this part” to read “Appendix D to this part”;
■ d. Redesignating Appendix A to § 1.20 as Appendix C to Part 1; and

■ e. Redesignating Appendix B to § 1.20 as Appendix D to Part 1.

■ 3. Amend § 1.25 by:

■ a. Republishing paragraph (a) heading and the introductory text of paragraph (a)(1);
■ b. Removing paragraphs (a)(1)(v) and (vi);

■ c. Redesignating paragraph (a)(1)(vii) as paragraph (a)(1)(v);
■ d. Revising newly redesignated paragraph (a)(1)(v);

■ e. Adding new paragraphs (a)(1)(vi) and (a)(1)(vii);
■ f. Republishing the introductory text of paragraph (b) and the paragraph (b)(2) heading;

■ g. Revising paragraph (b)(2)(i) introductory text;
■ h. Republishing paragraph (b)(2)(iv)(A);

■ i. Revising paragraphs (b)(2)(iv)(A)(1) and (2);
■ j. Removing paragraph (b)(2)(vi);
■ k. Republishing paragraph (b)(3) heading;

■ l. Revising paragraphs (b)(3)(i)(C) and (E);
■ m. Removing paragraph (b)(3)(i)(F);
■ n. Redesignating paragraph (b)(3)(i)(G) as (b)(3)(i)(F);

■ o. Revising newly redesignated paragraph (b)(3)(i)(F), paragraphs (b)(3)(ii)(B) through (E) and (b)(4)(i), paragraph (c) introductory text, paragraph (c)(1), and paragraph (c)(5)(ii) introductory text;

■ p. Revising in paragraph (c)(7), the cross-reference to “The appendix to this section” to read “Appendix E to this part”;

■ q. Adding paragraph (c)(8);
■ r. Republishing the introductory text of paragraph (d);
■ s. Revising paragraphs (d)(2) and (d)(7);

- t. Adding paragraph (f); and
- u. Redesignating the Appendix to § 1.25 as Appendix E to Part 1.

The republications, revisions, and additions read as follows:

§ 1.25 Investment of customer funds.

(a) *Permitted investments.* (1) Subject to the terms and conditions set forth in this section, a futures commission merchant or a derivatives clearing organization may invest customer money in the following instruments (permitted investments):

(v) Interests in government money market funds as defined in § 270.2a–7 of this title, provided that the government money market funds do not choose to rely on the ability to impose discretionary liquidity fees consistent with the requirements of § 270.2a–7(c)(2)(i) of this title (government money market fund);

(vi) Interests in exchange-traded funds, as defined in § 270.6c–11 of this title, which seek to replicate the performance of a published short-term U.S. Treasury security index composed of bonds, notes, and bills with a remaining maturity of 12 months or less, issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury (U.S. Treasury exchange-traded fund); and

(vii) General obligations of Canada, France, Germany, Japan, and the United Kingdom (permitted foreign sovereign debt), subject to the following:

(A) A futures commission merchant may invest in the permitted foreign sovereign debt of a country to the extent it has balances in segregated accounts owed to its customers denominated in that country's currency; and

(B) A derivatives clearing organization may invest in the permitted foreign sovereign debt of a country to the extent it has balances in segregated accounts owed to its clearing members that are futures commission merchants denominated in that country's currency.

(b) *General terms and conditions.* A futures commission merchant or a derivatives clearing organization is required to manage the permitted investments consistent with the objectives of preserving principal and maintaining liquidity and according to the following specific requirements:

(2) *Restrictions on instrument features.* (i) With the exception of government money market funds and U.S. Treasury exchange-traded funds, no permitted investment may contain an

embedded derivative of any kind, except as follows:

(iv)(A) Adjustable rate securities are permitted, subject to the following requirements:

(1) The interest payments on variable rate securities must correlate closely and on an unleveraged basis to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the Secured Overnight Financing Rate, or the interest rate of any fixed rate instrument that is a permitted investment listed in paragraph (a)(1) of this section;

(2) The interest payment, in any period, on floating rate securities must be determined solely by reference, on an unleveraged basis, to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the Secured Overnight Financing Rate, or the interest rate of any fixed rate instrument that is a permitted investment listed in paragraph (a)(1) of this section;

(3) *Concentration—*
(i) * * *

(C) Investments in certificates of deposit may not exceed 25 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(E) Investments in government money market funds or U.S. Treasury exchange-traded funds with \$1 billion or more in assets and whose management company manages \$25 billion or more in assets may not exceed 50 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(F) Investments in government money market funds or U.S. Treasury exchange-traded funds with less than \$1 billion in assets or which have a management company managing less than \$25 billion in assets, may not exceed 10 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(ii) * * *
(B) Securities of any single issuer of municipal securities or certificates of deposit held by a futures commission merchant or derivatives clearing organization may not exceed 5 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(C) Interests in any single family of government money market funds or U.S.

Treasury exchange-traded funds may not exceed 25 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(D) Interests in any individual government money market fund or U.S. Treasury exchange-traded fund may not exceed 5 percent of the total assets held in segregation by the futures commission merchant or derivatives clearing organization.

(E) For purposes of determining compliance with the issuer-based concentration limits set forth in this section, securities issued by entities that are affiliated, as defined in paragraph (b)(5) of this section, shall be aggregated and deemed the securities of a single issuer. An interest in a permitted government money market fund or U.S. Treasury exchange-traded fund is not deemed to be a security issued by its sponsoring entity.

(4) *Time-to-maturity.* (i) Except for investments in government money market funds, U.S. Treasury exchange-traded funds, and permitted foreign sovereign debt subject to the requirements of paragraph (f) of this section, the dollar-weighted average of the time-to-maturity of the portfolio, as that average is computed pursuant to § 270.2a–7 of this title, may not exceed 24 months.

(c) *Government money market funds and U.S. Treasury exchange-traded funds.* The following provisions will apply to the investment of customer funds in government money market funds or U.S. Treasury exchange-traded funds (the fund).

(1) The fund must be an investment company that is registered under the Investment Company Act of 1940 with the Securities and Exchange Commission and that holds itself out to investors as a government money market fund, in accordance with § 270.2a–7 of this title, or an exchange-traded fund, in accordance with § 270.6c–11 of this title.

(5) * * *

(ii) *Exception.* A government money market fund may provide for the postponement of redemption and payment due to any of the following circumstances:

(8) Interests in U.S. Treasury exchange-traded funds will qualify as permitted investments under paragraph (a) of this section if:

(i) The interests are redeemable in cash by a futures commission merchant

or a derivatives clearing organization in its capacity of an authorized participant pursuant to an authorized participant agreement, as defined in § 270.6c-11 of this title, at a price based on the net asset value in accordance with the Investment Company Act of 1940 and regulations thereunder, and on a delivery versus payment basis;

(ii) The U.S. Treasury exchange-traded fund invests at least 95 percent of its assets in securities comprising the short-term U.S. Treasury index whose performance the fund seeks to replicate; and

(iii) The interests are acceptable as performance bond by a derivatives clearing organization.

(d) *Repurchase and reverse repurchase agreements.* A futures commission merchant or derivatives clearing organization may buy and sell the permitted investments listed in paragraphs (a)(1)(i) through (vii) of this section pursuant to agreements for resale or repurchase of the securities (agreements for repurchase or resell), provided the agreements to repurchase or resell conform to the following requirements:

* * * * *

(2) Permitted counterparties are limited to a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation, a securities broker or dealer, a government securities dealer registered with the Securities and Exchange Commission or which has filed notice pursuant to section 15C(a) of the Government Securities Act of 1986. In addition, with respect to agreements to repurchase or resell permitted foreign sovereign debt, the following entities are also permitted counterparties: a foreign bank that qualifies as a depository under § 1.49(d)(3) and that is located in a

money center country as the term is defined in § 1.49(a)(1) or in another jurisdiction that has adopted the currency in which the permitted foreign sovereign debt is denominated as its currency; a securities broker or dealer located in a money center country as the term is defined in § 1.49(a)(1) and that is regulated by a national financial regulator; and the Bank of Canada, the Bank of England, the Banque de France, the Central Bank of Japan, the Deutsche Bundesbank, or the European Central Bank.

* * * * *

(7) Securities transferred to the futures commission merchant or derivatives clearing organization under the agreement are held in a safekeeping account with a bank as referred to in paragraph (d)(2) of this section, a Federal Reserve Bank, a derivatives clearing organization, or the Depository Trust Company in an account that complies with the requirements of § 1.26. Securities transferred to the futures commission merchant or derivatives clearing organization under an agreement related to permitted foreign sovereign debt may also be held in a safekeeping account that complies with the requirements of § 1.26 at a foreign bank that meets the location and qualification requirements in § 1.49(c) and (d).

* * * * *

(f) *Permitted foreign sovereign debt.* The following provisions will apply to investments of customer funds in permitted foreign sovereign debt.

(1) The dollar-weighted average of the remaining time-to-maturity of the portfolio of investments in permitted foreign sovereign debt, as that average is computed pursuant to § 270.2a-7 of this title on a country-by-country basis, may not exceed 60 calendar days. Permitted foreign sovereign debt instruments

acquired under an agreement to resell shall be deemed to have a maturity equal to the period remaining until the date on which the resale of the underlying instruments is scheduled to occur, or, where the agreement is subject to demand, the notice period applicable to a demand for the resale of the securities. Permitted foreign sovereign debt instruments sold under an agreement to repurchase shall be included in the calculation of the dollar-weighted average based on the remaining time-to-maturity of each instrument sold.

(2) A futures commission merchant or a derivatives clearing organization may not invest customer funds in any permitted foreign sovereign debt that has a remaining maturity greater than 180 calendar days.

(3) If the two-year credit default spread of an issuing sovereign of permitted foreign sovereign debt is greater than 45 basis points:

(i) The futures commission merchant or derivatives clearing organization shall not make any new investments in that sovereign's debt using customer funds.

(ii) The futures commission merchant or derivatives clearing organization must discontinue investing customer funds in that sovereign's debt through agreements to resell as soon as practicable under the circumstances.

§ 1.26 [Amended]

■ 4. Amend § 1.26 by:

■ a. Redesignating Appendix A to § 1.26 as Appendix F to Part 1 and Appendix B to § 1.26 as Appendix G to Part 1; and

■ b. In the table below, for each paragraph indicated in the left column, removing the words indicated in the middle column from wherever they appear in the paragraph, and adding the words indicated in the right column:

Paragraph	Remove	Add
(a)	"money market mutual funds"	"government money market funds and U.S. Treasury exchange-traded funds."
(b)	"the money market mutual fund"	"the government money market fund or U.S. Treasury exchange-traded fund."
(b)	"appendix A or B to this section"	"Appendix F, G, H or I to this part."
(b)	"appendix A or B to § 1.20"	"appendix C or D to this part."

■ 5. Revise newly redesignated Appendix C to part 1 to read as follows:

Appendix C to Part 1—Futures Commission Merchant Acknowledgment Letter for CFTC Regulation 1.20 Customer Segregated Account

[Date]

[Name and Address of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant]

We refer to the Segregated Account(s) which [Name of Futures Commission Merchant] ("we" or "our") have opened or will open with [Name of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant] ("you" or "your") entitled:

[Name of Futures Commission Merchant]
[if applicable, add "FCM Customer Omnibus

Account"] CFTC Regulation § 1.20 Customer Segregated Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, "Abbreviated as [short title reflected in the depository's electronic system]"]

Account Number(s): []
(collectively, the "Account(s)").

You acknowledge that we have opened or will open the above-referenced Account(s) for the purpose of depositing, as applicable, money, securities and other property

(collectively the “Funds”) of customers who trade commodities, options, swaps, and other products, as required by Commodity Futures Trading Commission (“CFTC”) Regulations, including Regulation § 1.20, as amended; that the Funds held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the “Act”), and part 1 of the CFTC’s regulations, as amended; and that the Funds must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you. This prohibition does not affect your right to recover funds advanced in the form of cash transfers, lines of credit, repurchase agreements or other similar liquidity arrangements you make in lieu of liquidating non-cash assets held in the Account(s) or in lieu of converting cash held in the Account(s) to cash in a different currency.

In addition, you agree that the Account(s) may be examined at any reasonable time by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors’ designees, or an appropriate officer, agent or employee of our designated self-regulatory organization (“DSRO”), [Name of DSRO], and this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice to or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors’ designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information request will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission

and delivery of the requested information to the appropriate recipient(s). We will not hold you responsible for acting pursuant to any information request from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors’ designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event that we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Funds maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC’s regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

DATE:

■ 6. Revise the heading of newly redesignated Appendix E to part 1 to read as follows:

Appendix E to Part 1—Government Money Market Fund Prospectus Provisions Acceptable for Compliance With § 1.25(c)(5)

* * * * *

■ 7. Revise newly redesignated Appendix F to part 1 to read as follows:

Appendix F to Part 1—Futures Commission Merchant Acknowledgment Letter for CFTC Regulation § 1.26 Customer Segregated Government Money Market Fund Account

[Date]

[Name and Address of Government Money Market Fund]

We propose to invest funds held by [Name of Futures Commission Merchant] (“we” or

“our”) on behalf of our customers in shares of [Name of Government Money Market Fund] (“you” or “your”) under account(s) entitled (or shares issued to):

[Name of Futures Commission Merchant] [if applicable, add “FCM Customer Omnibus Account”] CFTC Regulation § 1.26 Customer Segregated Government Money Market Fund Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, “, Abbreviated as [short title reflected in the depository’s electronic system]”]

Account Number(s): []
(collectively, the “Account(s)”).

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the “Shares”), for the benefit of customers who trade commodities, options, swaps and other products (“Commodity Customers”), as required by Commodity Futures Trading Commission (“CFTC”) Regulation § 1.26, as amended; that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the “Act”), and part 1 of the CFTC’s regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

In addition, you agree that the Account(s) may be examined at any reasonable time by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors’ designees, or an appropriate officer, agent or employee of our designated self-regulatory organization (“DSRO”), [Name of DSRO], and this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice to or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other account information regarding or related to the Account(s) from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors’ designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information request will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors’ designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of

any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers’ funds in government money market funds pursuant to CFTC Regulation § 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a government money market fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation § 1.25(c)(5)(ii); and,

(3) The agreement under which we invest customers’ funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns, and for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC’s regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO, in accordance with CFTC Regulation § 1.20. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]
By:
Print Name:
Title:
ACKNOWLEDGED AND AGREED:
[Name of Government Money Market Fund]
By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

Date:

■ 8. Revise newly redesignated

Appendix G to part 1 to read as follows:

Appendix G to Part 1—Derivatives Clearing Organization Acknowledgment Letter for CFTC Regulation § 1.26 Customer Segregated Government Money Market Fund Account

[Date]

[Name and Address of Government Money Market Fund]

We propose to invest funds held by [Name of Derivatives Clearing Organization] (“we” or “our”) on behalf of customers in shares of [Name of Government Money Market Fund] (“you” or “your”) under account(s) entitled (or shares issued to):

[Name of Derivatives Clearing Organization] Futures Customer Omnibus Account, CFTC Regulation § 1.26 Customer Segregated Government Money Market Fund Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, “, Abbreviated as [short title reflected in the depository’s electronic system]”] Account Number(s): [] (collectively, the “Account(s)”).

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the “Shares”), for the benefit of customers who trade commodities, options, swaps and other products, as required by Commodity Futures Trading Commission (“CFTC”) Regulation § 1.26, as amended; that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the “Act”), and part 1 of the CFTC’s regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors’ designees, and this letter constitutes the

authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors’ designees, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event that we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of

any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers’ funds in government money market funds pursuant to CFTC Regulation § 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a government money market fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation § 1.25(c)(5)(ii); and,

(3) The agreement under which we invest customers’ funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC’s regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) in accordance with CFTC Regulation § 1.20. We hereby authorize and direct you to provide such copy without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Derivatives Clearing Organization]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Government Money Market Fund]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

DATE:

■ 9. Add Appendix H to part 1 to read as follows:

Appendix H to Part 1—Futures Commission Merchant Acknowledgment Letter for CFTC Regulation § 1.26 Customer Segregated U.S. Treasury Exchange-Traded Fund Account

[Date]

[Name and Address of U.S. Treasury Exchange-Traded Fund]

We propose to invest funds held by [Name of Futures Commission Merchant] (“we” or “our”) on behalf of our customers in shares of [Name of U.S. Treasury Exchange-Traded Fund] (“you” or “your”) under account(s) entitled (or shares issued to):

[Name of Futures Commission Merchant] [if applicable, add “FCM Customer Omnibus Account”] CFTC Regulation § 1.26 Customer Segregated U.S. Treasury Exchange-Traded Fund Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, “, Abbreviated as [short title reflected in the depository’s electronic system]”]

Account Number(s): []
(collectively, the “Account(s)”).

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the “Shares”), for the benefit of customers who trade commodities, options, swaps and other products (“Commodity Customers”), as required by Commodity Futures Trading Commission (“CFTC”) Regulation § 1.26, as amended; that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the “Act”), and part 1 of the CFTC’s regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

In addition, you agree that the Account(s) may be examined at any reasonable time by the Director of the Market Participants Division of the CFTC or the Director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such Directors’ designees, or an appropriate officer, agent or employee of our designated self-regulatory organization (“DSRO”), [Name of DSRO], and

this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice to or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other account information regarding or related to the Account(s) from the Director of the Market Participants Division of the CFTC or the Director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such Directors’ designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information request will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the Director of the Market Participants Division of the CFTC or the Director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such Directors’ designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the

balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers’ funds in U.S. Treasury exchange-traded funds pursuant to CFTC Regulation § 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a U.S. Treasury exchange-traded fund:

(1) To qualify as a permitted investment, interests in U.S. Treasury exchange-traded must be redeemable in cash by a futures commission merchant or derivatives clearing organization in its capacity as an authorized participant pursuant to an authorized participant agreement, as defined in § 270.6c–11 of Title 17 of the Code of Federal Regulations, at a price based on the net asset value in accordance with the Investment Company Act of 1940 and regulations thereunder, and on a delivery versus payment basis;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request; and,

(3) The agreement under which we invest customers’ funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns, and for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC’s regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws

of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO, in accordance with CFTC Regulation § 1.20. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of U.S. Treasury Exchange-Traded Fund]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

Date:

■ 10. Add Appendix I to part 1 to read as follows:

Appendix I to Part 1—Derivatives

Clearing Organization

Acknowledgment Letter for CFTC

Regulation § 1.26 Customer Segregated U.S. Treasury Exchange-Traded Fund Account

[Date]

[Name and Address of U.S. Treasury Exchange-Traded Fund]

We propose to invest funds held by [Name of Derivatives Clearing Organization] (“we” or “our”) on behalf of customers in shares of [Name of U.S. Treasury Exchange-Traded Fund] (“you” or “your”) under account(s) entitled (or shares issued to):

[Name of Derivatives Clearing Organization] Futures Customer Omnibus Account, CFTC Regulation § 1.26 Customer Segregated U.S. Treasury Exchange-Traded Fund Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, “, Abbreviated as [short title reflected in the depository’s electronic system]”]

Account Number(s): []

(collectively, the “Account(s)”).

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the “Shares”), for the benefit of customers who trade commodities, options, swaps and other products, as required by Commodity Futures Trading Commission (“CFTC”) Regulation § 1.26, as amended; that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act,

as amended (the “Act”), and part 1 of the CFTC’s regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the Director of the Division of Clearing and Risk of the CFTC or the Director of the Market Participants Division of the CFTC, or any successor divisions, or such Directors’ designees, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the Director of the Division of Clearing and Risk of the CFTC or the Director of the Market Participants Division of the CFTC, or any successor divisions, or such Directors’ designees, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event that we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims

relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers’ funds in U.S. Treasury exchange-traded funds pursuant to CFTC Regulation § 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a U.S. Treasury exchange-traded fund:

(1) To qualify as a permitted investment, interests in U.S. Treasury exchange-traded must be redeemable in cash by a futures commission merchant or derivatives clearing organization in its capacity as an authorized participant pursuant to an authorized participant agreement, as defined in § 270.6c–11 of Title 17 of the Code of Federal Regulations, at a price based on the net asset value in accordance with the Investment Company Act of 1940 and regulations thereunder, and on a delivery versus payment basis;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request; and,

(3) The agreement under which we invest customers’ funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the

event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) in accordance with CFTC Regulation § 1.20. We hereby authorize and direct you to provide such copy without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Derivatives Clearing Organization]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of U.S. Treasury Exchange-Traded Fund]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

DATE:

- 11. In § 1.32, revise paragraphs (f)(3)(v), (vi), and (vii) to read as follows:

§ 1.32 Reporting of segregated account computation and details regarding the holding of futures customer funds.

* * * * *

(f) * * *

(3) * * *

(v) Permitted foreign sovereign debt by country:

(A) Canada;

(B) France;

(C) Germany;

(D) Japan;

(E) United Kingdom;

(vi) Interests in U.S. Treasury exchange-traded funds; and

(vii) Interests in government money market funds.

* * * * *

PART 22—CLEARED SWAPS

- 12. The authority citation for part 22 continues to read as follows:

Authority: 7 U.S.C. 1a, 6d, 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376.

- 13. In § 22.2, revise paragraphs (g)(5)(iii)(E), (F), and (G) to read as follows:

§ 22.2 Futures Commission Merchants: Treatment of Cleared Swaps and Associated Cleared Swaps Customer Collateral.

* * * * *

(g) * * *

(5) * * *

(iii) * * *

(E) Permitted foreign sovereign debt by country:

(1) Canada;

(2) France;

(3) Germany;

(4) Japan;

(5) United Kingdom;

(F) Interests in U.S. Treasury exchange-traded funds; and

(G) Interests in government money market funds.

* * * * *

- 14. In § 22.3, revise paragraph (d) to read as follows:

§ 22.3 Derivatives clearing organizations: Treatment of cleared swaps customer collateral.

* * * * *

(d) *Exceptions; Permitted investments.*

Notwithstanding the foregoing and § 22.15, a derivatives clearing organization may invest the money, securities, or other property constituting Cleared Swaps Customer Collateral in accordance with § 1.25 of this chapter. A derivative clearing organization shall bear sole responsibility for any losses resulting from the investment of Cleared Swaps Customer Collateral in instruments described in § 1.25 of this chapter. No investment losses shall be borne or otherwise allocated to a futures commission merchant.

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

- 15. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6c, and 12a, unless otherwise noted.

- 16. In § 30.7, revise paragraphs (d)(2) and (3) and (l)(5)(iii)(E) through (G) to read as follows:

§ 30.7 Treatment of foreign futures or foreign options secured amount.

* * * * *

(d) * * *

(2) The written acknowledgment must be in the form as set out in Appendix E to this part; *Provided, however*, that if the futures commission merchant invests funds set aside as the foreign futures or foreign options secured amount in government money market funds or U.S. Treasury exchange-traded funds as a permitted investment under paragraph (h) of this section and in accordance with the terms and

conditions of § 1.25(c) of this chapter, the written acknowledgment with respect to such investment must be in the form as set out in Appendix F to this part or in Appendix G to this part, respectively.

(3)(i) A futures commission merchant shall deposit 30.7 customer funds only with a depository that agrees to provide the director of the Division of Swap Dealer and Intermediary Oversight, or any successor division, or such director's designees, with account balance information for 30.7 customer accounts.

(ii) The written acknowledgment must contain the futures commission merchant's authorization to the depository to provide account balance information to the director of the Division of Swap Dealer and Intermediary Oversight, or any successor division, or such director's designees, without further notice to or consent from the futures commission merchant.

* * * * *

(l) * * *

(5) * * *

(iii) * * *

(E) Permitted foreign sovereign debt by country:

(1) Canada;

(2) France;

(3) Germany;

(4) Japan;

(5) United Kingdom;

(F) Interests in U.S. Treasury exchange-traded funds; and

(G) Interests in government money market funds.

* * * * *

- 17. Revise Appendix E to part 30 to read as follows:

**Appendix E to Part 30—
Acknowledgment Letter for CFTC
Regulation § 30.7 Customer Secured
Account**

[Date]

[Name and Address of Depository]

We refer to the Secured Amount Account(s) which [Name of Futures Commission Merchant] (“we” or “our”) have opened or will open with [Name of Depository] (“you” or “your”) entitled:

[Name of Futures Commission Merchant] [if applicable, add “FCM Customer Omnibus Account”] CFTC Regulation § 30.7 Customer Secured Account under Section 4(b) of the Commodity Exchange Act [and, if applicable, “, Abbreviated as [short title reflected in the depository's electronic system]”]

Account Number(s): []

(collectively, the “Account(s)”).

You acknowledge that we have opened or will open the above-referenced Account(s) for the purpose of depositing, as applicable, money, securities and other property (collectively “Funds”) of customers who

trade foreign futures and/or foreign options (as such terms are defined in U.S. Commodity Futures Trading Commission (“CFTC”) Regulation § 30.1, as amended); that the Funds held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be kept separate and apart and separately accounted for on your books from our own funds and from any other funds or accounts held by us, in accordance with the provisions of the Commodity Exchange Act, as amended (the “Act”), and part 30 of the CFTC’s regulations, as amended; that the Funds may not be commingled with our own funds in any proprietary account we maintain with you; and that the Funds must otherwise be treated in accordance with the provisions of Section 4(b) of the Act and CFTC Regulation § 30.7.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you. This prohibition does not affect your right to recover funds advanced in the form of cash transfers, lines of credit, repurchase agreements or other similar liquidity arrangements you make in lieu of liquidating non-cash assets held in the Account(s) or in lieu of converting cash held in the Account(s) to cash in a different currency.

In addition, you agree that the Account(s) may be examined at any reasonable time by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors’ designees, or an appropriate officer, agent or employee of our designated self-regulatory organization (“DSRO”), [Name of DSRO], and this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors’ designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information request will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual

making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors’ designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not § 30.7 customer funds maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or part 30 of the CFTC regulations that relates to the holding of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or

corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4(b) of the Act and the CFTC’s regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Depository]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

DATE:

■ 18. Revise Appendix F to part 30 to read as follows:

**Appendix F to Part 30—
Acknowledgment Letter for CFTC
Regulation § 30.7 Customer Secured
Government Money Market Fund
Account**

[Date]

[Name and Address of Government Money Market Fund]

We propose to invest funds held by [Name of Futures Commission Merchant] (“we” or “our”) on behalf of our customers in shares of [Name of Government Money Market Fund] (“you” or “your”) under account(s) entitled (or shares issued to):

[Name of Futures Commission Merchant] [if applicable, add “FCM Customer Omnibus Account”] CFTC Regulation § 30.7 Customer Secured Government Money Market Fund Account under Section 4(b) of the Commodity Exchange Act [and, if applicable,

“, Abbreviated as [short title reflected in the depository’s electronic system]”]

Account Number(s): []
(collectively, the “Account(s)”).

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the “Shares”), for the benefit of customers who trade foreign futures and/or foreign options (as such terms are defined in U.S. Commodity Futures Trading Commission (“CFTC”) Regulation § 30.1, as amended); that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be kept separate and apart and separately accounted for on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the “Act”), and part 30 of the CFTC’s regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4(b) of the Act and CFTC Regulations §§ 1.25 and 30.7.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

In addition, you agree that the Account(s) may be examined at any reasonable time by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors’ designees, or an appropriate officer, agent or employee of our designated self-regulatory organization (“DSRO”), [Name of DSRO], and this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice to or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the Account(s) from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors’ designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information, without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information request will be made in accordance with, and subject to, such reasonable and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission

and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors’ designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected.

Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or part 30 of the CFTC regulations that relates to the holding of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers’ funds in government money market funds pursuant to CFTC Regulation § 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a government money market fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation § 1.25(c)(5)(ii); and,

(3) The agreement under which we invest customers’ funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4(b) of the Act and the CFTC’s regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]
By:
Print Name:
Title:
ACKNOWLEDGED AND AGREED:
[Name of Government Money Market Fund]
By:
Print Name:
Title:
Contact Information: [Insert phone number and email address]
DATE:

■ 19. Add Appendix G to part 30 to read as follows:

**Appendix G to Part 30—
Acknowledgment Letter for CFTC
Regulation § 30.7 Customer Secured
U.S. Treasury Exchange-Traded Fund
Account**

[Date]

[Name and Address of U.S. Treasury
Exchange-Traded Fund]

We propose to invest funds held by [Name of Futures Commission Merchant] (“we” or “our”) on behalf of our customers in shares of [Name of U.S. Treasury Exchange-Traded Fund] (“you” or “your”) under account(s) entitled (or shares issued to):

[Name of Futures Commission Merchant] [if applicable, add “FCM Customer Omnibus Account”] CFTC Regulation § 30.7 Customer Secured U.S. Treasury Exchange-Traded Fund Account under Section 4(b) of the Commodity Exchange Act [and, if applicable, “Abbreviated as [short title reflected in the depository’s electronic system]”]

Account Number(s): []

(collectively, the “Account(s)”).

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the “Shares”), for the benefit of customers who trade foreign futures and/or foreign options (as such terms are defined in U.S. Commodity Futures Trading Commission (“CFTC”) Regulation § 30.1, as amended); that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the “Act”), and part 30 of the CFTC’s regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4(b) of the Act and CFTC Regulations §§ 1.25 and 30.7.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

In addition, you agree that the Account(s) may be examined at any reasonable time by the Director of the Market Participants Division of the CFTC or the Director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such Directors’ designees, or an appropriate officer, agent or employee of our designated self-regulatory organization (“DSRO”), [Name of DSRO], and this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice to or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other account information regarding or related to the Account(s) from the Director of the Market Participants Division of the CFTC or the

Director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such Directors’ designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information request from the Director of the Market Participants Division of the CFTC or the Director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such Directors’ designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Shares maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to

herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest customers’ funds in U.S. Treasury exchange-traded funds pursuant to CFTC Regulation § 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a U.S. Treasury exchange-traded fund:

(1) To qualify as a permitted investment, interests in U.S. Treasury exchange-traded must be redeemable in cash by a futures commission merchant or derivatives clearing organization in its capacity as an authorized participant pursuant to an authorized participant agreement, as defined in § 270.6c–11 of Title 17 of the Code of Federal Regulations, at a price based on the net asset value in accordance with the Investment Company Act of 1940 and regulations thereunder, and on a delivery versus payment basis;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request; and,

(3) The agreement under which we invest customers’ funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns, and for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4(b) of the Act and the CFTC’s regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format

and manner determined by the CFTC) and to [Name of DSR], acting in its capacity as our DSR. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of U.S. Treasury Exchange-Traded Fund]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

Date:

Issued in Washington, DC, on November 3, 2023, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Support of Chairman Rostin Behnam

A fundamental tenet of the Commission's customer protection framework is the safeguarding and investment of customer funds deposited by customers with futures commission merchants ("FCMs") and derivatives clearing organizations ("DCOs") to margin futures, foreign futures, and cleared swaps transactions. This proposal to revise the Commission's regulations for the safeguarding and investment of customer funds by FCMs and DCOs in Commission regulations §§ 1.20, 1.25, 1.26, 1.32, 22.2, 22.3, and 30.7 along with the relevant appendices does not change this foundational principle. This proposal embodies a prudent, periodic reassessment of these requirements to ensure that this framework remains appropriately calibrated to preserve principal and maintain liquidity. Therefore, I support the Commission issuing this proposal for public comment.

Modernizing the List of Permitted Investments of Customer Funds

Regulation § 1.25 currently permits FCMs and DCOs to invest customer funds in, among other things, U.S. government securities, municipal securities, and U.S. agency obligations. The Commission's proposal would expand the list of permitted investments to add the foreign sovereign debt

of Canada, France, Germany, Japan, and the United Kingdom, and add interests in certain short-term U.S. Treasury exchange-traded funds. These investments would be subject to various restrictions based on credit default spreads, time-to-maturity, concentration limits, and liquidity conditions that limit FCMs and DCOs to investing customer funds in safe investments. The Commission's proposal to add these instruments follows a detailed staff analysis of these instruments' liquidity, volatility, and credit characteristics. To the extent the proposal refines regulations in response to a decade of market developments including, but not limited to, the LIBOR transition to SOFR, changes to the broader U.S regulatory framework, and lessons learned from the implementation of the electronic access requirement, the amendments exemplify good government.

FCM and DCO Permitted Investments Parity

FCMs and DCOs operate in tandem as the backbone of our cleared markets. Given that the number of FCMs that offer customer clearing has significantly decreased in the past decade, alignment of the types of investments permitted for FCMs and DCOs is an essential component to maintaining market continuity and resiliency for customer clearing. The proposal would permit FCMs and DCOs to invest customer funds in the same narrowly-tailored set of foreign sovereign debt to the extent that FCMs and DCOs hold balances owed to customers in the currency of the issuing sovereign and subject to certain eligibility, credit, and time-to-maturity conditions. This addition to the list of permitted investments would not only minimize FCMs' exposure to foreign currency risk fluctuations, but also incorporate the exact same conditions currently in place for CFTC registered DCOs to *uneventfully* invest customer funds in French and German sovereign debt—conditions that have been in place for the past five years. Simply put, a level playing field across agency registrants.

Stay Strong

The proposal would not undermine or weaken any of the safeguards that the Commission has had in place since 2011. In fact, the Commission recognized in the 2011 final rule release "that the safety of sovereign debt issuances of one country may vary greatly from those of another, and that investment in certain sovereign debt may be consistent with the objectives of preserving principal and maintaining liquidity, as required by Regulation 1.25."¹ The Commission not only anticipated, but "invite[d] FCMs and DCOs that seek to invest customer funds in foreign sovereign debt to petition the Commission pursuant to Section 4(c)."² This proposal incorporates the section 4(c) order and its conditions that the Commission provided to DCOs in 2018.

¹ Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions Final Rule, 76 FR 78776, 78782 (Dec. 19, 2011).

² *Id.*

Welcome Public Comment

I look forward to hearing the public's comments for further guidance on how to strengthen Regulation § 1.25 and the related regulations, while also making the derivatives markets more resilient and less concentrated.

I want to thank Abigail Knauff, and staff in the Market Participants Division, Division of Clearing and Risk, Office of the General Counsel, and the Office of the Chief Economist for all of their work on the proposal.

Appendix 3—Statement of Commissioner Kristin N. Johnson

Preserving Trust and Preventing the Erosion of Customer Protection Regulation

Introduction

The Commodity Exchange Act (CEA) tasks the Commodity Futures Trading Commission (CFTC or Commission) with developing, adopting, and implementing rules that effectively protect customer funds or property held by market participants that serve as custodians. Preserving the value of customer funds and property held by a third-party is a central, critical, and foundational role of the CFTC.

Retail participation in our markets is growing. The regulation advanced today is only part of our broader framework to preserve customer assets.

As we examine the matter before us today, I strongly advocate for the Commission to carefully consider (among other issues outlined below) and implement:

- appropriate parallel rules to protect retail customer assets, funds, and property across our markets;
- a regulatory metric that acknowledges the challenges of relying on credit default swap (CDS) spreads calculated by an increasingly concentrated market to inform our understanding of the likelihood of foreign sovereign debt default risk; and
- forthcoming rules governing the clearing of U.S. treasuries.

Preserving Customer Assets Is Our Mission

Successful preservation of customer assets directly impacts transaction costs and, in periods marked by significant losses of customer funds, may impact market integrity.

For decades, the CFTC and other market and prudential regulators have introduced and enforced important rules governing the preservation of customer funds and property. Notwithstanding prudential and market regulators' best efforts, markets and customers have experienced remarkable losses. We have witnessed customer losses in heavily regulated markets as well as markets where there are regulatory gaps and regulators may have limited visibility.

FTX and Billions in Missing Customer Funds

Last year, we witnessed a series of bankruptcies in the \$1 trillion cryptocurrency markets. Several of the failed firms were among the largest global retail customer trading platforms in the digital asset marketplace.

A year ago today, media accounts began reporting that FTX Trading or FTX.com

(FTX) could not account for more than \$10 billion in customer funds.¹ Yesterday, in a federal courtroom in the Southern District of New York, jurors found Sam Bankman-Fried, former chief executive officer (CEO) of FTX, guilty of misappropriating and embezzling billions of dollars in customer funds deposited with and held in the custody by FTX in connection with crypto-trading transactions at FTX.

An ounce of prevention is worth a pound of cure. When customers entrust their resources and assets to registered participants in our markets, regulation offers the first-best method of preserving customers funds or property. Consequently, creating and enforcing effective, well-tailored rules governing the custody, investment, and preservation of customer funds must be among the Commission's highest priorities. Without these rules and rigorous enforcement, our markets would lack the foundation of trust upon which every transaction is built.

Commission Regulation § 1.25

A recent report indicates that futures commission merchants (FCMs) may hold approximately \$500 billion of customer funds in segregated accounts—a number that is the equivalent of the gross domestic product of certain medium-sized countries.

Today, the Commission seeks to refine a foundational rule governing the investment of funds by FCMs and derivatives clearing organizations (DCOs) in our markets. FCMs and DCOs, alongside several other registered futures and swaps market participants, are entrusted with customer funds.

I commend the Market Participants Division (Division) for its willingness to incorporate comments from my office in the Proposed Rule.² I applaud the effort of the proposed amendments to Regulation § 1.25 and related matters (Proposed Rule) advanced today, which seeks to introduce greater protections for customer funds, yet, regrettably I find that the Commission has missed an important opportunity.

Over the term of my service as a Commissioner, I have continuously advocated for enhanced protection of customer funds. While I support the adoption of the Proposed Rule, I find that the Commission has missed an opportunity to effectively address gaps in a parallel market that has had exponential growth in recent

years due, in part, to the introduction of cryptocurrency or digital assets.

Understanding and Applying Our Regulatory Authority

Before reaching the impact of the Proposed Rule, it is important to consider the scope of the Commission's authority to act to refine existing rules governing the investment of customer funds as well as a broader intervention that addresses evolving market structures.

The Commission is proposing to amend Regulation § 1.25 pursuant to its public interest exemptive authority under section 4(c) of the CEA. The Commission may exercise this power to provide certain exemptions from the requirements of the CEA and regulations promulgated thereunder, if the Commission determines that such an exemption would be consistent with the public interest.³

The Commission may grant a public interest exemption by engaging in the rulemaking process for the Proposed Rule. In a formal rulemaking process, we benefit from careful review and development of the proposed rule text and the heightened discourse and public exchanges that are characteristic of the notice and comment period. As a financial market regulator, the Commission must continuously engage in careful and deliberative analyses to ensure the adoption and implementation of robust regulatory processes. Our efforts to achieve these goals ensure the continued stability and integrity of our derivatives markets.

However, as noted in the legislative history of section 4(c) of the CEA, the Commission must be vigilant to ensure that the exercise of its exemptive power does not “prompt a wide-scale deregulation of markets falling within the ambit of the [CEA].”⁴

Origins of the Commission's 4(c) Authority

Section 4(c) of the CEA was adopted in the context of the evolution of the derivatives market from traditional agricultural derivatives to financial derivatives. In the 1980s, market participants developed a new OTC derivatives or swaps market featuring instruments that shared characteristics with existing futures contracts and had similar economic purposes. While some questioned the CFTC's jurisdiction over the novel swap agreements, the Commission's jurisdiction over futures contracts was clearly established. Congress has long concluded that the CFTC has jurisdiction over contracts that are “in the character of” futures contracts.⁵

In 1992, in response to regulatory uncertainty, Congress adopted section 4(c) of the CEA—codified in the Futures Trading Practices Act (1992 Act). Rather than resolving the appropriate classification for OTC swap agreements, Congress deferred to the Commission to exempt exchange-traded and OTC derivatives instruments from the CEA where such exemptions are consistent with the public interest. Congress granted the

CFTC this exemptive authority to ensure “certainty and stability” for “existing and emerging markets” and to enable “financial innovation and market development” and competition.⁶

Roughly a year later, consistent with the authority granted by Congress in the 1992 Act, the CFTC adopted an exemptive regulation (1993 Exemptive Regulation).⁷ Relying on section 4(c)(3)(K) of the CEA, the Commission limited the market participants permitted to trade in these products to “eligible swap participants,” a group that includes sophisticated individuals with assets over \$10 million.⁸ To further enhance customer protection, the CFTC mandated that an eligible swap participant could only trade unregulated swaps on its own behalf or on behalf of another eligible swap participant.⁹

Seven years later as the swaps market grew exponentially, Congress enacted the Commodity Futures Modernization Act and addressed the product classification issue head-on. By law, Congress exempted financial OTC derivatives from the scope of the CEA, subject to certain conditions that generally excluded small businesses and individual investors from participating in the unregulated swaps market.

The deregulation of the swaps market directly and markedly contributed to the global financial crisis, which caused significant stress and contagion in global financial markets. Certain of the proposed amendments will weaken many of the regulations adopted pursuant to the Dodd-Frank Act, and it is imperative that we not make the same mistake as the Commission amends its customer protection regime.

Explanation of the Customer Protection Framework

Pursuant to its authority under section 4(c) of the CEA, the Commission proposes to expand the range of instruments in which FCMs and DCOs may invest customer funds beyond those specifically enumerated in the CEA under section 4d. The stated benefit is to enhance the yield available to FCMs, DCOs and their customers, without compromising the safety of customer funds.

The Commission has established a comprehensive customer protection regime, designed to ensure that customer funds are segregated from the proprietary funds of FCMs and DCOs, used only to support customer positions, and available for return to customers in the event of the insolvency of the FCM or DCO. Customer funds are classified into one of three account classes based on the specific type of customer position. The categories are futures customer funds, cleared swaps collateral, or 30.7 customer funds in respect of domestic futures, cleared swaps, and foreign futures, respectively—all of which are referred to as customer funds.

¹ FTX Demonstrates Need for More Oversight: CFTC's Johnson (Bloomberg TV Nov. 9, 2022), <https://www.bloomberg.com/news/videos/2022-11-09/ftx-demonstrates-need-for-more-oversight-cftc-s-johnson>.

² I thank the Division for carefully considering and agreeing to include a question in the Proposed Rule evaluating Regulation § 1.25(b)(5)(ii), which currently provides that an FCM or a DCO may invest customer funds in a fund affiliated with that FCM or DCO, and they have introduced several questions in the Proposed Rule. Additionally, at my request, the Commission is exploring whether we should provide greater certainty and clarity as to the acceptable benchmark in light of the various types of Secured Overnight Financing Rates (SOFR) that are available, the permissible investments that are likely to have a floating interest rate calculated on SOFR, and the recommendations of the Alternative Reference Rates Committee.

³ 7 U.S.C. 6(c).

⁴ H.R. Rep. No. 102–978, at 3213 (1992) (Conf. Rep.).

⁵ 7 U.S.C. 2(a).

⁶ H.R. Conf. Rep. No. 102–978, at 3213.

⁷ Exemption for Certain Swap Agreements, 58 FR 5587 (Jan. 22, 1993). The 1993 Exemptive Regulation for swaps was a revision to the exemption the CFTC had previously issued in 1989 in a Statement of Policy.

⁸ *Id.* at 5589–5590.

⁹ *Id.*

The CEA and Commission Regulation § 1.25 are foundational provisions that set the framework and scope for FCMs' and DCOs' investment of customer funds and are fundamentally interconnected with the requirements to segregate customer funds.¹⁰ Section 4d of the CEA permits FCMs to invest futures customer funds in a prescribed list of instruments—obligations of U.S. government, obligations fully guaranteed as to principal and interest by the U.S., and general obligations of any State or any political subdivision.¹¹ The regulation permits FCMs and DCOs to invest customer funds in each account class in a limited set of permitted investments consistent with the prudential objectives of preserving customer funds and mitigating credit risk, market risk, and liquidity risk. The CEA and Regulation § 1.25 reinforce the long-held view of the Commission that customer funds, entrusted to an FCM or a DCO, must be invested in a manner that preserves the availability to customers of FCMs and DCOs.

However, the investment of customer funds may threaten the preservation of such funds, and I have diligently and consistently called for Commission regulation to protect the funds of retail clients that might not fall within the definition of "customer funds." Some DCOs do not have an intermediated market structure. As a result, the protections that exist for customers of FCMs in the context of an intermediated DCO are not extended to direct clients of a DCO in the context of a non-intermediated market structure.

Overview of the Proposed Amendments

Since the Commission first authorized FCMs and DCOs to invest futures customer funds in these limited permitted instruments in 1968, the Commission has engaged in a series of critical expansions and subsequent restrictions of the provisions of Commission Regulation § 1.25.¹² This evolution is largely in response to failures of large FCMs and major financial crises and economic stresses.

In its current form, Commission Regulation § 1.25 applies to all three account classes and lists seven categories of investments that qualify as permitted investments—obligations of the U.S. and obligations fully guaranteed as to principal and interest by the

U.S.; general obligations of any State or political subdivision of a State; obligations of any U.S. government corporation or enterprise sponsored by the U.S.; certificates of deposit issued by a bank; commercial paper fully guaranteed by the U.S. under the Temporary Liquidity Guarantee Program (TLGP) as administered by the Federal Deposit Insurance Corporation; corporate notes and bonds fully guaranteed as to principal and interest by the U.S. under the TLGP; and interests in money market mutual funds (MMFs).¹³

The Commission's authority to introduce and enforce regulations that ensure the preservation of customers' assets, particularly in instances where FCMs and DCOs may experience liquidity crises, is foundational to protecting market participants from fraudulent and other abusive conduct and the misuse of customer assets. Effectively exercising this authority is equally central to the Commission's role in supporting sound risk management practices and ensuring the stability of the broader financial system.

In the Proposed Rule, the Commission proposes to take several significant actions: add specified foreign sovereign debt to the list of permitted investments; add short-term U.S. treasury exchange-traded funds (ETF) to the list of permitted investments; limit the scope of MMF whose interest qualify as permitted investments; eliminate commercial paper and corporate notes and bonds as permitted investments; request comment on the potential elimination of certificates of deposit issued by banks; replace the London Interbank Offered Rate (LIBOR) with SOFR as a permitted benchmark for adjustable rate securities; revise concentration limits for certain permitted investments; establish capital charges for specified foreign sovereign debt and qualified ETFs; propose to eliminate the read-only, access provisions; and clarify that DCOs are financially responsible for any losses resulting from investments of cleared swap customer collateral in permitted investments.

I appreciate the importance of the Commission's engagement in the continual reassessment of Regulation § 1.25 and related matters and revising regulatory requirements as and when appropriate. In this case, the proposed amendments are in response to specific petitions by market participants; but the Commission must ensure that its regulations are robust and responsive to our evolving market structure.

Regulatory Gap for Non-Intermediated DCOs

The Proposed Rule does not consider the prudential principles of Regulation § 1.25 in the context of a non-intermediated clearing model where the DCO offers direct client access to its clearing services, without the FCM as an intermediary. The derivatives market structure is significantly evolving, and it is imperative that the Commission's regulations evolve in parallel.

Formal Rules Governing Custody for Retail Investors Across Our Markets

In 2022, the Commission received a request from LedgerX, which was withdrawn last

year when LedgerX's parent company, FTX, filed for bankruptcy protection. The request aimed to amend its order of registration as a non-intermediated DCO to clear margined products for retail participants.

Five years earlier, LedgerX solicited and the Commission granted an order permitting the firm to offer fully-collateralized derivatives contracts as a DCO. The Commission's order, amended in September 2020, imposed a number of important conditions, including requiring LedgerX to "at all times maintain funds of its clearing members separate and distinct from its own funds."¹⁴ The conditions were necessary and important for the preservation of customer property.

Our current regulations do not reach the issues addressed by the conditions in the LedgerX order. The Commission should consider regulation that closes this gap and ensures parallel retail customer protection for trading through intermediaries and non-intermediated DCOs.

LedgerX's obligation to comply with the Commission's conditions contributed to the preservation of customer property after FTX acquired LedgerX. When FTX, filed for bankruptcy, LedgerX remained solvent, a non-debtor. The LedgerX order serves as an important precedent for the framework the Commission should consider when adopting parallel protections for direct clients, particularly retail clients, in the non-intermediated context.

It is imperative that the Commission consider an equivalent application of Regulation § 1.25 in the context of a non-intermediated DCO's investment of the property of retail customers.¹⁵

Earlier Evidence of the Need To Enhance Customer Protections Rules

Long before crypto markets, however, we witnessed significant FCM bankruptcies under then-existing rules that failed to prevent losses to customers. Refco collapsed in 2005; Sentinel Management Group shuttered its doors in 2007; MF Global failed in 2012; and Peregrine Financial Group filed for bankruptcy protection in 2012. The substantial amount of customer funds entrusted to FCMs and the long history of FCM failures underscore the critical relationships between FCMs and customers as well as the FCM's role, responsibility, and accountability in serving as a custodian of customer funds.

Elimination of Read-Only, Electronic Access to Customer Accounts

As historic and current events demonstrate, the Commission's customer protection framework, though exceptionally

¹⁰ Kristin N. Johnson, Commissioner, CFTC, Statement on Extension of Staff No-Action Letter Regarding Investments in Securities with Adjustable Rate of Interest Benchmarked to SOFR (Dec. 23, 2022), <https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement122322>.

¹¹ Section 4(b)(2)(A) of the CEA grants the Commission the plenary authority to adopt rules and regulations regarding an FCM's safeguarding of 30.7 customer funds. In 2011, the Commission extended the requirements of Regulation § 1.25 to an FCM's investment of 30.7 customer funds for trading foreign futures positions. Section 4d(f)(4) of the CEA prescribes a list of instruments that cleared swaps customer collateral may be invested in and further provides that the investments must be made in accordance with the rules and regulations, and subject to any conditions, as the Commission prescribes. In 2012, the Commission extended the requirements of Regulation § 1.25 to an FCM's investment of cleared swaps customer collateral.

¹² Title 17—Commodity and Securities Exchanges, 33 FR 14454 (Sept. 26, 1968).

¹³ 17 CFR 1.25(a)(1).

¹⁴ See Press Release No. 8230–20, CFTC Approves LedgerX, LLC to Clear Fully-Collateralized Futures and Options on Futures (Sept. 2, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8230-20>.

¹⁵ Kristin N. Johnson, Commissioner, CFTC, Keynote Speech at the Salzburg Global Finance Forum (June 29, 2023), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opajohnson4>; Kristin N. Johnson, Commissioner, CFTC, Keynote Address at the World Federation of Exchanges Annual Meeting (Sept. 21, 2023), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opajohnson5>.

consequential and significant, does not guarantee against losses of customer funds. Following several infamous bankruptcies, the Commission tightened existing regulations including to improve oversight of FCM activities and verify customer funds. The Commission is reevaluating certain aspects of those regulations, which is important. But we should be careful not to forget the unprecedented events that led to the implementation of more stringent oversight of FCMs and necessitate the extension of strict oversight to non-intermediated DCOs.

The Failure of MF Global and Peregrine

MF Global, a prominent FCM and broker-dealer, is an example of a firm that unraveled during the financial crisis. Jon Corzine, a former investment banking executive and former Governor and Senator of New Jersey, adopted a proprietary trading strategy involving the investment in the sovereign debt (bonds) of certain European nations through repurchase-to-maturity transactions. MF Global structured a portfolio of “repurchase to maturity” bonds, bonds that paid large coupon rates. Later the bonds were posted as “collateral for short-term borrowing” and purportedly delayed any risk to the firm’s balance sheet until maturity.

A steep decline in sovereign debt markets triggered demands for increased margin, and MF Global had insufficient liquidity to maintain positions. In an attempt to stave off a “run on the bank” by customer withdrawals, creditors’ demands, efforts to unwind repo counterparty positions, and attempts to liquidate proprietary positions at fire sale prices, MF Global made the unacceptable and catastrophic decision to misappropriate customer funds in violation of the Commission’s customer segregation requirements.¹⁶

The failure of futures trading firm Peregrine also created a need for stronger customer protection tools. Russell Wasendorf Sr. was the founder and former CEO of Peregrine, and he was sentenced to 50 years in prison because he siphoned off more than \$215 million from customers of Peregrine. The National Futures Association (NFA), the self-regulatory organization (SRO) and Peregrine’s auditor, was heavily criticized for failing to catch the shortfall in customer funds.

After the collapse of MF Global and Peregrine Financial Group, the Commission supplemented the protections embedded in Commission regulations to enhance customer protections and transparency at the FCM level.¹⁷

¹⁶ Investing customer funds in foreign sovereign debt is distinguishable from the investments of MF Global made for its own account, and the issue with MF Global is that funds were transferred out of the segregated account and used for other purposes. But MF Global highlights the need for strong enforcement of segregation requirements in times of unusual market conditions, such as a run. See Rena S. Miller, Cong. Rsch. Serv., R42091, *The MF Global Bankruptcy, Missing Customer Funds, and Proposals for Reform* (2013), <https://sgp.fas.org/crs/misc/R42091.pdf>.

¹⁷ Kristin N. Johnson, Commissioner, CFTC, Keynote Address at Digital Assets @Duke Conference, Duke’s Pratt School of Engineering and Duke Financial Economics Center (Jan. 26, 2023),

Dated Efforts To Enhance Customer Protection

In November 2013, the Commission adopted a rule that afforded greater assurances to market participants that customer funds are protected.¹⁸ The Commission required depositories holding customer funds for FCMs to provide the Commission with direct, read-only electronic access to customer fund accounts while acknowledging that the Commission did not intend to access FCM accounts on a regular basis but would use that information when necessary to obtain account balance and other information that staff could not obtain via the designated auditors, either CME Group Inc. (CME) or NFA.

The Division notes that the Commission and depositories are experiencing significant operational and resource-intensive challenges in implementing and administering the provision and the CME and NFA have provided alternative means of obtaining transaction and account balance information.

Although the Commission is proposing to remove the “direct access” requirement, the Commission should be confident that the private sector auditing features that exist at the relevant designated self-regulatory organization (DSRO) are considered in the context of non-intermediated DCOs where there is an absence of an FCM.

Whether it is a traditional market structure or new market structure, the Commission needs to be comfortable that liabilities to customers will be satisfied. I also expect that the Commission and relevant DSRO would impose on non-intermediated market infrastructures the same segregation investment reporting obligations imposed on traditional infrastructures. There is a continuous need to revisit whether measures to protect customer funds are adequate.

Consideration of Other Important Factors

Although I support the Proposed Rule, a few discrete aspects of the Proposed Rule merit additional discussion.

• Inclusion of Foreign Sovereign Debt as Permitted Investments

The Commission plans to use the CDS spread to determine whether certain permitted foreign sovereign debt should qualify as “permitted investments.” The Commission needs to carefully consider the conditions that apply to each permitted foreign sovereign debt by establishing strong guardrails so that history does not repeat itself.

On August 15, 2023, FCMs held the U.S. dollar equivalent of \$51 billion of customer funds denominated in Canadian, European, Japanese, and UK currencies. Given the significant non-U.S. dollar customer transactions intermediated by FCMs, the Commission’s proposal expands the list of permissible investments to add the debt of countries that represent the largest

<https://www.cftc.gov/PressRoom/SpeechesTestimony/opajohnson2>.

¹⁸ Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 FR 68506 (Nov. 14, 2013).

economies, are members of the Group of 7, and a money center country—Canada, France, Germany, Japan, and the UK.

De-Regulatory Decisions and the Recent Financial Crisis

The recent global financial crisis is a cautionary tale. A series of deregulatory decisions created significant vulnerabilities in financial markets. More specifically, an exemption from regulation for bespoke OTC swaps trading in bilateral markets obscured excessive risk-taking and undermined the integrity of global markets. According to the U.S. Government Accountability Office, the 2007–2009 financial crisis, which threatened the stability of the U.S. financial system and the health of the U.S. economy, may have led to \$10 trillion in losses, including large declines in employment and household wealth, reduced tax revenues from lower economic activity, and lost output (value of goods and services).¹⁹

Traditionally, customer funds have been invested in U.S. treasury securities. The Commission amended Regulation § 1.25 in 2000 to expand the list of investments to include all foreign sovereign debt, subject to a ratings requirement.²⁰ Following the 2007–2009 global financial crisis, in December 2011, the Commission unanimously approved a final rule amending Regulation § 1.25 to eliminate all foreign sovereign debt as permitted investments in light of the economic crisis but remained open to the possibility of reintroducing specific foreign debt.²¹ The Commission tightened the definition of permissible investments.

History has demonstrated that certain sovereign debt instruments may be risky. The financial crisis was closely intertwined with the sovereign debt crisis, which is characterized by the economic collapse in—and a deterioration in the credit quality of—Iceland, Portugal, Italy, Ireland, Greece, and Spain. It is helpful that sovereign debt from those countries are not proposed to be permitted investments.

The Commission should reintroduce foreign sovereign debt as a permitted investment with caution and sufficient guardrails. The Commission is using the CDS spread of the sovereign issuer as a proxy for default risk, such that the relevant sovereign is disqualified if the issuer’s two-year credit default spread exceeds 45 basis points. The CDS spread is the spread on protection pursuant to a CDS against the default of the issuer of a debt instrument, and an increase in the spread reflects a market perception that the creditworthiness of the issuer has

¹⁹ U.S. Gov’t Accountability Off., GAO–13–180, *Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act* (2013), <https://www.gao.gov/assets/files/gao.gov/assets/gao-13-180.pdf>.

²⁰ See Rules Relating to Intermediaries of Commodity Interest Transactions, 65 FR 77993 (Dec. 13, 2000); Investment of Customer Funds, 65 FR 82270 (Dec. 28, 2000) (making technical corrections and accelerating the effective date of the final rules from February 12, 2001 to December 28, 2000).

²¹ Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 76 FR 78776 (Dec. 19, 2011).

deteriorated, implying an increased risk of non-payment on the debt investment.

We must not forget that the CDS market came under heavy scrutiny during the financial crisis. Warren Buffett infamously called CDS “financial weapons of mass destruction.” Since the adoption of the Dodd-Frank Act, there has been significant contraction in a number of important segments of the CDS market.

Given the nature of this specific market-based metric, I encourage market participants, in responding to the request for comment, to consider whether the use of the CDS spread, which is dependent on a functioning CDS market, is (and the circumstances under which it would be) an appropriate indicator of whether a foreign sovereign debt is “consistent with the objectives of preserving principal and maintaining liquidity and according to the following specific requirements.”²²

• Interaction With Proposed U.S. Treasury Clearing Requirement

Financial markets are closely interconnected and correlated. Consequently, we need a comprehensive and holistic approach to U.S. treasury obligations. The Securities and Exchange Commission (SEC) has announced a proposed rule that seeks to address the clearing of certain repurchase or reverse repurchase agreements involving U.S. treasury securities.

Our registrants, FCMs and DCOs, may buy and sell permitted investments, including U.S. treasury obligations, pursuant to repurchase and reverse repurchase transactions with permitted counterparties, subject to certain conditions.

Upon the finalization of the SEC proposed rule, the Commission may need to revisit Regulation § 1.25 accordingly.

Conclusion

For the reasons above, I support the adoption of the Proposed Rule. I look forward to the thoughtful contributions of market participants.

Appendix 4—Statement of Commissioner Christy Goldsmith Romero

The CFTC’s Sacrosanct Responsibility To Safeguard Customer Funds To Protect Customers and Avoid Systemic Risk

Proposed Changes to Regulations Governing the Investment of Customer Funds

The CFTC has a sacrosanct responsibility to safeguard customer funds held by brokers and clearinghouses. For our markets to work well, customers must have confidence that their funds will be safe. Safe from a broker or clearinghouse who misuses customer money for their own purposes or decides on their own to use customer funds to make risky bets chasing their own profits.

The Importance of Customer Confidence and Public Confidence for Markets to Work Well

History has shown that a loss of customer confidence in the safety of their funds often has immediate negative consequences on markets. Vulnerability to runs, increased customer redemption requests, significant

market volatility, and rapid and steep drop in prices, can signal a loss of confidence. And given how interconnected our markets are, this can happen very fast, and can cause contagion. We saw an example earlier this year with Silicon Valley Bank.

Promoting public and customer confidence in our markets is one of the CFTC’s most important regulatory responsibilities. There is a disconnect between regular people and what goes on on Wall Street and in Washington. That’s a message from the late CFTC Commissioner Bart Chilton at the open meeting the last time the CFTC took up this same regulation in 2011.¹ He was speaking with the backdrop of MF Global’s bankruptcy weeks before, where there were concerns of misuse of customer funds. Commissioner Chilton said that we cannot get disconnected, and sometimes it’s just a matter of explaining what we’re doing. He said that we have to do the best we can to explain to people what our job is, what our responsibilities are, and that the first responsibility is to protect customer funds.

Well put, and I agree. Today we meet with the backdrop of the conviction on all counts of the founder of FTX, counts that included misuse of customer funds.² It’s not the same as MF Global. Regular people may not realize that those missing FTX customer funds were in an entity not regulated by the CFTC. But we have to stay connected to regular people who might be concerned about the safety of their funds in our markets. We have to explain how we are part of the solution to safeguard customer funds. This is particularly important because we have seen a rise of retail customers in our markets associated with trading in cryptocurrency and event contracts—retail customers who may not have the same ability as an institutional customer to withstand losses or delays if a broker or clearinghouse goes bankrupt.

We have to send a message and show through our actions that the CFTC is doing all that we can to protect customer funds.

Protecting Customer Funds by Limiting What They Can Be Invested In

One way the CFTC protects customer funds is by limiting what they can be invested in. In section 4(d) of the Commodity Exchange Act, Congress limited investments of customer funds to U.S. government and other municipal securities, and obligations fully guaranteed by the U.S.

The CFTC can make an exemption to section 4(d) to allow other investment types if they meet certain carefully designed factors established by Congress in section 4(c). From 2000 to 2005, the CFTC used this exemptive authority to considerably loosen Regulation § 1.25 to allow brokers (FCMs) and clearinghouses (DCOs) to invest customer funds in all kinds of investments.

¹ See CFTC, *Transcript of December 5, 2011 Open Commission Meeting*, https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/dfssubmission/dfssubmission12_120511-trans.pdf.

² See United States Attorney Southern District of New York, *Statement Of U.S. Attorney Damian Williams On The Conviction Of Samuel Bankman-Fried*, <https://www.justice.gov/usao-sdny/pr/statement-us-attorney-damian-williams-conviction-samuel-bankman-fried> (Nov. 2, 2023).

Then there was the financial crisis, the Dodd Frank Act, and the MF Global scandal. In 2011, the CFTC under Chairman Gary Gensler, eliminated exemptions for certain investments that could pose an unacceptable level of risk to customer funds.³ One investment type eliminated in a 5–0 vote in 2011 was foreign sovereign debt. That investment type is before us again today at the request of the same groups (CME and FIA) who opposed the CFTC’s elimination of foreign sovereign debt as a permitted investment in 2011. While the Commission subsequently made a limited exception for clearinghouses in the debt of France and Germany in 2018, at that time, it declined to apply that exception to brokers as requested by FIA.

We need to be very cautious about revisiting post-crisis CFTC reforms, particularly reforms that only came after substantial public engagement and careful CFTC deliberation. In good economic times like we are in today, we have to keep the lessons learned from the past in mind, while we look to the future. One of those lessons learned is that things can change quickly when it comes to risk.

We have to always keep sacrosanct our responsibility to protect customer funds and avoid systemic risk. Holding customer funds is not intended to be a way for brokers and clearinghouses to maximize profits through investments that could prove risky. Customer funds must only be invested in a way that minimizes exposure to credit, liquidity, and market risk, not just now, but in the future. This would preserve customer funds, and enable investments to be quickly converted to cash at a predictable value, which is necessary to avoid systemic risk. This has to be one of our top priorities.

That’s why I support prohibiting investments of customer funds in: (1) commercial paper; (2) corporate notes and bonds; (3) bank certificates of deposit; (4) adjustable rate securities that reference LIBOR; and (5) money market funds that are not government money market funds or that charge a liquidity fee for customer redemptions. I also support the concentration limits on money market funds to protect customer funds from potential risk of loss from a cyber-attack.

Proposed Expansion of How Brokers and Clearinghouses Can Invest Customer Funds

The proposal before us would also make two exemptions under section 4(d),⁴ allowing investments of customer funds in: (1) ETFs that invest in primarily short-term U.S. Treasury securities; and (2) sovereign debt of

³ See 76 FR 78776 (Dec. 19, 2011) (“In issuing these final rules, the Commission is narrowing the scope of investment choices in order to eliminate the potential use of portfolios of instruments that pose an unacceptable level of risk to customer funds.”).

⁴ In addition to Regulation § 1.25, the proposal also applies to Regulation § 30.7 that governs a broker’s treatment of customer funds associated with positions in foreign futures and options. Additionally, the proposal applies to customer swaps funds (cleared swaps customer collateral) held by brokers and clearinghouses. See generally 17 CFR part 22 (implementing section 4d(f) of the Commodity Exchange Act).

²² 17 CFR 1.25(b).

five G7 countries (Canada, France, Germany, Japan, and the United Kingdom) and expanding the list of counterparties to foreign banks, brokers and dealers, and central banks.

Section 4(c)(2) sets a high bar for exemptions. The CFTC is required to show:

1. It is in the public interest;
2. It is consistent with the purposes of the Act;
3. The agreements, contracts or transactions have to be between appropriate persons; and
4. The exemption cannot have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory responsibilities.

I would have liked to see more independent CFTC analysis of these factors in this proposal.

Public Interest Factor: I am concerned about the proposal's discussion of the public interest factor:

The expanded selection of Permitted Investments is expected to also permit FCMs and DCOs to remain competitive globally and domestically and maintain safeguards against systemic risk. A wider range of alternatives to invest futures customer funds may provide more profitable investment options, allowing FCMs and DCOs to generate more income for themselves and their customers. This, in turn, may motivate FCMs and DCOs to increase their presence in the futures markets and other relevant markets, thus increasing competition. Increased revenue to FCMs and DCOs from the investment of Customer Funds also may benefit customers in the form of lower commission charges of direct interest payments on funds on deposit with the FCM or DCO, which may lead to greater market participation by customers and increased market liquidity. In light of the foregoing, the Commission believes that the adoption of the proposed amendments would promote responsible economic and financial innovation and fair competition, and would be consistent with the objective of Regulation 1.25 and with the "public interest."

We should be very careful about drawing the *dangerous* conclusion that increased profits is a sufficient justification to satisfy the public interest factor. This conclusion could justify granting every requested exemption, which is surely not what Congress had in mind or the message that we should send. It is important to remember that broker and clearinghouse profit is not the goal for the CFTC, the Commodity Exchange Act or the public. Chasing profits could lead to risky investments, potentially putting customer funds at risk.

We should not draw an unsupported conclusion that if brokers and clearinghouses make more profit, that the benefits will flow to customers, as opposed to being kept for those companies or their shareholders. There was also no independent supportive analysis that additional profits would increase competition or innovation. I would also have liked to see analysis on the avoidance of systemic risk, not just a conclusory, unsupported statement that this change will permit brokers and clearinghouses to "maintain safeguards against systemic risk."

An independent CFTC analysis of whether a Commission action is in the public interest

is the important responsibility given to us by Congress. The proposal discusses without supporting data or analysis that the proposal could reduce foreign currency risk and result in diversification of investments. However, those were the same considerations that were not persuasive to the Commission in 2011. I encourage public interest groups and customers of brokers and clearinghouses to let the CFTC know if they think these exemptions are in the public interest. Should we go forward in the future with a final rule, I would expect to see an independent and supported CFTC analysis.

I would encourage the CFTC to engage in more data analysis, as well as more roundtables and requests for comment, before proposing rules or exemptions that revise post-crisis reforms. We may also be able to use public interest analysis conducted by other federal agencies. I would also encourage greater engagement with public interest groups before proposing changes to rules, just as we engage with industry.

Consistent with the Purposes of the Act: The purposes of the Act are to deter and prevent price manipulation or other disruptions to market integrity; to ensure the financial integrity of all transactions and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.⁵

The proposal contains a thorough and independent CFTC analysis of conditions necessary to protect against the misuse of customer assets. But the proposal's discussion of fair competition, responsible innovation, and systemic risk is conclusory, without supporting analysis. I encourage commenters and the public to let us know if these exemptions are consistent with the purposes of the Act.

Appropriate Persons Factor: I did not see discussion of this important factor. The proposal would expand counterparties for foreign sovereign debt, including foreign brokers and dealers, with certain conditions. I would have liked to see an analysis of how this factor is met. We should not assume that it is met, that no analysis is needed or that Commissioners do not have views on meeting this test. I look forward to commenters' views on this. Should we go forward in the future with a final rule, I would expect to see an independent supported CFTC analysis of this factor.

Discharge of Regulatory Responsibilities Factor: The CFTC's regulatory responsibility in Regulation § 1.25 is to preserve principal and maintain liquidity. I commend the staff for the depth and comprehension of this analysis, and appreciate the thorough calibration of conditions to address future risk with sovereign debt. I agree that investments in certain sovereign debt might be consistent with preserving principal and maintaining liquidity. This analysis found that government ETFs and sovereign debt in these countries appear to be similar to existing permitted investments. Commenters

will tell us whether we have conducted the correct analysis.

While I am supporting putting this out for public comment, I also believe that we should be very cautious in overturning post-crisis reforms. In 2011, the CFTC considered all of the same concerns raised before us today, but decided unanimously to ban investments in sovereign debt. The Commission in 2011 said that although it appreciated the risk of foreign currency exposure, not all sovereign debt, in all situations, is sufficiently safe. The Commission said then that global and regional crises illustrated that circumstances may quickly change, leaving a broker or clearinghouse unable to timely liquidate the investment, and potentially only after a significant mark-down.

At that time, the CFTC said it would consider exemption requests. The staff explained that when considering such a request, they would ask the petitioner why they need the exemption and to explain why it is in the public interest, and analyze liquidity. The record shows only one request in 12 years. In 2018, after notice and receiving only supporting comments, the Commission approved a limited exemption for clearinghouses to invest customer funds in the sovereign debt of France and Germany, finding comparable credit, liquidity and volatility characteristics to U.S. Government securities.

In the proposal before us, the staff's analysis reflects that the debt of these countries is similar to current permitted investments, but may be less liquid than U.S. government securities. The proposal asks whether these investments would raise any liquidity or other concerns. I am interested in commenters' views on this and on whether the expansion of counterparties will expose customers to unacceptable levels of risk.

Given that we know that circumstances can change very quickly, I often say that we should expect the unexpected. One alternative would be to leave in place the current process of considering any exemptive request, rather than change the rule, particularly if there are concerns over liquidity or counterparties. This should not be unduly burdensome given there was only one request in 12 years. The Commission could consider the conditions at that time, the reason for the request, the public interest, and liquidity. The flexibility to conduct this type of analysis at the specific time of the request, and after notice and comment, would be more targeted to avoid systemic risk. And should circumstances change quickly, an exemptive order could be much easier and faster to revisit than a rule. I look forward to commenters' views on this alternative compared to rewriting the rule.

Finally, I would urge CFTC staff to look for other safeguards for customer funds in other Commission rules. Additional safeguards would allow us to fulfill our sacrosanct responsibility to protect customer funds, and promote public confidence.

Appendix 5—Statement of Support of Commissioner Caroline D. Pham

I support the Notice of Proposed Rulemaking on Investment of Customer

⁵ 7 U.S.C. 5(b).

Funds by Futures Commission Merchants and Derivatives Clearing Organizations (Proposed Amendments to Regulation § 1.25 or NPRM) because, importantly, it provides regulatory clarity by codifying outstanding no-action relief, and promotes good government by providing a timely response to a petition from market participants. I would like to thank Tom Smith, Warren Gorlick, Liliya Bozhanova, and Jeff Burns for their work on the NPRM.

Regulatory clarity has a number of key aspects: transparency, simplicity, and significantly, unambiguity. In turn, regulatory clarity promotes compliance, market integrity, and confidence. As regulators, in everything we do, we must remember that regulatory clarity enables businesses to effectively comply with our regulations, thereby reducing the likelihood of non-compliance issues. It's why I have made regulatory clarity a guiding principle of my commissionership.

Good government has a number of key aspects that overlap with those of regulatory clarity: transparency and simplicity, for instance. However, responsiveness is an aspect unique to good government. In serving the public, we must be mindful that we are here to be responsive to the concerns and needs of our constituents—in our case, market participants. Good government, in turn, promotes economic growth and progress. It's why I have made good government something I am always striving to encourage as Commissioner.

Background

Regulation § 1.25 is the primary CFTC rule setting forth safeguards for the investment of customer funds held by futures commission merchants (FCMs) and derivatives clearing organizations (DCOs). As the Commission has said in the past, customer segregated funds must be invested in a manner that minimizes their exposure to credit, liquidity, and market risks, both to preserve their availability to customers and DCOs and to enable investments to be quickly converted to cash at a predictable value to avoid systemic risk.¹ These safeguards are vital in maintaining confidence in our markets.

The requirement for a FCM or DCO to treat customer funds as belonging to the customers, and for the FCM or DCO to segregate customer funds from its own funds, is a critical component of this framework. The Commodity Exchange Act (CEA) and CFTC regulations provide three regulatory frameworks based on the market in which customers are transacting: (i) futures customer funds; (ii) cleared swaps customer collateral; or (iii) 30.7 customer funds.²

CEA section 4d(a)(2) covers futures customer funds, setting forth the framework for requiring FCMs to treat futures customer funds as belonging to the futures customer.³

CEA section 4d(b) addresses the duties imposed on DCOs and other depositories receiving futures customer funds from FCMs pursuant to section 4d(a)(2).⁴ Regulations §§ 1.20 through 1.30, and Regulations §§ 1.32 and 1.49 implement sections 4d(a)(2) and 4d(b).⁵

CEA section 4d(f)(2)(A) covers cleared swaps customer collateral, setting forth a framework for requiring FCMs to treat cleared swaps customer collateral as belonging to the cleared swaps customer.⁶ Regulations §§ 22.2 through 22.13, and Regulations §§ 22.15 through 22.17, implement CEA section 4d(f).⁷ And CEA section 4(b)(2)(A) covers 30.7 customer funds, setting forth a framework for requiring FCMs to safeguard 30.7 customer funds deposited by 30.7 customers for trading on foreign boards of trade (FBOTs).⁸ Regulation § 30.7 implements CEA section 4(b)(2)(A).⁹

A cornerstone of these frameworks is the ability of FCMs and DCOs to invest customer funds. CEA section 4d(a)(2) authorizes FCMs to invest futures customer funds in: (i) obligations of the U.S.; (ii) obligations fully guaranteed as to principal and interest by the U.S.; and (iii) general obligations of any State or of any political subdivision of a State.¹⁰ Regulation § 1.25 was initially adopted to implement section 4d(a)(2), and authorized FCMs and DCOs to invest futures customer funds in the instruments set forth in section 4d(a)(2) of the Act (the Permitted Investments).¹¹

Over time, the Commission has changed the Permitted Investments: in 2000, for instance, expanding the list to include certificates of deposit, commercial paper, corporate notes, foreign sovereign debt, and interests in money market funds. Currently, Regulation § 1.25 lists seven categories of investments that qualify as Permitted Investments.¹² In addition, the Commission extended Regulation § 1.25 to apply to an FCM's investment of 30.7 customer funds for trading foreign futures positions, and to FCMs and DCOs investing cleared swaps customer collateral.¹³

When looking at Regulation § 1.25, the Commission always has to balance the need to safeguard customer funds, against retaining an appropriate degree of flexibility for FCMs and DCOs to invest funds and attain capital efficiency. I believe the Proposed Amendments to Regulation § 1.25 continue to strike the right balance, though I encourage commenters to comment on that facet.

How the Commission Does, and Should Continue to, Promote Regulatory Clarity and Good Government

I would like to highlight two aspects of the Proposed Amendments to Regulation § 1.25 that provide examples of regulatory clarity and good government.

The NPRM endeavors to promote regulatory clarity by codifying outstanding CFTC staff no-action relief, proposing to replace LIBOR with SOFR as a permitted benchmark for adjustable rate securities.

Regulation § 1.25(b)(2)(iv)(A) provides that permitted investments may contain variable or floating rates of interest provided, among other things, that: (i) the interest payments on variable rate securities correlate closely, and on an unleveraged basis, to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the one-month or three-month LIBOR, or the interest rate of any fixed rate instrument that is a listed permitted investment under Regulation § 1.25(a);¹⁴ and (ii) the interest rate, in any period, on floating rate securities is determined solely by reference, on an unleveraged basis, to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, the one-month or three-month LIBOR, or the interest rate of any fixed rate instrument that is a listed permitted investment under Regulation § 1.25(a).¹⁵

As we all know, it was announced in March 2021 that LIBOR would cease to be published and would effectively be discontinued.¹⁶ In response to the Alternative Reference Rate Committee (ARRC) identifying SOFR as the preferred alternative benchmark to USD LIBOR for certain new USD derivatives and financial contracts,¹⁷ CFTC staff issued Staff Letter 21–02 in January 2021,¹⁸ permitting FCMs to invest customer funds in permitted investments that contain adjustable rates of interest benchmarked to SOFR. A later CFTC Staff letter 22–21 extended the effective date of the no-action position to December 31, 2024, and expanded the scope of the no-action position to include permitted investments made by DCOs.¹⁹

Given the discontinuation of LIBOR and the increasing use of SOFR, the Commission is proposing to amend Regulation § 1.25(b)(2)(iv)(A) by replacing LIBOR with SOFR as a permitted benchmark for

¹⁴ 17 CFR 1.25(b)(2)(iv)(A)(1).

¹⁵ 17 CFR 1.25(b)(2)(iv)(A)(2).

¹⁶ See CFTC Staff Letter No. 21–26, Revised No-Action Positions to Facilitate an Orderly Transition of Swaps from Inter-Bank Offered Rates to Alternative Benchmarks (Dec. 20, 2021).

¹⁷ ARRC, “The ARRC Selects a Broad Repo Rate as its Preferred Alternative Reference Rate,” June 22, 2017, available at <https://www.newyorkfed.org/medialibrary/microsites/arrc/files/2017/ARRC-press-release-Jun-22-2017.pdf>.

¹⁸ See CFTC Staff Letter No. 22–21, CFTC Regulation 1.25—Investment of Customer Funds in Securities with an Adjustable Rate of Interest Benchmark to [SOFR]—Extension of Time-Limited No-Action Position Concerning Investments by [FCMs] and No-Action Position Concerning Investments by [DCOs], Dec. 23, 2022.

¹⁹ See *id.*

¹ Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 76 FR 78776 (Dec. 19, 2011).

² See, 17 CFR 1.20 (segregation framework for futures customer funds); 17 CFR 22.2 and 22.3 (segregation framework for cleared swaps customer collateral); and 17 CFR 30.7 (segregation framework for 30.7 customer funds).

³ 7 U.S.C. 6d(a)(2).

⁴ 7 U.S.C. 6d(b).

⁵ 17 CFR 1.20 through 17 CFR 1.30, 17 CFR 1.32, and 17 CFR 1.49.

⁶ 7 U.S.C. 6d(f)(2)(A).

⁷ 17 CFR 22.2 through 17 CFR 22.13, 17 CFR 22.15 through 17 CFR 22.17.

⁸ 7 U.S.C. 6(b)(2)(A).

⁹ 17 CFR 30.7.

¹⁰ 7 U.S.C. 6d(a)(2).

¹¹ See Title 17—Commodity and Securities Exchanges, 33 FR 14454 (Sept. 26, 1968).

¹² 17 CFR 1.25(a)(1).

¹³ See 17 CFR 22.2(e)(1) and 17 CFR 22.3(d).

permitted investments that contain an adjustable rate of interest. To give effect to this revision, paragraphs (b)(2)(iv)(A)(1) and (2) of Regulation § 1.25 would be amended to replace the phrase “one-month or three-month LIBOR rate” with the phrase “SOFR rate.”

This is important to me for three reasons. First, I have been vocal that the Commission must not get stuck in a never-loop of extending staff no-action relief.²⁰ To be sure, no-action relief has its place in our regulatory framework.²¹ But the Commission should seek to find pragmatic solutions to fixing unworkable rules.

Second, I appreciate the Commission is taking action in advance of the relief expiration date of December 2024. Firms expend considerable resources to come into compliance with our requirements. To the extent our requirements are changing (*e.g.*, staff no-action relief is expiring), waiting on the part of the Commission only unnecessarily increases the risks and costs to firms for implementation.

And third, I am pleased the NPRM does not propose to impose any additional conditions beyond the relief contained in CFTC staff letter 22–21. Conditions may have their place, but the Commission needs to avoid a “kitchen sink” approach when applying them.

All of this comes together to provide an example of what regulatory clarity needs to

entail. Extraneous changes, unworkable conditions, and waiting too long to act all inhibit regulatory clarity by introducing ambiguity, unnecessary burdens, and wasted time.

The NPRM also endeavors to promote good government by providing a timely, thorough response to a petition submitted by market participants.

The Futures Industry Association (FIA) and CME Group Inc. (CME) submitted a joint petition requesting the Commission to expand investments that FCMs and DCOs may enter into with Customer Funds.²² The Petitioners requested that the Commission permit FCMs and DCOs to invest Customer Funds in the foreign sovereign debt of Canada, France, Germany, Japan, and the United Kingdom, subject to the condition that the investment in the foreign sovereign debt is limited to balances owed by FCMs and DCOs to customers and FCM clearing firms, respectively, denominated in the applicable currency of Canada, France, Germany, Japan, or the United Kingdom.²³ The Petitioners further request that the Commission exempt FCMs and DCOs from the provisions of Regulation § 1.25(d)(2) to authorize FCMs and DCOs to enter into Repurchase Transactions involving Specified Foreign Sovereign Debt with foreign banks and foreign securities brokers or dealers and to hold Specified Foreign Sovereign Debt in safekeeping accounts at foreign banks.²⁴

The Petitioners further request that FCMs and DCOs be permitted to invest Customer Funds in certain ETFs that invest primarily in short-term U.S. Treasury securities (U.S. Treasury ETFs),²⁵ because U.S. Treasury ETFs have characteristics that may be consistent with those of other Permitted Investments and may provide FCMs and DCOs with an opportunity to diversify further their investments of customer funds.²⁶

This is important to me for two reasons. First, the Commission is providing a timely response to the petition. Not only does every market participant deserve a response to a request to the Commission, but they deserve a response in a reasonable amount of time. Second, the NPRM does not propose additional conditions beyond what was requested in the Joint Petition. Instead, and admirably, the Commission requests comment where it is unsure about conditions, after a careful and thorough analysis of its proposed actions.

In conclusion, I am pleased to support the NPRM because multiple aspects set an example for how the Commission can promote regulatory clarity and good government in all areas of its regulation and oversight. Thank you again to the staff for their hard work, and I look forward to the comments on the Proposed Amendments to Regulation § 1.25.

[FR Doc. 2023–24774 Filed 11–20–23; 8:45 am]

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²⁰ See Statement of Commissioner Caroline D. Pham on Conditional Order of SEF Registration (July 20, 2022).

²¹ See *e.g.*, Statement of Commissioner Caroline D. Pham on Staff Letter Regarding ADM Investor Services, Inc. (June 16, 2023).

²² Petition for Order under Section 4(c) of the Commodity Exchange Act, dated May 24, 2023 (the Joint Petition). The Joint Petition and a Supplement are available on the Commission’s website.

²³ Joint Petition at p. 4.

²⁴ Joint Petition at p. 5.

²⁵ Joint Petition at pp. 8–9.

²⁶ *Id.*



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Part IV

Department of Homeland Security

Coast Guard

46 CFR Parts 401 and 402

Great Lakes Pilotage Modernization; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 401 and 402

[Docket No. USCG–2022–0025]

RIN 1625–AC79

Great Lakes Pilotage Modernization

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend certain Great Lakes Pilotage regulatory requirements to align with current Coast Guard and U.S. pilot association operations and pilotage practices. This proposed rule would clarify the different phases of training and types of registrations for pilots who work on the Great Lakes, eliminate outdated practices and redundant requirements, and adds much needed structure regarding the billing dispute process.

DATES: Comments and related material must be received by the Coast Guard on or before January 22, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0025 using the Federal Decision Making Portal at www.regulations.gov. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Mr. Vincent Berg, Coast Guard; telephone 202–906–0835, email vincent.f.berg@uscg.mil.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

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

We encourage you to submit comments through the Federal Decision Making Portal at www.regulations.gov. To do so, go to www.regulations.gov, type USCG–2022–0025 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using www.regulations.gov, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the www.regulations.gov Frequently Asked Questions web page. That page also explains how to subscribe for email alerts that will notify you when comments are posted or if a final rule is published. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

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

We do not plan to hold a public meeting, but we will consider doing so if based on public comments we determine that a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

II. Abbreviations

CFR Code of Federal Regulations
 DHS Department of Homeland Security
 Director Director, Great Lakes Pilotage
 FR Federal Register
 GLPAC Great Lakes Pilotage Advisory Committee
 GT Gross tonnage
 MMC Merchant Mariner Credential
 MOU Memorandum of Understanding
 NPRM Notice of proposed rulemaking
 NAICS North American Industry Classification System
 NTSB National Transportation Safety Board
 OMB Office of Management and Budget
 § Section
 TWIC Transportation Workers Identification Credential
 U.S.C. United States Code
 WWM–2 Coast Guard Great Lakes Pilotage Division

III. Basis and Purpose

The legal basis of this proposed rulemaking is Title 46 of the United States Code (U.S.C.) Chapter 93,¹ which requires each foreign vessel and each vessel of the U.S. operating “on register,” meaning U.S. vessels engaged in foreign trade, to use United States or Canadian pilots while transiting the U.S. waters of the St. Lawrence Seaway and the Great Lakes system.² For U.S. Great Lakes pilots, 46 U.S.C. 9303(a) requires the Secretary to prescribe, by regulation, standards of competency to be met by each applicant for registration as a Great Lakes pilot. Additionally, sections 9303(c) and (d) authorize the Secretary to prescribe regulations establishing the validity period of Great Lakes pilot’s registration and other conditions for service respectively. The Secretary’s duties and authority under 46 U.S.C. Chapter 93 have been delegated to the Coast Guard.³

The purpose of this notice of proposed rulemaking (NPRM) is to update the Great Lakes pilotage regulations in title 46 of the Code of Federal Regulations (CFR) parts 401 and 402 to reflect the current pilotage terms and practices used by the Coast Guard and U.S. pilot association operations. While the regulations in the current CFR do not conflict with our current practices, they do not fully reflect the current apprentice pilot training requirements and titles for pilot progression. Accordingly, the Coast Guard proposes to update the current CFR as follows:

1. To redefine the different phases of pilot registration, which would generally follow this progression:

¹ 46 U.S.C. 9301–9308.

² 46 U.S.C. 9302(a)(1).

³ Department of Homeland Security (DHS) Delegation No. 00170.1, Revision No. 01.3, paragraph II (92)(f).

“Applicant,” “Applicant Trainee,” “Apprentice Pilot,” “Limited Registration,” “Full Registration,” and “Temporary Registered Pilot”;

2. To add “marine accident” to the definitions section to clarify a pilot’s reporting requirements;

3. To clarify training benchmarks to ensure registration of qualified mariners and help retain experienced U.S. Registered Pilots.

4. To align medical requirements and radar observer training requirements for U.S. Registered Pilots with the Merchant Mariner Credential (MMC) and manning regulations in 46 CFR parts 10–15;

5. To clarify the pilotage billing dispute process with respect to when a vessel is and is not liable for charges; and

6. To remove outdated provisions, including dates and terms, from the Transportation Workers Identification Credential (TWIC), the foreign language requirements for navigation, the one-year time limit for applicants to complete training, and other regulations that were written when both the Department of Commerce and the Coast Guard had regulatory authority over U.S. pilotage services.

The Coast Guard believes that the updated registration process in this proposed rule would ensure that regulations reflect current training practices while keeping within the statutory mandate to prescribe standards of competency in 46 U.S.C. 9303(a). The proposed updates would also align with the program’s goals of promoting competent, safe, efficient, and reliable pilotage service throughout the Great Lakes and St. Lawrence Seaway, promoting commerce, and protecting the marine environment.

IV. Background

Chapter 93 of Title 46 of the U.S.C. establishes a system of compulsory pilotage on the Great Lakes, requiring that each vessel of the United States operating “on register,” meaning United States vessels engaged in any commercial activity, and all foreign vessels, use a United States or Canadian Registered Pilot when operating in the Great Lakes.⁴

Great Lakes pilots use in-depth local knowledge, seasoned navigational and ship handling expertise, and informed independent judgement to guide both U.S. and foreign oceangoing commercial vessels safely in and out of Great Lakes’ ports and waterways. Congress made pilotage use compulsory in 1960, after

becoming concerned that the 1959 opening of the St. Lawrence Seaway led to a surge in shipping traffic. Congress addressed such a definite threat to safe navigation by passing the Great Lakes Pilotage Act of 1960.

The regulations for pilot application and registration appear in 46 CFR parts 401 and 402. These regulations require that mariners applying for pilot registration meet minimum requirements and qualifications and file an application form with the Director. While the Coast Guard is responsible for publishing an annual rule that sets pilotage rates, 46 CFR parts 401 and 402 have not been otherwise substantively updated since the early 1960s. As a result, these regulations are not in alignment with current practices by the Coast Guard and the pilotage industry operating on the Great Lakes.

In 2017, the Coast Guard asked the Great Lakes Pilotage Advisory Committee (GLPAC) to help the Coast Guard identify existing regulations, guidance, and collections of information (that fall within the scope of the Committee’s charter) for possible repeal, replacement, or modernization.⁵ In March 2018, GLPAC made several recommendations to update or remove outdated regulatory requirements from 46 CFR parts 401 and 402.⁶ In a September 10, 2018 meeting, GLPAC also recommended that the Coast Guard explore deadlines for contesting pilotage service invoices in part 402.⁷

In addition, the Coast Guard has identified several other areas that we propose revising. Ambiguities in regulatory text have caused confusion for pilots regarding training and registration instructions. A mariner qualifies for a given pilotage district in segments, allowing the Coast Guard to provide limited credentials as a mariner completes each stage of the pilot association’s training program. This progression is in the best interest of the mariners who can gain responsibility during the training program while ensuring that safety is not compromised. As explained above, with this rulemaking, the Coast Guard proposes to clarify the different phases of training and types of registrations for pilots who work on the Great Lakes. This includes clarifying the differences between

temporary and limited registrations, and which pilots are eligible for those registrations.

This proposed rule would affect approximately 51 United States Registered Pilots, 9 Apprentice Pilots, and 3 Temporary Registered Pilots on the Great Lakes as well as 3 district pilot associations and the owners and operators of approximately 293 vessels opting to use those pilots or statutorily required to use those pilots.

V. Discussion of Proposed Rule

A. Summary of Proposed Changes

This proposed rule would make several changes to 46 CFR parts 401 and 402 to clarify nomenclature and align these regulations with current practice and with other relevant regulations and plain language guidelines. The changes are summarized here and discussed in detail, section-by-section, below. The most substantial change that the Coast Guard is proposing in is to update the definitions section in part 401, subpart A, to clarify the phases of transition through the registration process, as well as adding definitions for miscellaneous terms to help clarify their application in other subparts. The Coast Guard is also proposing to change each instance of the affected terms based on the new definitions that appear elsewhere in parts 401 and 402. Additionally, the Coast Guard is proposing to change the application and training requirements for the different phases of pilotage registration in part 401, subpart B, that would generally follow this progression: “Applicant,” “Applicant Trainee,” “Apprentice Pilot,” “Limited Registration,” “Full Registration,” and “Temporary Registered Pilot.”

The Coast Guard proposes changing these regulations to align them with current pilotage training practices and to clarify the obligations that mariner applicants must fulfill before advancing to the next phase of registration.

The Coast Guard is also proposing to change the regulations covering the administration of registered pilots located in subparts B, C, D, E, and G. The Coast Guard is proposing these changes to bring the regulations into conformity with modern pilot administrative practices. Many of the specific requirements reference outdated locations, contact information, and procedures. These antiquated references make the regulations difficult to understand, and the proposed changes will bring much needed clarity to the regulations imposed on registered pilots.

The last category of changes that the Coast Guard is proposing is a series of

⁵ 82 FR 34909, July 27, 2017.

⁶ See Meeting Minutes from the March 6, 2018, meeting of the GLPAC Regulatory Reform Sub-Committee, which can be found in the docket. To locate the docket for this rulemaking, see the Public Participation and Request for Comments portion of this preamble.

⁷ The recommendation is on page 171 of the September 10, 2018, GLPAC Meeting Transcript, which is available in the docket for this rulemaking.

⁴ See The Great Lakes Pilotage Act of 1960, Public Law 86–555, June 30, 1960, as amended (codified at 46 U.S.C. 9301 *et seq.*).

technical amendments that will bring the regulations into conformity with the Plain Language Act and Information Network's Plain Language guidelines. One such proposed technical amendment, for example, is changing "The Coast Guard shall" to "The Coast Guard must."

A section-by-section description of the proposed changes follows.

B. Definitions

The Coast Guard is proposing to make a number of changes to § 401.110 to update the phases of pilot registration, to add definitions to terms that are commonly used by industry members but not reflected in the CFR, to revise definitions for terms whose meaning has changed since the last update to these regulations, and to remove definitions for terms that are no longer used or applicable to these regulations.

Updated Phases of Pilot Registration

In § 401.110, the Coast Guard is proposing to redefine the different stages of pilot registration to clarify the transitions through the registration process. At the present, there are training phases that are commonly used by the pilots in practice but lack precise legal definitions. This can lead to confusion for pilot applicants as to what is required of them before advancing to the next phase.

The Coast Guard proposes to add the following terms and their definitions, currently used in practice, to the CFR: Applicant, Limited Registration, and Temporary Registered Pilot. The Coast Guard proposes to redefine the following terms already existing in the CFR: Apprentice Pilot and Applicant Trainee. The proposed general progression would be Applicant, Applicant Trainee, Apprentice Pilot, Limited Registration, Full Registration (which we also refer to as a United States Registered Pilot or U.S. Registered Pilot in the regulations), and Temporary Registered Pilot. This would help clarify the differences between the terms and phases. We describe these updates, in turn, below.

Applicant

The Coast Guard proposes to add the term Applicant and its definition to the CFR. Applicant would mean a person who has submitted an application (Form CG-4509) to the Director for consideration for placement in an approved U.S. Great Lakes pilotage training and qualification program at an association. The Director would review the application to see if the Applicant meets the minimum requirements per § 401.210.

Applicant Trainee

The Coast Guard proposes to redefine the term Applicant Trainee that currently appears in the CFR. Redefined, Applicant Trainee would mean a person who is approved by the Director and is participating in an approved U.S. Great Lakes pilot training and qualification program. The mariner would meet the minimum requirements of the pilotage regulations in proposed new § 401.214 for Applicant Trainees. These requirements are spelled out in further detail below in Section C., *Updates to Training Requirements for Pilots*. The Applicant Trainee does not have the necessary 6 months of service or experience on the Great Lakes or endorsement on their MMC to qualify as an Apprentice Pilot. The Director would issue the Applicant Trainee a U.S. Coast Guard Applicant Trainee Identification Card.

In practice, the Applicant Trainee would spend at least 6 months at the district becoming familiar with the area waters. The Applicant Trainee would conduct trips on vessels, accompanying a U.S. Registered Pilot or Temporary Registered Pilot, to gain pilotage experience on the Great Lakes. These trips, conducted as an Applicant Trainee, would not count toward the minimum number of round trips required for Full Registration. Once the Applicant Trainee completes the familiarization in the district waters, the association could request the Applicant Trainee become an Apprentice Pilot in the district's training and qualification program. The Applicant Trainee is not eligible for a Limited or Temporary Registration.

Apprentice Pilot

The Coast Guard proposes to redefine the term Apprentice Pilot that currently appears in the CFR. Redefined, Apprentice Pilot would mean a person who has been approved by the Director and is participating in an approved U.S. Great Lakes pilot training and qualification program. The mariner would meet the minimum requirements in revised § 401.211. The Director would issue the Apprentice Pilot a U.S. Coast Guard Apprentice Pilot Identification Card. The proposed requirements for an Apprentice Pilot are discussed further in the preamble with the proposed changes to § 401.211.

Apprentice Pilots would typically possess a minimum of 6 months of pilotage experience on the Great Lakes and have a First Class Pilot endorsement on their MMC for the waters in which Full Registration is sought. The Apprentice Pilot would be required to

complete round trips until the Apprentice Pilot demonstrates proficiency, accompanying a U.S. Registered Pilot or Temporary Registered Pilot, upbound and downbound in the district's waters, and inbound to and outbound from ports, in accordance with their individual training plan.

Limited Registration

The Coast Guard would add the term Limited Registration and its definition to the CFR. Limited Registration would mean an authorization issued by the Director via letter to an Apprentice Pilot, upon the request of the pilotage association, that allows the Apprentice Pilot to provide pilotage service without direct supervision from a U.S. Registered Pilot or Temporary Registered Pilot in a specific area or waterway to facilitate the Apprentice Pilot's training. The proposed requirements for a Limited Registration are discussed with the proposed changes to § 401.211 in new paragraph (k).

Full Registration

The Coast Guard would add the term Full Registration and its definition to the CFR. Full Registration would mean the issuance of a Certificate of Registration ID card, by the Director, to an Apprentice Pilot, who meets and completes all the Coast Guard's proposed registration requirements in new §§ 401.210, 401.211, 402.210, and 402.220. These proposed requirements are discussed further below in Section C., *Updates to Training Requirements for Pilots*.

Generally, if the Apprentice Pilot satisfies all the Coast Guard's registration requirements and the pilotage association's requirements, and has maintained favorable performance evaluations during the training program, the Apprentice Pilot advances to Full Registration. The pilotage association could request that the Director consider an Apprentice Pilot for Full Registration as a United States Registered Pilot. The Director could approve or deny the request. If approved, the Director would issue the Apprentice Pilot a Certificate of Registration, making them a fully registered pilot. Full Registration would make the Apprentice Pilot a United States Registered Pilot who may provide pilotage services for the relevant pilotage association in accordance with the pilotage regulations.

Temporary Registered Pilot

The Coast Guard is proposing to add the term Temporary Registered Pilot and its definition to the CFR. A Temporary

Registered Pilot means a person who is issued a Temporary Registration by the Director, in accordance with proposed new § 401.222. A Temporary Registration would apply to pilots who desire to provide pilotage services but who have either reached the age of 70, or previously retired from pilotage service. The Coast Guard would require that a Temporary Registered Pilot hold a valid MMC, have previously held a Full Registration, meet the requirements of proposed § 401.222, and have been requested to provide pilotage services by the pilotage association. The new requirements in proposed § 401.222 are discussed further below in Section C., *Updates to Training Requirements for Pilots*. The Director may make the Temporary Registration valid for a certain period of time, not to exceed 1 year from the date of issuance.

New Definitions

In addition to the updated phases of pilot registration, the Coast Guard also proposes to add definitions to the CFR for the following terms that currently appear in the CFR to better clarify their meanings: chemical test, gross tonnage, individual training plan, marine accident, minimum number of round trips, officer endorsement, round trip, and semi-annual performance evaluation report. These terms clarified in the following paragraphs.

Chemical Test

The Coast Guard proposes to add the definition of “chemical test” to the definitions in § 401.110 to clarify the kind of test that will comply with the proposed new reporting requirements. Chemical test would mean a scientifically recognized test that analyzes an individual’s breath, blood, urine, saliva, bodily fluids, or tissues for evidence of dangerous drug, alcohol use, or any illegal substance, in alignment with the existing definition in 46 CFR 4.03–7. The definition of chemical test would apply to new requirements in parts 401 and 402 for mariners to submit chemical tests to the Coast Guard either at the Applicant phase of their application to be a pilot, or for marine accident reporting.

Gross Tonnage or GT

This proposed rule would add a definition for “gross tonnage or GT” to align with the gross tonnage measurement of the vessel under 46 U.S.C. chapter 143, Convention Measurement. Though 46 U.S.C. chapter 143 does not apply to a vessel of United States or Canadian registry or nationality, or a vessel operated under the authority of the United States or

Canada, and that is operating only on the Great Lakes, unless the owner requests, the Coast Guard proposes to adopt the Convention Measurement’s definition of gross tonnage to clarify which tonnage scheme the Great Lakes Pilotage regulations use. Parts 401 and 402 use gross tonnage in the context of determining whether Applicants or Apprentice Pilots (referred to as applicant pilots in the current CFR) have had comparable experience on other vessels or integrated tugs and tows on the Great Lakes or oceans to that of registered pilots on the Great Lakes. This is the same definition used in 46 CFR 10.107 for MMCs and in 46 CFR 69.57 for piloting regulations. As defined in parts 401 and 402, gross tonnage would require the mariner to obtain knowledge and previous performance that is equivalent to the knowledge and technical skills obtained by serving as an officer on vessels 4,000 GT or over.

Individual Training Plan

The Coast Guard proposes to add the term “individual training plan” and its definition to the CFR. This term and its definition are consistent with its use in current pilot association training programs. The individual training plan would outline the specific requirements of the association for an Apprentice Pilot, including the length of time to complete the training and the minimum number of round trips required to demonstrate proficiency. The individual training plan would communicate the qualifications and demonstrated skills that the Apprentice Pilot would be required to complete to meet the proficiency requirements for the training. The association would submit the individual training plan to the Director for review and approval, and the Director would then track the Apprentice Pilot’s development through the training period. This is consistent with current practice. The association would establish an individual training plan’s training requirements based on the association’s determination of proficiency, the officer endorsement on the MMC, and the Apprentice Pilot’s pilotage experience on the Great Lakes.

Marine Accident

The Coast Guard proposes to add a definition for the term “marine accident” that currently appears in the CFR. A marine accident would include any of the following incidents that occur while a U.S. Registered Pilot, Apprentice Pilot, Apprentice Pilot with Limited Registration, or Temporary Registered Pilot is providing pilotage services in U.S. or Canadian waters:

- (i) Any allision or collision;
- (ii) Any grounding;
- (iii) A loss of main propulsion, primary steering, or any associated component or control system that, due to its duration or other circumstance, significantly impacts the maneuverability of the vessel;
- (iv) An occurrence, directly related to the provision of pilotage services, involving significant harm to the environment as currently defined in 46 CFR 4.03–65, and including Canadian waters throughout the Great Lakes in addition to U.S. waters; or
- (v) Any other incident, directly related to the provision of pilotage services, causing property damage in excess of \$75,000 U.S. dollars (including the cost of labor and material to restore the property to its condition before the incident, but excluding the cost of such things as salvage, cleaning, gas-freeing, drydocking, or demurrage).

The outlined instances in this proposed definition are based on the definition in 46 CFR 4.05–1 for marine casualties, tailored for reporting marine accidents related to the Great Lakes pilotage program.

This definition would be used to identify events or occurrences where pilots must submit a marine accident report to the Director under revised § 401.260. Clearly defining marine accident would help ensure that certain marine accidents are reported to the Director in support of the Director’s oversight. The reporting requirement would clarify that this obligation to report marine accidents to the Director does not alleviate any other marine casualty reporting requirements elsewhere in Coast Guard or other agency regulations. We propose adding the marine accident definition and reporting requirement to alleviate concerns about accidents related to Great Lakes pilotage not being reported to the Director.

Minimum Number of Round Trips

The Coast Guard proposes to add a definition for “minimum number of round trips” to have one term to define the number of successful round trips an Apprentice Pilot must complete to become eligible for Full Registration. The phrase minimum number of round trips would mean the fewest successful round trips that the Apprentice Pilot would be required to perform under the direct supervision of a U.S. Registered Pilot or Temporary Registered Pilot to demonstrate proficiency prior to advancing and completing training. The minimum number of round trips required would be prescribed in the Apprentice Pilot’s approved individual

training plan, discussed in revised § 401.211. Section 402.220 contains the minimum number of round trips for certain officer endorsements.

In practice, each round trip would be evaluated, and the evaluation form would be retained in the mariner's training record. If, after evaluation, the Apprentice Pilot does not satisfy the Director's or association's proficiency requirements, additional trips in that area or port could be required.

Officer Endorsement

Officer endorsement is currently used in the regulations governing MMCs in 46 CFR part 10 to mean an annotation on an MMC that allows a mariner to serve in the capacities listed in 46 CFR 10.109. We are proposing to add a definition for "officer endorsement" that matches the definition in 46 CFR part 10 to help ensure that the term is interpreted consistently.

Round Trip

The Coast Guard proposes to add a definition for "round trip" to clarify what is expected of the Apprentice Pilot, as outlined in their individual training plan. We propose to define round trip as providing pilotage service, in both directions, from one change point to another change point or inbound and outbound in a port designated by an authorized pilotage pool. This definition would also apply to the round trip in the proposed definition minimum number of round trips. Defining round trip would help clarify the minimum requirements for Apprentice Pilots in their training.

Semi-Annual Performance Evaluation Report

The Coast Guard proposes to add a definition for "Semi-annual Performance Evaluation Report." Twice per shipping season, the association would be required to submit to the Director a progress report of how the Apprentice Pilot is progressing through their training. The report would assess an Apprentice Pilot's progress in the pilot association's training and qualification program, and the Apprentice Pilot's performance in completing their individual training plan.

Revised Definitions

We are also proposing to revise the definitions of association, Commandant, comparable experience, Director, person, pilotage pool, Rate computation definitions to determine Weighting Factors, Secretary, and United States Registered Pilot or U.S. Registered Pilot to align the regulatory definitions with

industry usage and understanding. These proposed revisions are detailed below.

Association

The Coast Guard proposes to remove the words "or held" from the definition of "association." This would clarify that if the Coast Guard revokes an association's Certificate of Authorization, they are no longer an association under the Act or Coast Guard regulations. In addition, the Coast Guard proposes to specify in the definition of association that the Director, instead of the Great Lakes Pilotage Branch, issues the Certificate of Authorization to the association.

Commandant

In the definition of "Commandant," our only proposed change is to replace the outdated office symbol, CG-00, with the current office designation, CCG.

Comparable Experience

The Coast Guard proposes to change the first sentence in the definition of "comparable experience" to better define the requirements. Currently, the definition suggests that comparable experience is similar experience obtained by serving as an officer of a vessel. The proposed changes would state that comparable experience means knowledge and previous performance that is equivalent to the knowledge and technical skills obtained by serving as an officer on vessels of at least 4,000 GT or over. We propose adding this requirement, that comparable experience must be obtained on vessels of at least 4,000 GT, throughout the regulations to be consistent regarding comparable experience and the requirements to be a registered pilot in 46 U.S.C. 9303(a)(2). The existing regulations for qualifying for registration in 46 CFR 401.210(a)(1) require service to be accrued on vessels of 4,000 GT or over on the Great Lakes or oceans. This experience, on vessels of 4,000 GT or over, also applies to Apprentice Pilots (currently referred to as Applicant Pilots in the CFR) in existing § 401.211(a)(1).

Director

In the definition, this proposed rule would remove outdated reference to Commandant (CG-WWW-2) and replace it with Director, Great Lakes Pilotage. We would also update the mailing address for the Director within the definition.

Person

In the definition of "person," we propose changing "pool" to "pilotage

pool," to align with the new definition of "pilotage pool" discussed below.

Pilotage Pool

The Coast Guard proposes to revise the current term and definition of "pool" by revising the term and amending the definition. First, we propose to revise the term pool by adding "pilotage" to identify it more clearly. Throughout parts 401 and 402, this proposed rule would update all references to "pool" to "pilotage pool." In current practice, the Director provides the pilotage pool a Certificate of Authorization to operate as an association. Second, the definition of pool in the current CFR text is an organization authorized to provide pilotage services. We propose to revise the definition to account for the requirement that an organization must hold a Certificate of Authorization issued by the Director to provide pilotage services. The new definition would clearly indicate what is required for a pilotage pool authorization.

Rate Computation Definitions To Determine Weighting Factors

The Coast Guard proposes to add the words, "to determine Weighting Factors" to the existing phrase, "Rate computation definitions," at § 401.110(a)(10) to indicate to the public the purpose for these rate computation definitions. The definitions of "length", "breadth", and "depth" at § 401.110(a)(10)(i)-(iii) themselves would remain unchanged. Weighting factors are used in the calculation of a vessel's pilotage rate to determine the appropriate fee for a vessel's pilotage services and are based on the size of the vessel.

Secretary

This proposed rule would revise the definition of "Secretary" to align with the definition used in 46 U.S.C. 2101. The revised definition would point to the Secretary of the department in which the Coast Guard is operating, instead of the Secretary of Homeland Security. This proposed change would promote consistency between definitions used throughout statutes and Coast Guard implementing regulations.

United States Registered Pilot or U.S. Registered Pilot

This rule proposes non-substantive changes to the definition of "United States Registered Pilot or U.S. Registered Pilot." First, we propose to remove an outdated reference to "license" and revise the discussion of the authorization document to read "an MMC with an officer endorsement." We

propose to add the word “areas” to capture that the endorsements for pilotage on the Great Lakes can be for routes or areas. We also propose an edit to make clear that, under the newly proposed training stage nomenclature, a United States Registered Pilot currently holds a Certificate of Registration.

We would also update the outdated references to Title 52 of the Revised Statutes of the United States with references to Title 46 of the United States Code, which is where the Coast Guard’s statutory authority exists for Great Lakes pilotage regulations.

Removed Definitions

The Coast Guard proposes to remove the definition of *Movage* because the ratemaking methodology no longer supports this action. Under the ratemaking methodology before 2016, pilot districts charged the vessel owners a defined *movage* fee to move a vessel from one place to another; for example, from an anchorage to inside the harbor, or dock to dock. Since the ratemaking methodology was updated in 2016, vessel owners are charged an hourly rate for any vessel movement by a United States Registered Pilot, rounded up or down to the nearest 15 minutes.

The Coast Guard also proposes to delete the definition of “other officer” from the definition section because we are proposing to delete the only reference to the term in § 401.510(b)(3). The definition would no longer be necessary because we would not reference the term anywhere in part 400.

Organizational Changes

The Coast Guard proposes to revise § 401.110 to list the existing and new definitions in alphabetical order to make it easier for the reader to find definitions. The changes to the definitions are described in the alphabetical order they would appear in the revised § 401.110 definition section.

The Coast Guard is also proposing to update each instance of affected terms in parts 401 and 402 to align with the new definitions.

C. Updates To Training Requirements for Pilots

The Coast Guard is proposing to update the regulations that govern the application and training requirements to bring the CFR into conformity with industry practice. These regulations, located in part 401, instruct an applicant pilot as to what specifically they must do in order to apply and progress through the newly clarified phases of pilot registration. Following is a section-by-section description of the updates being proposed to the Great

Lakes Pilotage application and training requirements. These changes include formatting changes that will improve the usability and readability of the CFR.

§ 401.200 Application for Registration

In § 401.200, the Coast Guard proposes to add the email address, “*GreatLakesPilotage@uscg.mil*”, and physical mailing address, “Great Lakes Pilotage Office, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509” to which Applicants for pilotage on the Great Lakes must submit the Application for Registration as a United States Registered Pilot (Form CG–4509). We propose allowing either physical mail or electronic submission of the Application for Registration as a United States Registered Pilot (Form CG–4509) form to the Director to provide flexibility to the mariners. This change would also provide clear guidance for where to submit the form.

In this section, the Coast Guard proposes to remove the requirement to submit two full-face photographs when submitting Application Form CG–4509. The passport photos are not needed at this stage of the process. Following the submission of an application and an interview process, passport-style photos would be requested from the Applicant if they are approved to be placed into a U.S. Great Lakes pilot training and qualification program. The requirement to submit the photos upon the request of the Director would be in § 401.211(e) for Apprentice Pilots, and in proposed new § 401.214(e) for Applicant Trainees.

In practice, if the Applicant does not submit the required application materials, the Coast Guard Great Lakes Pilotage Office works with the Applicant to obtain the required documentation to meet the minimum requirements. Once the Applicant provides additional information and meets the minimum requirements, the approved application is forwarded to the pilot district(s) requested by the applicant for consideration. The pilot associations maintain a list of Applicants who meet the minimum requirements, and conduct interviews based on the applications provided by the Great Lakes Pilotage Office and the need for more pilots. If the Applicant is selected by the association, the association submits a letter to the Director requesting that the Applicant be placed in that district’s approved training and qualification program.

We are also proposing a formatting change to this section where we would remove the paragraph (a) designation. All the text within this section would be undesignated. Removing the paragraph (a) designation would remove the need

for the unused reserved paragraph (b) within this section. There is no need for multiple paragraph designations within this short section.

§ 401.210 Requirements and Qualifications for Full Registration

In paragraph (a)(1), the Coast Guard proposes to clarify that the mariner must have an MMC with an officer endorsement issued in accordance with 46 CFR subchapter B, part 11. We propose to delete the outdated references to Title 52 of the Revised Statutes of the United States. We also propose to change applicants qualifying with “ocean service” to applicants qualifying with “other than Great Lakes service,” because mariners may have different endorsements on their MMC, such as Master Ocean or Master Inland Waters. This change would help clarify that applicants qualifying with an endorsement on their MMC other than Great Lakes service must obtain at least 6 months of service as a deck officer or comparable experience on the Great Lakes.⁸ We also propose to clarify in this section that the officer experience must be “deck” officer experience. Deck officer experience means the mariner is working on a vessel under the endorsement as per their MMC.

The paragraphs in paragraph (a) of this section contain several requirements a pilot must meet to be eligible for full registration. We propose making the following changes to the paragraphs and redesignate the requirements in paragraphs (a)(1) through (8).

In paragraph (a)(4), the Coast Guard proposes to add a reference to 46 CFR part 10, subpart C, for the mariners to find the applicable medical requirements and standards prescribed by the Commandant.

In paragraph (a)(6), the Coast Guard proposes to remove the requirement for a U.S. Registered Pilot to have a valid TWIC because this requirement is duplicative of the TWIC requirement prescribed in 46 CFR 10.203 for obtaining an MMC. A mariner cannot be a U.S. Registered Pilot without holding an MMC. This non-substantive change is in accordance with GLPAC recommendation 1 from the GLPAC Subcommittee Teleconference Meeting Minutes from March 5, 2018. Because we propose to remove the text from paragraph (a)(6), we propose to redesignate the subsequent paragraphs. We propose to move the existing requirement that the mariner agrees to

⁸ See Meeting Minutes from the March 6, 2018, meeting of the GLPAC Regulatory Reform Subcommittee, which can be found in the docket.

be available for service, currently in paragraph (a)(7), into paragraph (a)(6), without change.

In redesignated paragraph (a)(7), the Coast Guard proposes to change “Applicant Pilot” to “Apprentice Pilot” to conform to the proposed new definitions. Revised paragraph (a)(7) would require mariners seeking Full Registration to complete the requirements for an Applicant Pilot in § 401.220(b). We are also proposing to delete the text “if applying for registration for waters in which a pilotage pool is authorized” because the requirements in § 401.220(b) would apply to all Apprentice Pilots.

In 401.210(a)(8), the Coast Guard also proposes to add that Apprentice Pilots requesting full registration must meet chemical testing requirements as defined in 46 CFR part 16. Currently, all U.S. pilots on the Great Lakes are required to meet the chemical testing requirements in part 16. The purpose of this proposed addition is to clarify that this will also be part of the Apprentice Pilot qualifications.

§ 401.211 Training requirements for Apprentice Pilots and Limited Registration Authorization

The Coast Guard proposes to change the term “Applicant Pilot” to “Apprentice Pilot” throughout this section to align with the new definition of Apprentice Pilot. Use of the term Apprentice Pilot falls more in line with industry vernacular for this stage. We also propose to add “Limited Registration Authorization” to the section name because we propose to include the requirements for Apprentice Pilots to obtain this authorization as part of their training program.

This proposed rule would separate the requirements for Apprentice Pilots to be selected for training from existing paragraph (a) and put the list into new paragraph (b). In the requirements for Apprentice Pilots in redesignated paragraph (b)(1), this proposed rule would update the cross-reference from § 401.210(a)(7) to paragraph (a)(8) to conform with proposed redesignations in that section.

In revised paragraph (b)(3), the Coast Guard proposes to revise the radar observer requirement to state that the Apprentice Pilot must have a radar observer (unlimited) endorsement on their MMC. We would also include a cross-reference to the radar observer requirements in § 11.480 for the public’s reference. By removing the obsolete radar competency certificate option, we would bring the regulations up to date with the current radar observer endorsement requirements in 46 CFR

subchapter B, part 11. This conforming change would not be a new requirement for mariners, because they are already expected to have a radar endorsement issued by the Coast Guard.

In this section, we also propose to allow submission of the Application Form CG-4509 to the email address *GreatLakesPilotage@uscg.mil* in addition to the physical mailing address Great Lakes Pilotage Office, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593-7509. Emailing the form could reduce the administrative burden associated with submitting the form. We would also clarify that the Director will request a signed passport-style photograph from those applying to be an Apprentice Pilot, when needed. The photographs would not be required when submitting Form CG-4509, because the photos are not needed until the Coast Guard is ready to issue an identification card.

In this revised section, the Coast Guard proposes to clarify the issuance of the U.S. Coast Guard Apprentice Pilot Identification Card. If the applicant meets the requirements in this section and is selected to be placed in an association’s training program, the association would submit a letter to the Director for approval. If the Director approves placing the applicant in the training program, the Coast Guard would issue the applicant an Apprentice Pilot Identification Card.

The Coast Guard proposes to expand the list of circumstances when an Apprentice Pilot Identification Card would become invalid to account for the Director’s statutory authority to set validity periods in 46 U.S.C. 9303(c). At the time of issuance of the Identification Card, the Director would indicate a validity period for the card. For example, the Director could coincide the expiration dates of the identification card with the dates of the Semi-annual Performance Evaluation Reports, August 15 and January 15. The other three existing grounds for expiration for the Identification Card would remain substantively the same, including when the Apprentice Pilot is registered as a pilot under § 401.210, when the Apprentice Pilot withdraws from the training program, or when the card is ordered withdrawn by the Director.

In new paragraph (g), we propose to add a requirement that all Apprentice Pilots must have a Director-approved individual training plan. The associations currently provide Director-approved individual training plans to the Apprentice Pilots as guidance during the approved U.S. Great Lakes pilot training and qualification program. We intend to codify this current practice

in the regulations. As stated in the proposed definition, an individual training plan would outline the specific requirements and expectations for each Apprentice Pilot. The individual training plan would provide clear direction for the Apprentice Pilot, association, and Director regarding the Apprentice Pilot’s goals and progression through the training program. The Apprentice Pilot and the pilot association would record the round trips outlined in the individual training plan and provide this information to the Director for review.

In new paragraph (g) we also propose to clarify that round trips completed as an Apprentice Pilot would count toward the minimum number of round trips required for Full Registration. As a consequence of not defining round trips previously, there has been confusion for Applicant Trainees and Apprentice Pilots regarding when their trips do or do not count towards the Full Registration certification. The trips outlined in the Apprentice Pilot’s individual training plan and conducted with a U.S. Registered Pilot or Temporary Registered Pilot would have to be recorded by the Apprentice Pilot and count towards Full Registration. If the association feels the Apprentice Pilot is not ready to provide pilotage services after completing the required minimum number of round trips outlined in their individual training plan, the association could require the Apprentice Pilot to continue conducting round trips until they meet the association’s requirements. Trips completed while an Applicant Trainee would not count toward the minimum number of round trips.

In addition, the Coast Guard is proposing at new paragraph (h) to require that associations conduct Semi-annual Performance Evaluation Reports for their Apprentice Pilots to assess the Apprentice Pilots’ progress in their training program. The associations currently provide evaluation reports to the Director to share the Apprentice Pilot’s progress in the approved U.S. Great Lakes pilot training and qualification program at the District. We propose to codify this current practice in the regulations. The associations would submit these reports to the Director by August 15 and January 15 of each year.

The report would include recommendations to the Director on whether to keep the Apprentice Pilot in the training program. This report would be intended to evaluate the Apprentice Pilot’s progression through their training and help keep the Director informed of that progress. The report

would provide the Apprentice Pilot necessary feedback to stay on track with their individual training plan and association expectations. By requiring a semi-annual report submission to the Coast Guard, all parties would remain informed of the progression of the Apprentice Pilot's training throughout the Great Lakes. All requests for Apprentice Pilots and Limited Registrations must contain a positive endorsement from the pilot association's training committee or president for the Director's consideration. The positive endorsement does not guarantee issuance or renewal by the Director. The Director considers the Apprentice's training progress, traffic projections, and other relevant information when making the decision to issue a certification.

Another proposed requirement for this section at new paragraph (i) is that the Apprentice Pilot must be enrolled in the association's chemical testing program, commonly known as drug testing, that meets the requirements of 46 CFR part 16. We are proposing to add chemical testing requirements and compliance into these regulations to ensure Apprentice Pilots are being monitored by the associations in the interest of maritime safety on the Great Lakes.

In new paragraph (j), the Coast Guard proposes procedures for how an Apprentice Pilot may obtain a Limited Registration. Where the Director determines a need for the pilot in order to meet the needs of increased vessel traffic, a Limited Registration could be issued to an Apprentice Pilot who has completed the requirements in § 401.220(b) and maintained a favorable performance evaluation in their Semi-annual Performance Evaluation Reports.

Specifically, the Apprentice Pilot would be required to satisfy the association's requirements in a specific area or port of the district waters before being eligible for a Limited Registration, as set out in the Apprentice Pilot's training plan. Thereafter, the association would request approval for the Apprentice Pilot to provide pilotage services in these specific areas without supervision by a United States Registered Pilot or Temporary Registered Pilot. If approved, the Director would issue the Apprentice Pilot a letter authorizing Limited Registration for the area or port completed and requested by the association. The Apprentice Pilot would be able to provide pilotage services without supervision in the authorized area and would continue to complete round trips in other areas and ports as opportunities are provided by the association. Once all required round

trips are completed per their individual training plan, only the association may make a request to the Coast Guard that the Apprentice Pilot take the pilot's written exam.

The Director could revoke the Limited Registration if the Director feels the Apprentice Pilot is not receiving the appropriate training time to complete the remaining trips left in the District waters. Limited registrations are valid for as long as the Director determines.

Last, we propose adding new paragraph (k), which would state requirements for when an Apprentice Pilot may be eligible for a Certificate of Registration. These requirements are distinct from the requirements for Applicant Trainees contained in § 401.210 and reflect the value of an Apprentice Pilot's experience. The four proposed requirements would be: completion of a Director-approved Great Lakes pilot association's training program, a positive endorsement from the association, successful completion of the Director's exam, and a determination by the Director that there is a need for an additional pilot in that association. These requirements exist in practice and are referenced throughout parts 401 and 402. We propose codifying them here so that it is clear to the Apprentice Pilot and associations what conditions are necessary to reach Full Registration.

§ 401.214 Training Requirements for Applicant Trainees

In this new section, we propose to outline all the requirements for Applicant Trainees, as we do for Full Registration and Apprentice Pilots in other sections. This section would codify the Director's authority to determine the number of Applicant Trainees needed to be in training at a time for each association to ensure a sufficient number of U.S. Registered Pilots in that district. This authority is exercised in the ratemaking update every year, but this proposed rule would codify it.

The requirements for Applicant Trainees would be similar to those of Apprentice Pilots but would not require any prior Great Lakes service experience. In the proposed requirements, the Applicant Trainee must be a U.S. citizen, of good moral character and temperate habits, physically competent, available for service, under the age of 60, in compliance with the chemical testing requirements, and have a radar observer (unlimited) endorsement on their MMC.

The Applicant Trainee would be required to obtain at least 6 months of service as a credentialed officer on the

Great Lakes before being eligible to be considered for Apprentice Pilot. Training performed as an Applicant Trainee would be under the supervision of a U.S. Registered Pilot or Temporary Registered Pilot. This proposed section states that the Director must approve the pilots designated to provide training to Applicant Trainees, as an oversight measure. When an Applicant Trainee is conducting trips with a U.S. Registered Pilot or Temporary Registered Pilot to complete the 6-month familiarization requirement or comparable experience on the Great Lakes, the round trips would not count toward Full Registration certification.

In practice, Applicant Trainees would be required to receive a positive endorsement from the pilot association's training committee or president for the Director's consideration. The positive endorsement would not guarantee issuance or renewal by the Director. The Director would consider the Applicant Trainee's progress, traffic projections, and other relevant information when making the decision to issue a certification.

As we also propose in other sections, we propose clarifying that the Applicant Trainee may submit the Application Form CG-4509 to the to the email address *GreatLakesPilotage@uscg.mil* or the physical mailing address Great Lakes Pilotage Office, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593-7509. We also note that the Director would request the signed passport-style photographs when they are needed, but they would not need to be submitted with the application. The Coast Guard does not need the photos until issuing the identification card.

Applicant Trainees who are selected by the association and approved by the Director would be issued a U.S. Coast Guard Applicant Trainee Identification Card. The card would remain valid until the earliest of an expiration date set by the Director, the date the Applicant Trainee is registered as an Apprentice Pilot, the date the Applicant Trainee withdraws from the training program, or the date the Director orders the card returned.

§ 401.220 Registration of Pilots

The Coast Guard proposes to remove the 1-year time limit in §§ 401.220(b)(1) and 402.220(a) for Apprentice Pilots to complete their round trips, and instead allow the applicable time limit to be specified in an Apprentice Pilot's individual training plan. Due to limited vessel traffic in some districts and ports, some Apprentice Pilots are not able to complete the required number of

training trips in 1 year. This change would allow Apprentice Pilots more time to complete these trips, in accordance with their individual training plan. Currently, training takes 2-to-3 years, on average, depending on which MMC endorsements the Apprentice Pilot holds and how quickly they satisfy the requirements set forth by the association. This proposed change is in accordance with GLPAC subcommittee recommendations 4 and 5, described in the GLPAC Subcommittee Teleconference Meeting Minutes from March 5, 2018, and adopted at the GLPAC Teleconference meeting on April 11, 2018.⁹

The proposed revisions to § 401.220(b) would align the requirements in paragraphs (b)(1) through (3) with the new definition for Apprentice Pilots. In proposed paragraph (b)(3), the Coast Guard proposes to clarify when the written examination is to be taken by the Apprentice Pilot. The written examination is the final step before being considered for Full Registration. After all the requirements of the regulations and the individual training plan have been met, and the association is comfortable with the Apprentice Pilot's progress, the association would send a request to the Director for the administration of the written exam. The Director would then arrange for the Apprentice Pilot to take the written exam at the nearest Regional Exam Center or respective pilot association office. The proposed changes to paragraph (b)(3) would indicate that the Apprentice Pilot is eligible to take the exam after they complete their minimum number of round trips and complete their approved course of instruction prescribed by the association.

In paragraph (c), this proposed rule would provide that the pilot association's recommendation for registering the Apprentice Pilot can include reasons for or against their registration. Currently, the text only requires the association include reasons for the registration. We wish to clarify that the association should include any reasons, for or against registration, that are relevant to the Director's decision.

The Coast Guard proposes to clarify in paragraph (d) that a Certificate of Registration may be issued to an Apprentice Pilot who has completed all the requirements and has been found qualified.

Last, in § 401.220, this proposed rule would delete paragraph (e). This paragraph authorizes the Director to issue a temporary Certificate of Registration for a period of less than 1 year to qualified persons regardless of age. We propose deleting this because Temporary Registration is redefined and prescribed in new proposed § 401.222, discussed next.

D. Administration of Great Lakes Pilots

The Coast Guard is proposing to update various sections in parts 401 and 402 that govern the administration of Great Lakes pilots. The proposed changes included in this section will modernize the mechanisms and practices used by the Coast Guard to register, monitor, and ensure the compliance of Great Lakes pilots. Following is a section-by-section description of the proposed changes to each section.

§ 401.222 Temporary Registered Pilots on the Great Lakes

In conjunction with the new proposed definition for "Temporary Registered Pilot," the Coast Guard proposes a new § 401.222 regarding the requirements and issuance of a Temporary Registration. The mandatory retirement age for United States Registered Pilots is 70 years old. However, if a pilot maintains their MMC and meets the medical requirements, they could, with the Director's approval, receive a Temporary Pilot Identification Card to continue providing services where the association requests their pilotage services and where there is a need for the pilot. Alternatively, if a United States Registered Pilot has previously retired and is requested by the association to again provide pilotage services, the Director could consider issuing a Temporary Registration for them as well.

A mariner seeking Temporary Registration under this section would be required to meet all the requirements of a United States Registered Pilot in § 401.210, except the age requirement. This Temporary Registration would be for pilots who have reached the age of 70 or who have retired, but who desire to provide pilotage services. The Temporary Registration would be valid for a period of time defined by the Director but would not exceed 1 year from the date of issuance. Current regulations in § 401.222(e) for Temporary Registration have the same 1-year validity period. Given the risks associated with piloting large vessels through the Great Lakes and rivers, an annual renewal requirement would continue to promote the safety goals on

the Great Lakes while allowing flexibility to mariners who wish to continue to provide pilotage services after retirement or age 70.

§ 401.230 Certificates of Registration

In § 401.230(a), when describing the waters where the Certificate of Registration authorizes the pilot to perform pilotage services, the Coast Guard proposes to use "areas and routes" in place of "part or parts." Using "areas and routes" better aligns with language used throughout the pilotage regulations.

In paragraph (c), the Coast Guard proposes to clarify that a Certificate of Registration may not be digitally reproduced or be used to make a facsimile, in addition to the current prohibitions against copying or Photostat. The original Certificate of Registration, issued by the Director, is the only document allowed to be carried by a U.S. Registered Pilot. These proposed changes would further clarify that no copies, printed or electronic, are allowed.

The Coast Guard proposes to require that requests for replacement of Certificates of Registration must be made on Form CG-4509, instead of simply in writing, as the Coast Guard requires all the information on the form be updated to issue a new Certificate of Registration. The Coast Guard also proposes in paragraph (d) to clarify the style of signed photographs needed to generate a replacement for a Certificate of Registration that has been lost, damaged, or defaced. Because the signature on the photo is needed to authenticate the certificate, the signature would need to be as close to the head as possible, so that the signature remains visible when the photo is trimmed to fit the certificate during creation.

§ 401.240 Renewal of Certificates of Registration

The Coast Guard proposes to clarify in § 401.240(a) that an applicant for a renewal of Certificate of Registration must submit the Application for Registration as a United States Registered Pilot, Form CG-4905.

The Coast Guard proposes to clarify the style of photographs needed to generate a Certificate of Registration for renewal. Specifically, we propose stating that the signature on the photograph needs to be as close to the head as possible, so that the signature remains visible when the photo is trimmed to fit the certificate during creation.

⁹ See Meeting Minutes from the March 6, 2018, meeting of the GLPAC Regulatory Reform Subcommittee, which can be found in the docket.

§ 401.260 Reports

In paragraph (a), the Coast Guard proposes to clarify that, when a marine accident occurs while a United States Registered Pilot, Apprentice Pilot, Apprentice Pilot with Limited Registration, or Temporary Registered Pilot is providing pilotage services, they must report the accident to the Director in writing. We propose adding the results of the pilot's post-casualty drug and alcohol test, if required, to the report's mandatory contents. The existing requirements would be put into a list format to better clarify what the pilot must include in the report.

We propose redesignating as new paragraph (b) the existing requirement from paragraph (a) that the report to the Director does not relieve the pilot or others of responsibility for submitting any report required by other government agencies of the United States or Canada. We also propose clarifying in new paragraph (b) that this reporting requirement does not affect any other reporting requirements in Coast Guard regulations.

We propose to remove the requirement in 46 CFR 401.260(c) for the pilotage pool to submit a monthly availability report to the Director. As per 46 U.S.C. 9303(a)(3), "the applicant will be available for service when required." In 46 CFR 401.210(a)(6), pilots must agree to be available for service. The Coast Guard sees no use for this monthly availability report requirement because the associations notify the Director when a pilot is not available to provide pilotage services. In practice, the Director has not been requiring this monthly report. Accordingly, we propose to remove the requirement from the regulations.

§ 401.420 Cancellation, Delay, or Interruption in Provision of Services

In paragraph (a)(3) of this section, the Coast Guard proposes to remove the words "or movage" and replace them with "or transit," because the ratemaking methodology does not account for this movage action. "Transit" aligns better with the terminology used in part 400.

In paragraph (c), the Coast Guard proposes revisions to the existing provisions specifying that, when pilotage delay is due to ice or weather, the vessel is not responsible for the additional charges invoiced by the association. The regulations currently only state that the vessel is not liable for charges under this part. We propose adding language to explicitly extend this exemption to vessel owners to more

clearly establish the lack of liability for charges under this section.

We would also clarify that the decision to interrupt the voyage or detain the pilot as a result of ice or weather must be jointly determined by the vessel master and the United States Registered Pilot, Apprentice Pilot with Limited Registration, or Temporary Registered Pilot authorized to provide pilotage services to the vessel. This interruption of the voyage or the detention of the pilot would be in consideration of marine safety. Requiring them to reach this decision in agreement is an equitable solution to resolve when the vessel or owner is not liable for the pilotage charges. When possible, they should make the determination to interrupt, detain, or delay the vessel due to ice or weather prior to the pilot departing for the vessel. This additional guidance on when the determination should be communicated to the pilot would promote efficiency in the process of calling a pilot to a vessel.

We also propose removing interruption or detention due to traffic as a justification for this exemption for delayed pilotage charges. Vessel traffic is a normal occurrence on the waterways that can be expected during the normal course of business. On the other hand, weather and ice delays are made in response to maritime safety, and vessels should not be penalized for delays made in the interest of safety. These exemptions are intended to relieve vessels for charges brought on by forces outside of their control. While vessel traffic used to be difficult to predict, the availability of the Vessel Traffic System and Automated Information System data means that vessels are able to predict traffic. Therefore, the Coast Guard is removing this exemption and making vessels responsible for accurately predicting vessel traffic.

§ 401.425 Provision for Additional Pilot

The Coast Guard proposes to remove the text, "Great Lakes Pilotage Staff, U.S. Coast Guard, or the General Manager, Great Lakes Pilotage Authority, Ltd., Canada" and all references to Canada and other U.S. Coast Guard staff in this section to clarify who makes the decision as to when an additional U.S. Registered Pilot is required. We would clarify in the text that the Director makes this double pilotage determination, when necessary, for the safe navigation of the vessel.

We also propose removing the statement that the provisions for an additional pilot do not apply to a ship

that is not required to have a pilot on board in undesignated waters of Lake Erie between Southeast Shoal and Port Colborne, because a pilot is always required in these waters. As this exemption is obsolete and no longer applies, we propose deleting it from the regulations.

Additional pilot determinations are currently made on a case-by-case evaluation and are usually authorized for the opening and closing of the shipping season. We propose noting in the regulations that this is a case-by-case evaluation and include the potential reasons for the need for additional pilots. The association or vessel representative could request an additional pilot on the vessel for a specific time, particular port or area, or situation. For example, an association or vessel could need an additional pilot due to seasonal removal of aids to navigation, ice conditions, weather forecasts, or other relevant situations.

§ 401.431 Disputed Charges

The Coast Guard proposes to update this section to simplify and streamline the billing dispute process. This would make it easier to understand Coast Guard requirements and how the vessel, owner, or master should provide the required data, such as via a written letter from an authorized officer of a company. We would also define the response time periods for the Coast Guard, the vessel owner or agent, and the pilot association, to both shorten the process and hold all involved stakeholders to regulatory timelines, per GLPAC recommendation 2 from the GLPAC 2018 Annual Meeting on September 10, 2018.¹⁰

Under revised paragraph (a), a vessel master, owner, or agent who disputes the rate or charge for a pilot would be required to appeal to the Director within 60 days of the date the pilot association issues the bill. We propose clarifying that the pilot association may also apply the charge to the vessel owner, master, or agent thereof, because it is not always the pilot who applies the charge. The appeal would continue to be for the Director to issue an advisory opinion as to whether the disputed rate or charge is a prohibited charge or incorrectly assessed/calculated charge.

In proposed revisions to paragraph (b), the vessel owner, Master, an agent, or an employee empowered to speak on behalf of the owner or an agent would deliver the appeal to the Director in the form of official correspondence. The

¹⁰ See Meeting Minutes from the March 6, 2018, meeting of the GLPAC Regulatory Reform Subcommittee, which can be found in the docket.

rule would require the appeal correspondence to describe the pilotage services, exact disputed charges, regulatory citation for the dispute, and requested resolution.

The proposed rule would also require the owner or agent to provide the pilot association with a copy of the appeal and inform them that the disputed charges have been sent to the Director for an advisory opinion.

The association would continue to have up to 20 days to provide the Director and the entity that provided the complaint with any further data or arguments in defense of the disputed charges. We propose clarifying that they have 20 business days, starting upon receipt of the notice of appeal from the charterer or owner. We also propose removing “rates” from the subject of a dispute because the pilots and associations do not create or set the rates; the Coast Guard sets the rates through an annual rulemaking.

In paragraph (e), we propose adding a timeline of up to 30 business days for the Director to issue an advisory opinion. We propose removing the express recital that the Director considered all relevant material. Per current paragraph (e), the advisory opinion must address the disputed rates and charges, discuss the facts and information provided by both parties, and include a statement of opinion, so a recital that the Director considered the material is unnecessary.

If the Director’s advisory opinion finds the disputed rates or charges are prohibited, the association currently has a reasonable time, but not more than 30 days, to return the amount of disputed charges as per the advisory opinion. We propose revising the deadline to simply say the association must issue any refund according to the advisory opinion within 30 business days.

If the pilot association or the vessel owner feels the advisory opinion is incorrect, under proposed new paragraph (h), they would be able to appeal the advisory opinion to the Director of Marine Transportation Systems (CG–5PW). The pilot association would be able to submit an appeal for adjudication of the advisory opinion within 10 days of receiving the original advisory opinion.

§ 401.450 Pilot Change Points

In paragraph (b) of this section, the Coast Guard proposes to remove the effective date for the addition of change point Iroquois Lock. The change point went into effect on October 2, 2017, to provide enough time for the association to hire more pilots. Since the effective date has passed and the change point is

currently in use, we propose removing the start of the effective date, per GLPAC recommendation 1 from the GLPAC 2017 Annual Meeting on September 26, 2017.¹¹ In paragraph (b), we also propose to update the location of the change point for the Iroquois Lock. The change no longer happens between Iroquois Lock and the area of Ogdensburg, NY on the St. Lawrence River; the pilot exchange now takes place in the Iroquois Lock.

In paragraph (i), the Coast Guard proposes to update change point “Gros Cap” to “Buoy 33” of the St. Marys River, Point Iroquois. The GLPAC created a subcommittee to discuss all the pilot change points in the St. Lawrence Seaway and Great Lakes system. They found that Gros Cap was too far out of the St. Marys River, and weather conditions created unsafe conditions for the pilot boat to transfer pilots. Buoy 33 of the St. Marys River is a better harbor to transfer pilots, as it is safer for the pilots as they transit up and down the ladders of the vessels. This proposed change is from GLPAC recommendation 1 from the GLPAC 2017 Annual Meeting on September 26, 2017, and conforms to current practice.¹²

§ 401.510 Operation Without Registered Pilots

The Coast Guard proposes to remove outdated regulations in paragraphs (b)(3) through (7) of this section that were codified when both the Department of Commerce and the Coast Guard had regulatory authority over U.S. pilotage services. From 1960 to 1967, primary responsibility for Great Lakes pilotage resided with the Department of Commerce. As the Coast Guard is now the sole Federal agency responsible for enforcing the Great Lakes Pilotage Act, these regulations are unnecessary or cumbersome. And, because all the regulatory authority is now under the Coast Guard, we can coordinate more effectively and efficiently with Coast Guard District 9 than was possible when the authority was split between the Coast Guard and the Department of Commerce.

The regulations in § 401.510 addressing operation without registered pilots would be significantly streamlined to reflect the current operation requirements. For example, if a pilot is not available when needed, the Director’s pilotage office can coordinate with Coast Guard District 9 much more

effectively, because everything is under one agency. The 6-hour rule in current paragraphs (b)(3) and (4) has not been used since around the late-1980s or early-1990s. The 6-hour period was intended as a buffer to allow the Coast Guard time to evaluate a situation before concurring with the Department of Commerce’s desire to pull a pilot off their rest period. The Coast Guard monitors traffic throughout the 2,300 nautical miles in the Great Lakes system for compulsory pilotage and is now able to make these decisions in real time.

We propose deleting paragraph (b)(5) because the language is obsolete and outlines practices that are no longer relevant to the modern pilotage industry. The decision as to whether a vessel can proceed without a pilot rests solely with the Director. It does not require the concurrence of the Coast Guard officer to whom the violation was reported. Removing this paragraph from the CFR will prevent confusion by removing instructions that are contrary to the practices being followed by modern-day pilots.

We also propose deleting paragraph (b)(6), which requires a pilotage pool to obtain verification from the Canadian Supervisor of Pilots that they do not have a pilot available, for the same reasons.

The parts we propose to retain in existing paragraphs (b)(1), (2), and (8) outline the Director’s authority to allow a vessel to depart without a registered pilot and sufficiently articulate that the Director will make each decision on a case-by-case basis. The Director would continue to obtain Coast Guard District 9 concurrence before providing this information to the vessel.

§ 401.710 Operating Requirements for Holders of Certificates of Authorization

We propose updating the reference in this section to the Memorandum of Understanding (MOU) to reflect the most current issue of this Memorandum issued in conjunction with the Canadian Government. The updated version is the “Memorandum of Understanding, Great Lakes Pilotage, Between The United States Coast Guard and the Minister of Transport of Canada,” effective September 19, 2013, and can be found at www.dco.uscg.mil/Portals/9/DCO%20Documents/Office%20of%20Waterways%20and%20Ocean%20Policy/CG-WWM-2/2013%20MOU%20English.PDF?ver=2019-11-19-120352-133. The previous version mentioned in this section was issued in 1970 and is no longer current.

¹¹ See Meeting Minutes from the March 6, 2018, meeting of the GLPAC Regulatory Reform Subcommittee, which can be found in the docket.

¹² Ibid.

§ 402.210 Requirements and Qualifications for Registration (Medical Requirements)

The Coast Guard proposes to revise the language in this section to align the medical and vision requirements for Apprentice Pilots, United States Registered Pilots, and Temporary Registered Pilots with the existing MMC medical certification standards. There is no reason to duplicate the medical requirements in the pilot regulations that already exist in 46 CFR part 10

subpart C. Aligning these regulations would reduce the time and burden on pilots having to comply with regulations in two separate parts of the CFR, per GLPAC recommendation 7 from a subcommittee meeting on April 11, 2018.¹³ We propose revising the requirements in this section to say that United States Pilots, Apprentice Pilots, and Temporary Registered Pilots must pass the physical examination in accordance with 46 CFR, part 10 subpart C, and removing the requirements from paragraphs (b) regarding disease and

impairment and from paragraph (c) regarding vision. 46 CFR part 10 subpart C sufficiently covers these medical requirements for pilots. Pilots would still be required to meet the annual physical examination requirements in 46 CFR 11.709.

Table 1: Medical Regulations Comparison compares the newly proposed medical requirements under the two medical regulations addressing Great Lakes pilots and the medical requirements for mariners with a First Class Pilot endorsement on their MMC.

TABLE 1—MEDICAL REGULATIONS COMPARISON

Pilotage requirements 46 CFR 402.210	Mariners' requirements/first class pilot endorsement 46 CFR 10.302	Comments
Use Form CG-719K	Use Form CG-719K	Both pilots and mariners use the same form for the physical examination. This form is approved under OMB No. 1625-0040. No changes to the form would be required.
Examination performed by a medical doctor	Examination performed, witnessed, or reviewed by a licensed medical doctor, licensed physician assistant, licensed nurse practitioner, or a designated medical examiner.	Great Lakes pilotage regulations allow only a medical doctor to perform their physical examination. This limits the number of practitioners eligible to perform the examinations. Many pilots on the Great Lakes live in remote areas where it is difficult to see a medical doctor and must travel to be seen by a medical doctor, which increases the cost of getting an exam.
46 CFR 402.210(c) An applicant for original registration must have a visual acuity either with or without glasses of at least 20/20 vision in one eye and at least 20/40 in the other. An applicant who wears glasses or contact lenses must also pass a test without glasses or lens of at least 20/40 in one eye and at least 20/70 in the other. Registered Pilots, however, must have either with or without glasses or lens visual acuity of at least 20/30 in one eye and at least 20/50 in the other. A Registered Pilot who wears glasses or lens must also pass a test without glasses or lens of at least 20/50 in one eye and at least 20/100 in the other. The color sense of original applicants and Registered Pilots must be tested by a pseudoisochromatic plate test. Passage of the Williams lantern test or its equivalent is an acceptable substitute for a pseudoisochromatic plate test.	46 CFR § 10.305 Vision requirements (a) <i>Deck standard</i> . (1) A mariner must have correctable vision to at least 20/40 in one eye and uncorrected vision of at least 20/200 in the same eye. The color sense must be determined to be satisfactory when tested by any of the following methods or an alternative test acceptable to the Coast Guard, without the use of color-sensing lenses: (i) Pseudoisochromatic Plates (Dvorine, 2nd Edition; Approved Color Vision Test (AOC); revised edition or Hardy Rand and Rittler (AOC-HRR); Ishihara 14-, 24-, or 38-plate editions). (ii) Farnsworth Lantern. (iii) Titmus Vision Tester/OPTEC 2000. (iv) Optec 900. (v) Richmond Test, 2nd and 4th edition.	The vision requirements for pilots on the Great Lakes are more restrictive than those for mariners holding an MMC. Aligning these vision requirements would meet the minimum requirements for pilotage.

§ 402.220 Registration of Pilots

In this section, we propose updating the terminology for “Apprentice Pilot” and “minimum number of round trips” to reflect changes made throughout part 401. In paragraph (a), we would clarify that the pilot association training committee, pilot association president, or Director may require additional round trips. The additional rounds trips would be as needed to demonstrate proficiency in a specific waterway or port to ensure maritime safety. We also propose removing the 1-year time limit to complete the round trips because of limited vessel traffic in some districts and ports, meaning that some Apprentice Pilots are not able to complete the required number of

training trips within one year. We also propose including a caveat that the minimum number of round trips listed in the regulations or in an Apprentice Pilot’s individual training plan does not guarantee advancement to Full Registration. This way, the pilot association and the Director would be able to reserve the discretion to require additional round trips when necessary.

The Coast Guard proposes to remove foreign language requirements from § 402.220(b)(5) and knowledge of foreign-made navigational equipment from § 402.220(b)(10). The pilotage regulations in paragraph (b)(5) require United States Registered Pilots to be able to provide “[instructions] in basic helm and engine telegraph orders in

Greek, Spanish, German, and Italian languages.” These outdated foreign language requirements and instructions are no longer necessary or enforced because they have been superseded by international treaty requirements. Under Chapter 5, Regulation 14, paragraph 4 of the International Convention for the Safety of Life at Sea (SOLAS), all ships are required to use English as the working language for bridge-to-bridge and bridge-to-shore safety communications, as well as for communications between the pilot and the bridge watchkeeping personnel. This change is in accordance with GLPAC recommendations 2 and 3 from the subcommittee meeting on April 11, 2018.¹⁴

¹³ See Meeting Minutes from the March 6, 2018, meeting of the GLPAC Regulatory Reform Subcommittee, which can be found in the docket.

¹⁴ See Meeting Minutes from the March 6, 2018, meeting of the GLPAC Regulatory Reform Subcommittee, which can be found in the docket.

In addition, we propose updating the reference to the 1977 version of the MOU referenced in this section to reflect the most current issue of this Memorandum. The updated version is the “Memorandum of Understanding, Great Lakes Pilotage, Between The United States Coast Guard and the Minister of Transport of Canada,” effective September 19, 2013. The MOU can be found online at <https://www.dco.uscg.mil/Portals/9/DCO%20Documents/Office%20of%20Waterways%20and%20Ocean%20Policy/CG-WWM-2/2013%20MOU%20English.PDF?ver=2019-11-19-120352-133>.

§ 402.320 Working Rules

The Coast Guard proposes to remove the working rule references in paragraphs (a)(1) through (4), and instead provide an email address where the public may request a copy of the approved working rules for each District. Each association updates its working rules frequently. It is impractical for the Coast Guard to issue regulations to update this section every time an association issues new working rules. To receive accurate information, the public can request the most current copy of the working rules by emailing the Coast Guard.

E. Technical Revisions Throughout Parts 401 and 402

Throughout parts 401 and 402, this proposed rule would change most instances of “shall” to “must” to conform to plain language guidelines. We propose changing instances where the regulations require the Director or the Coast Guard to act from “shall” to “will” to clearly indicate how the Coast Guard will respond. However, we propose changing instances where the Director or the Coast Guard needs to reserve discretion in issuing certain endorsements or decisions from “shall” to “may.”

We also propose changing uses of “registered pilot” within the text of the regulations to specify exactly which phases of pilot registration are meant and to align these references with defined terms. We propose updating all references to “pool” to “pilotage pool” to conform to the new definition for pilotage pool.

Additionally, in several sections, we propose updating the mailing addresses in the regulations for the Great Lakes Pilotage Office to our current address: 2703 Martin Luther King Jr. Ave. SE, Mail Stop 7509, Washington, DC 20593–7509.

In certain places in the regulations, we propose to replace “Commandant” with “Director” for decisions that are made, in practice, by the Director. This change would help clarify the procedures and expectations for the public. For example, we propose making this change in § 401.220(b), because the Director prescribes the minimum number of round trips and written examination for Full Registration. These changes would reflect current practice.

Another nomenclature change proposed throughout part 401 and 402 is changing instances of “his” to “they” or “their” to be gender inclusive.

We propose several technical revisions and nomenclature changes in the Administrative Law Judge decision sections in 46 CFR part 401, subpart F, including sections 401.645 and 401.650. There are no proposed substantive changes in subpart F.

This proposed rule also removes outdated references to Title 52 of the Revised Statutes and replaces them with the current statutory requirements for Great Lakes pilotage, Title 46 of the United States Code. Public Law 98–99, 97 Stat. 558 consolidated these statutory requirements into 46 U.S.C. on August 26, 1983.

VI. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and

Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has not designated this proposed rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. OMB has not reviewed this regulatory action. A regulatory analysis (RA) follows.

Affected Population

The affected population for this proposed rule includes an average of 51 U.S. Great Lakes pilots, 9 Apprentice Pilots, and 3 Temporary Registered Pilots over the last five years (2018–2022) all represented by 3 pilot associations. Table 2 shows the population from 2018 to 2023, using projections provided by the pilotage associations published in the annual ratemaking for each year. Some of the changes detailed below impact a subset of this population, in which case we later detail the average of that subset along with the cost estimate. Unless otherwise noted, the change impacts the entire affected population equally.

TABLE 2—AFFECTED POPULATION 2018–2023

	Pilots	Temporary registered pilots	Apprentice pilots	Total
2023	56	3	6	65
2022	51	2	9	62
2021	54	3	8	65
2020	52	3	13	68
2019	51	3	8	62
2018	49	3	7	59
Average (2018–2022)	51.4	2.8	9	63.2

* **Note:** Data provided above for each year (inclusive of Year 2023) are projections based on pilot association estimates. We have chosen to draw the average from the previous 5 years (2018–2022). Projected figures for 2023 are provided for transparency's sake.

Costs

Most of the cost impacts for this proposed rule have already been realized by industry. As a result of the 2018 ratemaking final rule, a new staffing model was established, and updates to the GLPMS data management system occurred. 2018 also saw the Director provide industry and associations informal guidance on many of the cost provisions found in this rulemaking. This informal guidance directly impacted current industry

practices referenced in this proposed rulemaking. Therefore, to provide a comprehensive estimate of the impacts of this proposed rulemaking, the Coast Guard utilizes two baselines, a “Pre-Guidance” baseline” and a “No Action” baseline. The “Pre-Guidance” baseline captures costs across two different time horizons. First, it provides transparency regarding costs realized from 2018–2022 due to informal guidance becoming industry practice. Second, it captures new cost impacts across a 10-year period of analysis from 2023–2032 that

stem from this proposed rulemaking. Therefore, the entire period of analysis for the Pre-Guidance baseline is 2018–2032. The “No Action” baseline represents the current state of the world as if there were no proposed rulemaking. Quantifying costs against the No Action baseline entails including only costs directly attributable to this rule and excludes any costs derived from 2018 guidance. The period of analysis for costs relative to the No Action baseline is 2023–2032. See table 3 for a visual depiction of the baselines.

Table 3: Visual Depiction of No Action and Pre-Guidance Baselines

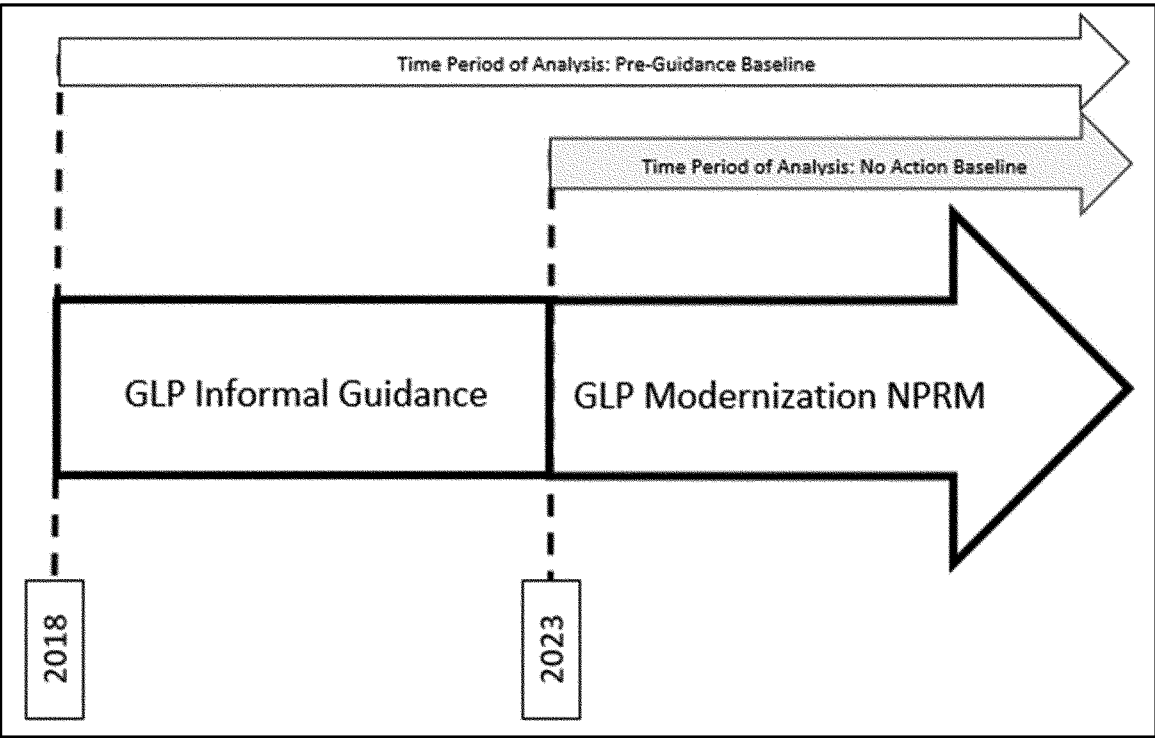


Table 4 shows the summary of net costs, broken down by each of the two baselines. The figures shown for each

baseline are in 2022 dollars and are discounted at 7-percent.

TABLE 4—SUMMARY OF NET COSTS BY BASELINE
[2022 Dollars]

	Pre-Guidance Baseline (2018–2032; discounted 7-percent)	No action baseline (2023–2032; discounted 7-percent)
Net Private Costs to Industry.	<i>Net Costs to Industry:</i> (\$720,755.13)	<i>Net Costs to Industry:</i> (\$834,809.05).
Net Costs to Gov- ernment.	<i>Annualized Net Costs to Industry:</i> (\$56,422.19)	<i>Annualized Net Costs to Industry:</i> (\$118,858.03).
	<i>Net Costs to Government:</i> \$12,540.65	<i>Net Costs to Government:</i> \$0.00.
	<i>Annualized Net Costs to Government:</i> \$981.71	<i>Annualized Net Costs to Government:</i> \$0.00.
Total Net Costs	<i>Total Net Costs:</i> (\$708,214.47)	<i>Total Net Costs:</i> (\$834,809.05).
	<i>Annualized Net Costs:</i> (\$55,440.48)	<i>Annualized Net Costs:</i> (\$118.858.03).

* **Note:** Components may not add to the totals due to rounding.

The no-cost category, summarized in table 5, includes changes that have no cost because the change is administrative, where the regulatory text needs revision for clarity to reflect reorganization of the text. It also includes proposed changes that result in no costs for either baseline, where the

substantive action occurred prior to 2018 (through either existing regulatory text or long-standing guidance). For many of the cost items, the affected population already realizes the impact of the changes from prior ratemakings and general changes to industry's current practice. Certain items in table

5 solely represent information collection costs, rather than new regulatory costs. Note that information collection costs include any cost of ongoing reporting or recordkeeping that must be submitted to the Coast Guard.

TABLE 5—SUMMARY OF NO-COST CHANGES

CFR section	Description of change	Reason for no cost	Benefits
Purpose: § 401.100	Adds the word “pilotage” to clarify the part relates to the creation of “pilotage pools”.	This would be an administrative change; pilotage is an older term from the 60's whereas pilotage pools is more commonly used today but both refer to the same thing.	Further clarifies the purpose of the section and reduces confusion.
Purpose: § 401.100	Adds text to clarify that “Registered Pilots” refers to “United States Registered Pilots”.	This would be an administrative change that makes explicit that the regulation does not include Canadian pilots, which is implicit based on the contextual language.	Further clarifies the purpose of the section and reduces confusion.
Definitions: § 401.110	Removes numbering of definitions and arrangement in alphabetical letter.	This would be an administrative change	Eases finding definitions, increasing readability and clarity.
Definitions: § 401.110	Adds the definition for “Applicant” to clarify that an “Applicant” is a person who has submitted a Form CG-4509 to the Director to be considered for placement in an approved U.S. Great Lakes pilot training and qualification program at one of the established pilotage pools.	This would be an administrative change that distinguishes an applicant that is awaiting an acceptance decision from an applicant trainee that has been accepted into training.	Further clarifies the differences between an “Applicant,” “Applicant Trainee,” and “Apprentice Pilot,” Which were previously not distinguished but all referred to synonymously as “applicant”.
Definitions: § 401.110	Modifies the definition of “Applicant Trainee” to clarify that an Applicant Trainee is a person who is approved and certified by the Director who is participating in an approved U.S. Great Lakes pilot training and qualification program but does not qualify as an Apprentice Pilot.	This would distinguish an applicant trainee that been accepted into training from an applicant that is awaiting an acceptance decision.	Further clarifies the differences between an “Applicant,” “Applicant Trainee,” and “Apprentice Pilot.” Which were previously not distinguished but all referred to synonymously as “applicant”.
Definitions: § 401.110	Removes the last sentence from the definition of Apprentice Pilot, “This definition is only applicable to determining which pilots may be included in the operating expenses, estimates, and wage benchmark in §§ 404.2(b)(7), 404.103(b), and 404.104(d) and (e)”.	The base definition of Apprentice Pilot would be unchanged.	Clarifies how this definition would be used in conjunction with the new definitions of Applicant and Applicant Trainee, which were not used when the term Applicant Pilot was first introduced.
Definitions: § 401.110	Modifies the definition of “association” to clarify that the Director of Great Lakes Pilotage issues a Certificate of Authorization, not the Great Lakes Pilotage Branch.	This would be an administrative change that does not change the method of authorization but clarifies the source of authority.	Adds additional clarity to the source of the Director's authority and reduces confusion on what actions are the responsibility of the Coast Guard and what is the responsibility of the Director.
Definitions: § 401.110	Updates the abbreviation of “Commandant” from CG-00 to CCG.	This would be an administrative change	Adds additional clarity and reduces confusion.
Definitions: § 401.110	Adds a definition for “chemical test”	This would be an administrative change. The new definition is the same as the existing definition in 46 CFR 4.03-7.	Adds additional clarity and reduces confusion.
Definitions: § 401.110	Updates the address for the Director from “Commandant (CG-WWM-2), to Attn:” to “Director”.	This would be an administrative change	Adds additional clarity and reduces confusion.
Definitions: § 401.110	Updates the definition for “comparable experience”.	This would be an administrative change. It clarifies that experience similar to experience on a vessel of 4,000 GT or over can be used to qualify as an applicant.	It has the unquantifiable benefit of expanding the number of potential applicants using experience from other areas of the US to qualify as an applicant. To date, this has not occurred.
Definitions: § 401.110	Adds the definition of “Full Registration” for additional clarity.	This would be an administrative change that does not change the requirements to achieve full registration but distinguishes the different types of registration.	Further clarifies the difference between Full, Limited, and Temporary Registrations.
Definitions: § 401.110	Creates a definition for “Limited Registration”.	This would be an administrative change that distinguishes from a temporary registration where previously “temporary” referred to multiple types of registration. This does not change the current requirements for receiving any of the types of registration.	Further clarifies the difference between Full, Limited, and Temporary Registrations.
Definitions: § 401.110	Creates a definition for “marine accident”.	This would be an administrative change that distinguishes between reportable marine casualties that are sent to the Coast Guard under 46 CFR Part 4, and accident reports of those casualties that are sent to the Director in the event that the casualty would affect pilotage.	Further clarifies 46 CFR 401.260(a), incident reporting requirements for pilots on the Great Lakes. The requirement to notify the Director is not new, but differentiating the kinds of reports makes it clearer to whom the notice must be given.

TABLE 5—SUMMARY OF NO-COST CHANGES—Continued

CFR section	Description of change	Reason for no cost	Benefits
Definitions: § 401.110	Creates a definition for “minimum number of round trips”.	This would not change the existing minimum requirements which are detailed in 401.220(b). This addition clarifies that the number of trips applies to trips conducted by an Apprentice, not by an applicant trainee.	Further clarifies round-trip requirements for Apprentice Pilots to be in line with added distinctions between apprentice pilots and applicant trainees.
Definitions: § 401.110	Renames the term “pool” to “pilotage pool” and adds additional text to the definition.	This would be an administrative change that better aligns with current authorization language.	Further clarifies that pilotage pools are organizations holding a Certificate of Authorization issued by the Director, which are the three existing pilotage associations for each of the three districts.
Definitions: § 401.110	Adds additional text to the term “rate computation definitions” to clarify that these definitions are used to determine the weighting factors in the rate.	This would be an administrative change	Further clarifies how the weighting factors are calculated.
Definitions: § 401.110	Adds definition for “round trip”	This would be an administrative change	Further clarifies what is considered a round trip.
Definitions: § 401.110	Adds definition for “Semi-annual Performance Evaluation Report”.	This would be an administrative change	Further clarifies the Semi-annual Performance Evaluation Report.
Definitions: § 401.110	Adds definition for “Sponsoring Organization”.	This would be an administrative change	Further clarifies what is considered a Sponsoring Organization for the chemical testing requirement.
Definitions: § 401.110	Adds the additional text to the definition of “United States Registered Pilot”.	This would be an administrative change	Updates text to reference current U.S. Code sections and mariner credentialing requirements.
Application for registration: § 401.200.	Adds email address and physical mailing address for submission of Form CG–4509.	This would be an administrative change	Adds email address and physical mailing address to make it easier for the regulated public to submit the form.
Application for registration: § 401.200.	Removes text requiring two photographs be submitted with Form CG–4509.	Form CG–4509 already requires the submission of two signed photographs. This change would merely remove duplicative text, not the requirement to submit the photographs.	Adds clarity by removing duplicative text.
§ 401.210(a)	Changes “Requirements and qualifications for Registration”.	This would be an administrative change	Further clarifies Full Registration in comparison to requirements for new definitions.
§ 401.210(a)	To “Requirements and qualifications for Full Registration”.		
§ 401.210(a)	Adds the word “fully”	This would be an administrative change	Adds clarity by matching title to altered text in the body paragraph.
§ 401.210(a)(1)	Adds clarifying text updating authority from “revised statutes” to specify 46 CFR part 11, removing “license or MMC” to read “MMC with an officer endorsement”, and replacing “tows” with “barge” in “integrated tug and barge”.	This change would remove outdated language and updates to the most current authority citations to provide clarity but does not change existing requirements.	Adds clarity by making citation more specific. Mariners are no longer issued licenses, but credentials with endorsements so this change removes outdated language and clarifies using more current language and authorities. The emphasis on barges clarifies that pilots must be credentialed deck officers and the tonnage requirements apply to an integrated tug and barge, not the aggregate tonnage of a tug and tow.
§ 401.210(a)(4)	Adds “applicable” to “applicable medical requirements and standards” and the CFR citation to the existing requirements.	This would be an administrative change because the requirements in the cited CFR section are unchanged.	Improves clarity of the source of requirements.
§ 401.210(a)(6)	Removes text specifying a requirement to hold a TWIC in addition to an MMC.	TWICs are already required to hold an MMC so specifying both is redundant.	Increases clarity and readability of the CFR by removing unnecessary text.
§ 401.210(a)(7)	Removes unnecessary text and changes the term “Applicant Pilots” to “Apprentice Pilots”.	This would be an administrative change necessary to make text consistent with new definitions added in other sections that clarify between applicants, applicant trainees, and apprentices.	Increases clarity and readability of the CFR by removing text specifying application for pilotage, which is already specified in the title of the section.
§ 401.210(a)(8)	Adds new paragraph requiring the individual to meet the chemical testing requirements in 46 CFR part 16 for Full Registration.	This would be an administrative change that integrates references to the existing source of requirements rather than restating requirements. This is an existing requirement for all mariners holding a MMC, per 46 CFR 10.209(h) and 46 CFR Part 16.	Increases clarity by changing “Applicant Pilots” to “Apprentice Pilots” to be consistent with proposed definition changes.
§ 401.211	Changes text from “Applicant Pilots” to “Apprentice Pilots” to be consistent with new terms.	This would be an administrative change necessary to make text consistent with new definitions added in other sections.	Adds clarity by making citation more specific and eliminating the need to update text when parts of 46 CFR part 16 change.
§ 401.211(b)	Creates new paragraph (b) containing current text.	This would be an administrative change necessary to detail changes in the organization of the text.	Adds clarity and consistency for references to new definitions.
§ 401.211(b)(3)	Adds citation to 46 CFR part 11.480 to clarify requirements to obtain radar observer qualification, but does not change the existing requirement to hold a radar observer qualification.	Pilots must already hold a radar observer qualification.	Adds clarity and better readability by making requirement list stand out within the paragraph.
			Adds clarity by making citation more specific and eliminating the need to update text when parts of 46 CFR part 11.480 change.

TABLE 5—SUMMARY OF NO-COST CHANGES—Continued

CFR section	Description of change	Reason for no cost	Benefits
§ 401.211(e)	Adds address for submission of Form CG-4509.	This would be an administrative change	Adds email and mailing address to make it easier for the regulated public to submit forms.
§ 401.211(e)	Adds text requiring two photographs be submitted with Form CG-4509 to provide clarity since § 401.200 would no longer require it.	This would be an administrative change that does not alter the existing requirements of Form CG-4509.	Clarifies the requirements for submitting Form CG-4509 where methods of submission are discussed.
§ 401.211(f)	Modifies text to clarify who may be issued a U.S. Coast Guard Apprentice Pilot Identification Card. Replaces the terms “applicant” and “Applicant Pilot” with “Apprentice Pilot”.	This would be an administrative change	Improves clarity and makes text consistent with proposed definitions.
§ 401.211(f)(1)	Adds new paragraph stating the Director may set an expiration date for the Apprentice Pilot Identification Card.	This would be an administrative change	Improves clarity.
§ 401.211(g)(4)	Minor wording changes	This would be an administrative change	Improves clarity by specifying the identification card is withdrawn.
§ 401.211(j)	New paragraph requires Apprentice Pilots to be enrolled in the association's chemical testing program.	This change would update text as this is already required as part of casualty reporting.	Improves clarity of applicability to make all text consistent across new sections that specify requirements for applicants, applicant trainees, and apprentices.
§ 401.211(k)	New paragraph outlines requirements for Full Registration, including passing an exam, a positive endorsement from the association, and the determination by the Director of the need for an additional pilot.	This change would update text to describe current practice. The impact of the change from prior text has already been realized in 401.220(b).	Creates clarity by detailing section title for Apprentice Pilot to be consistent with new terms.
§ 401.214	Adds new section with requirements for Applicant Trainees.	This would be an administrative change to separate requirements to Applicant Trainees and Apprentice Pilots in accordance with proposed definitions.	Creates clarity by codifying requirements for Applicant Trainees in a separate new section distinct from apprentices so that requirements are in clearly distinct sections and consistent with new terms. The requirements themselves are not new, as they were in place when all stages of training were referred to indistinguishably as applicants.
§ 401.214(b)	New paragraph adding qualifications to be considered an Applicant Trainee.	This would be an administrative change necessary to distinguish Applicants from Applicant Trainees. Use of this term is already common practice.	Creates clarity by listing requirements in clearly distinct sections and consistent with new terms. The requirements themselves are not new, as they were in place when all stages of training were referred to indistinguishably as applicants.
§ 401.214(e)	New paragraph clarifies that Applicant Trainees must submit an application on Form CG-4509.	Applicant Trainees have already been submitting these forms, but the regulatory text did not reference Applicant Trainees specifically. This practice pre-dates any guidance issued in 2018 and is not a result of this proposed rulemaking. This new clarifying paragraph would codify a long-standing practice. Therefore, this would be a no-cost change in both our Pre-Guidance baseline (2018–2032) and our No Action baseline (2023–2032).	Improves clarity by codifying the requirement that Applicant Trainees must submit an application. The requirement itself is not new and is a long-standing practice.
§ 401.220(b)	Changes the term “Applicant Pilot” to “Apprentice Pilot”.	This would be an administrative change necessary to make text consistent with new definitions added in other sections.	Creates clarity by listing requirements in clearly distinct sections and consistent with new terms. The requirements themselves are not new, as they were in place when all stages of training were referred to indistinguishably as applicants.
§ 401.220(b)(2)	Clarifies that Apprentice Pilots, not Applicant Pilots, must complete the approved course of instruction prescribed by the association authorized to establish the pilotage pool.	This would be an administrative change necessary to make text consistent with new definitions for applicant, applicant trainee, and apprentice.	Increased clarity of the CFR to specify where “Apprentice Pilot” would replace the previous term “Applicant Pilot.”
§ 401.220(b)(3)	Minor wording changes to improve clarity and readability.	This would be an administrative change necessary to make text consistent with new definitions added in other sections.	Removes outdated and gendered references consistent with changes in other sections.
§ 401.220(c)	Changes wording to be consistent with new definitions of Apprentice Pilot and Applicant.	This would be an administrative change necessary to make text consistent with new definitions added in other sections.	Increased clarity of the CFR to specify where “Apprentice Pilot” would replace the previous term “Applicant Pilot.”
§ 401.220(d)	Changes wording to be consistent with new definitions.	This would be an administrative change necessary to make text consistent with new definitions added in other sections.	Increased clarity of the CFR to specify where “Apprentice Pilot” would replace the old language and remove gendered references.
§ 401.220(e)	Deletes paragraph	This would be an administrative change	Increased clarity of the CFR necessary to be consistent with new sections.

TABLE 5—SUMMARY OF NO-COST CHANGES—Continued

CFR section	Description of change	Reason for no cost	Benefits
§ 401.222	Moves Temporary Registration requirements to their own section for clarity.	This would be an administrative that changes organization of the part.	Creates clarity by making requirements clear and consistent with a section for each category of applicant, applicant trainee, apprentice, pilot, and temporary pilot.
§ 401.222(a)	New paragraph that clarifies who may hold a Temporary Registration.	This would be an administrative alteration that changes organization of the text but does not change the requirements.	Creates clarity by making requirements clear and consistent a section for each category of applicant, applicant trainee, apprentice, pilot, and temporary pilot.
§ 401.230(a)	Minor wording change, updates statutory reference.	This would be an administrative change necessary to make text consistent with new definitions added in other sections.	Updates text to reference U.S. Code to improve clarity.
§ 401.230(c)	Modifies to include more up-to-date terms and methods of copying documents.	This would be an administrative change necessary to make text consistent with new definitions added in other sections.	Increased clarity as “Photostat” is not a common term.
§ 401.240(d)	Minor wording changes, replaces the word “Commandant” with “Director”.	This would be an administrative change	Improves clarity by better matching the language used by industry.
§ 401.250(d)	Removes the word “license”	This would be an administrative change that does not change the requirement to have an MMC.	Improves clarity and eliminates confusion as to what “license” refers.
§ 401.260(a)	Clarifies reporting requirements also apply to pilots on a Limited or Temporary Registration and other minor wording changes.	This would be an administrative change necessary to make text consistent with new definitions added in other sections.	Creates clarity by making requirements clear and consistent with new terms.
§ 401.260(a)	Reformats report contents from a paragraph to a numbered list.	This would be an administrative change reflecting organization of text.	Improves clarity by making the list of requirements more legible.
§ 401.260(a)	Modifies 401.260(a) to add clarity regarding the existing practice of receiving marine accident reports. It outlines that a written report is required when a marine incident occurs while an Apprentice Pilot, Apprentice Pilot with Limited Registration, United States Registered Pilot, or Temporary Registered Pilot is providing pilotage services.	This practice predates any 2018 guidance. The Director’s office already receives these reports and does not expect the trend in reports received to change as a byproduct of this rulemaking. The submission requirement for these reports is found in § 401.260 and originated in 31 FR 9065. ¹⁵ Therefore, it is a no-cost change in both our Pre-Guidance baseline (2018–2032) and our No Action baseline (2023–2032).	Improves clarity on the format of the submission and when the marine accident report is required.
§ 401.260(a)(7)	Adds requirement for pilot to share the results of post-casualty drug and alcohol tests in the notice to the Director.	This would not change the requirement for testing governed by 46 CFR § 4.06–3. Rather, § 401.260(a)(7) would detail what information must also be shared with the Director in the event that a reportable casualty affects pilotage.	Improves clarity by making requirements easier to find in an explicit list.
§ 401.420(c)	Minor wording changes, clarifies that a vessel master and a pilot authorized to provide pilotage service to the vessel determine weather delays jointly.	This would be an administrative change since this is already industry practice.	Further clarifies who determines whether an interruption is caused by weather.
§ 401.425	Removes provisions governing Canadian approval of double pilotage.	This would be an administrative change since the Director does not have to confer with the Canadians to approve pilotage and has not had to. The reference to Canada was erroneous.	Adds additional clarity, as the Director approves double pilotage for the U.S. pilots but has no jurisdiction over Canadian pilots. The Canadian pilots base their decisions on different criteria, though both countries may notify each other of their decision to approve double pilotage to assist in pilotage assignments.
§ 401.425	Removes the undesignated waters of Lake Erie from the Southeast Shoal to Colborne restrictions and states the director will evaluate dual pilotage on a case-by-case basis.	This change would update text as the Director can already require double pilotage as the situation dictates. The regulatory text was outdated, and double pilotage is allowed in this area when needed.	Improves clarity by removing outdated language.
§ 401.431(a)	Establishes 60-day billing dispute deadline, minor word changes.	There has only been one instance of a dispute longer than 60 days. We do not expect any further impacts.	Improves clarity and reduces the likelihood of a dispute occurring after the books have been closed.
§ 401.431(d)	Minor wording changes to clarify that the pilot association is the respondent, and they have 20 business days to defend disputed charges starting from when they receive the notice of appeal. Previous text listed 20 days without specifying business days or when those days would begin counting.	This process predates the 2018 guidance. The ability to appeal (§ 401.431(d)) was initially added to the CFR via 29 FR 10467 (July 28, 1964). ¹⁶ No changes to this behavior occurred over 2018–2022. The Coast Guard does not expect wording changes in the proposed rulemaking to alter behavior from the pilot association. Therefore, it is a no-cost change in both our Pre-Guidance baseline (2018–2032) and our No Action baseline (2023–2032).	Improves clarity on who is considered the respondent and the exact timeline for any pilot association wishing to defend disputed charges.
§ 401.431(e)	No previous dispute exceeded 20 days. Minor wording changes to clarify that the Director would respond with an advisory opinion within 30 working days.. Previous text did not specify a specific number of days.	No cost. This process predates 2018 guidance. § 401.431(e) was initially added to the CFR via 29 FR 10467 (July 28, 1964). ¹⁷ No changes to this behavior occurred over 2018–2022. The Coast Guard does not expect wording changes in the proposed rulemaking to alter the Director’s behavior in responding with advisory opinions. The text simply clarifies a long-standing practice.	Improves clarity for pilot associations submitting charge disputes as to when an advisory opinion can be expected from the Director.

TABLE 5—SUMMARY OF NO-COST CHANGES—Continued

CFR section	Description of change	Reason for no cost	Benefits
§ 401.431(h)	Creates new paragraph (h) that codifies the existing practice of pilotage associations appealing the advisory opinion made by the Director. The proposed reg text specifies that the associations may do so within 10 days of receiving the opinion.	This process predates any 2018 guidance. This proposed paragraph is codifying this long-standing practice performed by the pilotage associations. Neither 2018 guidance nor the proposed rulemaking substantively modifies this pilot association practice. Therefore, it is a no-cost change in both our Pre-Guidance baseline (2018–2032) and our No Action baseline (2023–2032).	Improves clarity by codifying the existing ability for pilotage associations to appeal the advisory opinion made by the Director. The practice itself is not new and is a long-standing practice.
§ 401.450(b)	Removes the effective date for the establishment of the pilot change point at Iroquois Lock.	This would be an administrative change since the date has passed.	Improves clarity as the text is outdated from when change point was first introduced.
§ 401.450(i)	Replaces Gros Cap with Buoy 33, St. Mary's River, Point Iroquois.	This change would only move the change point to a more convenient location; it would not change the number of change points.	Makes text consistent with change points currently used. This change point is a new location in the river, closer to the locks and a safer location to transfer pilots on and off the pilot boat. Gros Cap was too far out in the bay (about 2 nautical miles) and the transfers were affected by the weather and transit time.
§ 401.450(k)	Replaces Gros Cap with Buoy 33	See above	See above.
§ 401.510(b)(3)–(7)	Deletes outdated text	This would be an administrative change removing outdated references that refer to old systems of communication in paragraph (3) and references to when the Coast Guard was part of the Department of the Treasury in paragraphs (4) through (7).	Improves clarity of the CFR by removing outdated text.
§ 401.710(b)	Updates Memorandum of Understanding reference and date.	This would be an administrative change removing outdated references.	Improves clarity of the CFR.
§ 402.220(a)	Adds discretion for the Director or association to require additional round trips in a particular area as part of meeting the overall minimum number of round trips requirement.	This would codify an existing practice that would not change the total number of trips to meet the minimum but may change where those trips occur in order to ensure that the experience in training is representative of future operations.	Improves clarity of the CFR.
§ 402.220(a)(5)	Removes section describing requirement for training in foreign languages.	This would be an administrative change removing outdated references as these courses are no longer required under STCW.	Improves clarity of the CFR.
§ 402.220(a)(7)	Updates Memorandum of Understanding reference.	This would be an administrative change removing outdated references.	Improves clarity of the CFR.
§ 402.220(a)(10)	Removes paragraph	This would be an administrative change removing outdated references.	Improves clarity of the CFR.
§ 402.230(a)	Updates statutory references and makes minor wording changes to improve clarity and readability.	This would be an administrative change removing outdated references.	Improves clarity of the CFR.
§ 402.320(a)	Removes reference to each working rule individually and instead makes all rules available electronically by email request.	This would be an administrative change as the same information remains available and the Coast Guard has never received a request for a paper copy of a working rule.	Improves clarity and electronic access of information by the public and eliminates the need to provide a technical amendment whenever the date of a working rule changes.

The information collections in this proposed rule are actions that the affected population of pilots and pilot associations have already complied with in prior years. Prior to this proposed rulemaking, the Coast Guard had not

codified the burden for these collections into the information collection request for the Great Lakes Pilotage Rate Methodology (OMB Control Number 1625–0086).¹⁸ We present details on past reporting and estimated future

regulatory costs to industry in table 6, broken down by each of the two baselines. Table 6 also details relevant regulatory costs that concurrently act as information collection costs.

¹⁵ To access 31 FR 9065, please see https://archives.federalregister.gov/issue_slice/1966/7/1/9063-9067.pdf. Note that while the requirement is not new, a definition for “marine accident” is being proposed for § 401.110 in this NPRM.

¹⁶ § 401.431(d) was initially added to the CFR via 29 FR 10467 (July 28, 1964). To read the referenced final rule, see https://archives.federalregister.gov/issue_slice/1964/7/28/10461-10468.pdf#page=7.

For more information on the history of how the requirement was redesignated and amended through the years, see <https://www.ecfr.gov/current/title-46/chapter-III/part-401/subpart-D/section-401.431>.

¹⁷ § 401.431(e) was initially added to the CFR via 29 FR 10467 (July 28, 1964). To read the referenced final rule, see https://archives.federalregister.gov/issue_slice/1964/7/28/10461-10468.pdf#page=7.

For more information on the history of how the requirement was redesignated and amended through the years, see <https://www.ecfr.gov/current/title-46/chapter-III/part-401/subpart-D/section-401.431>.

¹⁸ To access the Great Lakes pilotage Rate Methodology ICR, please see www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201709-1625-004.

TABLE 6—SUMMARY OF COSTS BY BASELINE
[2022 Dollars, discounted at 7%]

CFR section	Description of change	Pre-guidance baseline (2018–2032)	No action baseline (2023–2032)
Definitions: § 401.110	Creates a definition for “individual training plan.” Prior to 2018, associations used the same template plan for the entire district, rather than individualizing plans.	The Coast Guard began receiving individualized training plans in 2018. Beginning in 2018, assume that individualized training plans take 2 hours to prepare. This hour burden per training plan is expected to remain consistent (2 hours) across 2018–2032. <i>Total Cost to Industry 2018–2032:</i> \$10,015.59. <i>Annualized Cost:</i> \$784.04.	No cost. No expected changes in cost from this rule when compared with cost of informal guidance issued in 2018. Our No Action baseline excludes any costs directly attributed to the guidance.
§ 401.211(g)	Adds new paragraph that codifies existing practice of requiring Apprentice Pilots to have The Director approve their individual training plan.	The Coast Guard began requiring The Director approve these individual training plans in 2018 (same year the agency began receiving the individualized training plans). Beginning in 2018, assume that it takes the Director 30 minutes to review. This hour burden per training plan is expected to remain consistent (0.5 hours) across 2018–2032. <i>Total Cost to Government 2018–2032:</i> \$3,899.46. <i>Annualized Cost:</i> \$305.26.	No cost. No expected changes in cost stemming from this rule when compared with informal guidance issued in 2018. Our No Action baseline excludes any costs directly attributed to the guidance.
Definitions: § 401.110	Adds definition for “Temporary Registered Pilot”.	2018–2022: In the 2023 annual ratemaking, the Coast Guard utilized the definition of temporary pilot to reduce the number of temporary pilots projected. 2023–2032: Any further impacts would be realized through a ratemaking.	Any further impacts would be realized through a ratemaking.
§ 401.211(h)	Adds new section that codifies existing practice of requiring Apprentice Pilots to have a Semi-annual Performance Evaluation Report.	This requirement began via informal guidance in 2018. Average of 5 Apprentice Pilots annually submitting 18 reports on average. Submission requires 6 hours per report. Review of these reports at the Director’s office takes 20 minutes (0.33 hours) per report. These hourly burdens remain unchanged across 2018–2032. <i>Total Cost to Industry 2018–2032:</i> \$99,875.41. <i>Annualized Cost:</i> \$7,818.45. <i>Total Cost to Government 2018–2032:</i> \$8,641.19. <i>Annualized Cost:</i> \$1,053.61.	No cost. No expected changes in cost stemming from this rule when compared with informal guidance issued in 2018. Our No Action baseline excludes any costs directly attributed to the guidance.
§ 401.230(d) and § 401.240(a)	Adds additional text to clarify the nature of photos submitted to the Coast Guard. Provides clarity by using common language for “passport style” photographs that would be more easily understood. The Coast Guard requires a signed photo inserted into Certificates of Registration as the photo with the signature is used in making certificates. In some cases, the photo submitted is too far away from the face of the subject, and in order to capture the signature a portion of the person may be cut off. This change would help eliminate these issues and needing new photos to be submitted.	2018–2022: Applicants have been asked to resubmit photos only a handful of times since 2018. 2023–2032: No cost. Potential for cost savings if the number of photos retaken is reduced. This cost saving could not be quantified given the limited number of times a cost has been incurred to retake photos and that cost was never quantified.	No additional cost stemming from rule-making. Potential for cost savings if the number of photos retaken is reduced. This cost saving could not be quantified given the limited number of times a cost has been incurred to retake photos and that cost was never quantified.

TABLE 6—SUMMARY OF COSTS BY BASELINE—Continued
[2022 Dollars, discounted at 7%]

CFR section	Description of change	Pre-guidance baseline (2018–2032)	No action baseline (2023–2032)
§ 401.260	Removes paragraph (d) which required submission of monthly availability reports.	2018–2022: No cost savings. This process pre-dates 2018 guidance and has not changed in scope during 2018–2022 due to guidance. The requirement to provide these originates in 31 FR 9065 (July 1, 1966).¹⁹ From 2018–2022, associations kept record of approximately 672 monthly availability reports each year during the 10 months of the shipping season, for each pilot and apprentice on roster. 2023–2032: If Coast Guard continued to require these reports, we would expect to receive 650 annually. It estimated that each monthly report takes 2.5 hours to submit. Removing this required submission results in cost savings over 2023–2032. <i>Total Cost Savings to Industry (2018–2032):</i> \$(835,065.99). <i>Annualized Cost Savings:</i> \$(65,370.68).	Cost savings over 2023–2032 are attributed only to this rulemaking and are not a by-product of any guidance over the 2018–2022 timeframe. Therefore, our cost savings in the No Action baseline equate to those in our Pre-Guidance baseline. Removing the submission requirement results in cost savings over the No Action Baseline period of analysis (2023–2032). <i>Total Cost Savings to Industry (2023–2032):</i> \$(835,065.99). <i>Annualized Cost Savings:</i> \$(118,894.61).
§ 401.431(b)	Changes “in writing” to “official correspondence” and adds requirements for what information must be in the appeal, rather than Coast Guard receiving disputes in varying formats.	2018–2022: No cost. The appeal process did not originate from 2018 guidance. The ability to appeal (§ 401.431(b)) was initially added to the CFR via 29 FR 10467 (July 28, 1964).²⁰ 2018 guidance did not alter any aspect of this existing requirement. 2023–2032: With the proposed changes, the Coast Guard estimates that forthcoming submissions will take one hour each, an additional 30 minutes per report. To avoid double counting an existing regulatory cost associated with these reports, the Pre-Guidance baseline uses 0.5 hours for the time burden. The Coast Guard estimates receiving one of these reports annually over 2023–2032. <i>Total Cost to Industry 2018–2032:</i> \$256.94. <i>Annualized Cost:</i> \$20.11.	Costs over 2023–2032 are attributed only to this rulemaking and are not a byproduct of any guidance over the 2018–2022 timeframe. Therefore, our cost savings in the No Action baseline equate to those in our Pre-Guidance baseline. The proposed changes result in costs over our No Action baseline period of analysis (2023–2032). <i>Total Cost to Industry 2023–2032:</i> \$256.94. <i>Annualized Cost:</i> \$36.58.
§ 402.210(a)	Adds Apprentice Pilots and Temporary Registered Pilots. Adds citation to current CFR requirements for all pilots to pass a physical examination. Given this edition, it equates to more than an editorial change.	This requirement began via informal guidance in 2018. This change impacts mariners who submit Apprentice Pilot applications to the Director. From 2018–2022, the Coast Guard received an average of 15 such applications annually. Each medical certificate takes about 18 minutes (0.3 hours) to draft and submit. The Coast Guard expects no change in behavior or burden over 2023–2032 as a result of this rulemaking. <i>Total Cost to Industry 2018–2032:</i> \$4,162.92. <i>Annualized Cost:</i> \$325.88.	No cost. No expected changes in cost stemming from this rule when compared with informal guidance issued in 2018. Our No Action baseline excludes any costs directly attributed to the guidance.
§ 402.210(b)	Removes paragraph	Cost included in change to § 402.210(a)	No cost.
§ 402.210(c)	Removes paragraph	Cost included in change to § 402.210(a)	No cost.

Costs: Pre-Guidance Baseline

This section outlines regulatory costs in accordance with the Pre-Guidance

baseline. Therefore, costs from 2018–2022 stemming from the 2018 guidance are included, as applicable. The Coast

Guard estimates that the annual time burden over the 2018–2022 period is zero in cases where the proposed rulemaking is (1) instituting a brand-new requirement; (2) making a substantive change to an industry practice that pre-dates 2018; or (3)

¹⁹To access 31 FR 9065, please see https://archives.federalregister.gov/issue_slice/1966/7/1/9063-9067.pdf.

²⁰§ 401.431(b) was initially added to the CFR via 29 FR 10467 (July 28, 1964). To read the referenced final rule, see https://archives.federalregister.gov/issue_slice/1964/7/28/10461-10468.pdf#page=7.

makes a substantive change to an existing regulatory requirement that pre-dates 2018. This is to avoid including new costs in 2018–2022 that are not attributable to guidance and therefore out of scope for this portion of the Pre-Guidance baseline’s timeframe. The Coast Guard estimates costs specifically stemming from this proposed rulemaking in the 2023–2032 portion of the Pre-Guidance period of analysis. The overall period of analysis for the Pre-Guidance timeframe is 2018–2032.

Individual Training Plans for Apprentice Pilots

One proposed addition to the Definitions portion of § 401.110 is the creation of a definition for “individual training plan.” Moreover, the proposed creation of paragraph (g) in § 401.211 would codify the existing requirement

for individual training plans to be submitted to the Coast Guard for each Apprentice Pilot. The Coast Guard has been receiving individualized plans since 2018 but did not previously specify in the regulatory text that plans must be individualized. Mentor pilots generate these plans and summarize the training that Apprentice Pilots undergo to ensure that they are gaining experience in all relevant transit areas. This is to ensure they are qualified for Full Registration at the end of their training. From 2018 to 2022, the Coast Guard received an average of 5 individual training plans annually, as shown in table 7. The Coast Guard estimates that it took 2 hours to generate and submit these plans during 2018–2022. The loaded wage of pilot submitters is \$73.17 from a base wage of \$50.09 and a load factor of 1.46.²¹

Going forward, the Coast Guard expects to receive six plans annually, one for each of the Apprentice Pilots authorized in the 2023 annual ratemaking (88 FR 12226, Feb. 27, 2023).²² Given the Coast Guard is simply codifying this requirement, these individualized plans will still each take 2 hours to generate and submit from 2023–2032. With six submissions annually, the Coast Guard estimates the annual cost of requiring individual training plans for apprentices over 2023–2032 to be \$877.99 (6 submissions × 2 hours × \$73.17). For the Pre-Guidance period of analysis (2018–2032), we estimate the grand total cost to be \$10,015.59 discounted to 7 percent and \$784.04 annualized as summarized in table 7.

TABLE 7—COST OF SUBMITTING INDIVIDUAL TRAINING PLANS FOR APPRENTICE PILOTS

[Pre-guidance; 2022 dollars]

Year	Plans	Total pre-guidance hours	Wage of submitter	Pre-guidance baseline cost	7-Percent	3-Percent
	[A]	[B]	[C]	[D = A * B * C]		
2018	4	2	\$73.17	\$585.33	\$767.24	\$658.79
2019	5	2	73.17	731.66	896.31	799.50
2020	5	2	73.17	731.66	837.68	776.22
2021	3	2	73.17	439.00	469.73	452.17
2022	6	2	73.17	877.99	877.99	877.99
2023	6	2	73.17	877.99	820.55	852.42
2024	6	2	73.17	877.99	766.87	827.59
2025	6	2	73.17	877.99	716.70	803.49
2026	6	2	73.17	877.99	669.82	780.08
2027	6	2	73.17	877.99	626.00	757.36
2028	6	2	73.17	877.99	585.04	735.30
2029	6	2	73.17	877.99	546.77	713.89
2030	6	2	73.17	877.99	511.00	693.09
2031	6	2	73.17	877.99	477.57	672.91
2032	6	2	73.17	877.99	446.33	653.31
Total .....	.....	.....	.....	12,145.54	10,015.59	11,054.11
Annualized .....	.....	.....	.....	.....	784.04	798.75

* **Note:** Components may not add to the totals due to rounding.

The Coast Guard estimates that it takes 30 minutes (0.5 hours) for the Director’s office to review these plans. This estimate remains consistent across 2018–2022 and 2023–2032. With 6 submissions annually, using a loaded

wage of \$113.95 for a GS–14 in-government worker,²³ the Coast Guard estimates the annual cost to government of reviewing individual training plans for apprentices over 2023–2032 to be \$341.84 (6 submissions × 0.5 hours ×

\$113.95). For the Pre-Guidance period of analysis (2018–2032), we estimate the grand total cost to be \$3,899.46 discounted to 7 percent and \$305.26 annualized as summarized in table 8.

²¹ The base wage of captains, mates, and pilots of water vessels is \$50.09 as of May 2022, per <https://www.bls.gov/oes/2022/may/oes535021.htm>. The load factor of 1.46 is obtained by dividing total hourly compensation for Transportation and Material Moving Occupations of \$33.07 by hourly wages (CMU2010000520000D) and salaries of \$22.64 (CMU2020000520000D). Access these series by searching the series number at <https://beta.bls.gov/dataQuery/search>. Last accessed August 2023.

²² <https://www.federalregister.gov/documents/2023/02/27/2023-03212/great-lakes-pilotage-rates-2023-annual-ratemaking-and-review-of-methodology>.

²³ The loaded wage of \$113.95 (rounded) comes from the base hourly wage of \$68.55 for a GS–14 Step 5 from the DC region multiplied by a load factor of 1.66, per https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB_h.pdf. To calculate the load factor of 1.66, we divide total hourly compensation

for workers with master’s degrees as shown in table 4, \$74.80, by the average hourly wage for workers with master’s degrees as shown in table 2, or \$45.00. $\$74.80 \div \$45.00 = 1.6622$. See “Comparing the Compensation of Federal and Private Sector Employees, 2011–2015,” <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52637-federalprivatepay.pdf>.

TABLE 8—COST TO GOVERNMENT OF REVIEWING INDIVIDUAL TRAINING PLANS FOR APPRENTICE PILOTS
[Pre-guidance; 2022 dollars]

Year	Plans	Total pre-guidance hours	Wage of reviewer	Pre-guidance baseline cost	7-Percent	3-Percent
	[A]	[B]	[C]	[D = A * B * C]		
2018	4	0.5	\$113.95	\$227.89	\$298.72	\$256.49
2019	5	0.5	113.95	284.86	348.97	311.28
2020	5	0.5	113.95	284.86	326.14	302.21
2021	3	0.5	113.95	170.92	182.88	176.05
2022	6	0.5	113.95	341.84	341.84	341.84
2023	6	0.5	113.95	341.84	319.47	331.88
2024	6	0.5	113.95	341.84	298.57	322.21
2025	6	0.5	113.95	341.84	279.04	312.83
2026	6	0.5	113.95	341.84	260.79	303.72
2027	6	0.5	113.95	341.84	243.72	294.87
2028	6	0.5	113.95	341.84	227.78	286.28
2029	6	0.5	113.95	341.84	212.88	277.94
2030	6	0.5	113.95	341.84	198.95	269.85
2031	6	0.5	113.95	341.84	185.94	261.99
2032	6	0.5	113.95	341.84	173.77	254.36
Total .....	.....	.....	.....	4,728.73	3,899.46	4,303.79
Annualized .....	.....	.....	.....	.....	305.26	407.61

* **Note:** Components may not add to the totals due to rounding.

Semi-Annual Performance Evaluation Reports for Apprentice Pilots

The proposed creation of paragraph (h) in § 401.211 would require associations to submit Semi-annual Performance Evaluation Reports to the Director for Apprentice Pilots. The Coast Guard assumes that mentor pilots generate these evaluation reports, which summarize the Apprentice Pilot's training progress twice annually. These reports allow the Director and the associations to make informed decisions on Apprentice Pilot progress to better tailor what training is needed for an Apprentice Pilot to successfully

complete training to become a United States Registered Pilot. Based on information from a United States Coast Guard SME, this industry practice began in 2018. The Coast Guard estimates that it takes 6 hours to generate and submit these reports. The loaded wage of pilot submitters is \$73.17 from a base wage of \$50.09 and a load factor of 1.46.²⁴

From 2018 to 2022 Coast Guard received an average of 18 reports annually, which is greater than the 12 reports the Coast Guard would expect for 6 Apprentice Pilots, assuming 2 reports submitted annually. Where Coast Guard initially received more

reports than the number of active apprentices, some reports were backdated for mariners who had already completed apprentice training and become pilots. To be conservative, the Coast Guard uses the higher average of 18 to estimate ongoing costs. The Coast Guard estimates the annual cost of requiring individual training plans for apprentices over 2023–2032 to be \$7,901.92 (18 submissions × 6 hours × \$73.17).²⁵ For the Pre-Guidance period of analysis (2018–2032), we estimate the grand total cost to be \$99,875.41 discounted to 7 percent and \$7,818.45 annualized as summarized in table 9.

TABLE 9—COST OF SUBMITTING SEMI-ANNUAL PERFORMANCE REPORTS FOR APPRENTICES
[Pre-guidance; 2022 dollars]

Year	Reports	Total pre-guidance hours	Wage of submitter	Pre-guidance baseline cost	7-Percent	3-Percent
	[A]	[B]	[C]	[D = A * B * C]		
2018	20	6	\$73.17	\$8,779.91	\$11,508.67	\$9,881.87
2019	18	6	73.17	7,901.92	9,680.19	8,634.64
2020	22	6	73.17	9,657.90	11,057.33	10,246.07
2021	9	6	73.17	3,950.96	4,227.53	4,069.49
2022	18	6	73.17	7,901.92	7,901.92	7,901.92
2023	18	6	73.17	7,901.92	7,384.97	7,671.77
2024	18	6	73.17	7,901.92	6,901.84	7,448.32
2025	18	6	73.17	7,901.92	6,450.32	7,231.38
2026	18	6	73.17	7,901.92	6,028.34	7,020.75
2027	18	6	73.17	7,901.92	5,633.96	6,816.26

²⁴ The base wage of captains, mates, and pilots of water vessels is \$50.09 as of May 2022, per <https://www.bls.gov/oes/2022/may/oes535021.htm>. The load factor of 1.46 is obtained by dividing total hourly compensation for Transportation and

Material Moving Occupations of \$33.07 by hourly wages (CMU2010000520000D) and salaries of \$22.64 (CMU2020000520000D). Access these series by searching the series number at <https://>

beta.bls.gov/dataQuery/search. Last accessed August 2023.

²⁵ The 6 hours to submit includes some time assumed for back-and-forth review between the apprentice and their approving manager.

TABLE 9—COST OF SUBMITTING SEMI-ANNUAL PERFORMANCE REPORTS FOR APPRENTICES—Continued
[Pre-guidance; 2022 dollars]

Year	Reports	Total pre-guidance hours	Wage of submitter	Pre-guidance baseline cost	7-Percent	3-Percent
	[A]	[B]	[C]	[D = A * B * C]		
2028	18	6	73.17	7,901.92	5,265.38	6,617.73
2029	18	6	73.17	7,901.92	4,920.92	6,424.98
2030	18	6	73.17	7,901.92	4,598.99	6,237.85
2031	18	6	73.17	7,901.92	4,298.12	6,056.16
2032	18	6	73.17	7,901.92	4,016.93	5,879.77
Total .....	.....	.....	.....	117,211.79	99,875.41	108,138.95
Annualized .....	.....	.....	.....	.....	7,818.45	7,813.88

* **Note:** Components may not add to the totals due to rounding.

The Coast Guard estimates that it takes 20 minutes (0.33 hours) for the Director's office to review these reports, using a loaded wage of 113.95 for a GS-14 in-government worker.²⁶ Using the

same metric of 18 submissions annually, the Coast Guard estimates the annual cost to Government of reviewing individual training plans for Apprentice Pilots over 2023–2032 to be \$683.67. For

the Pre-Guidance period of analysis (2018–2032), we estimate the grand total cost to be \$8,641.19 discounted to 7 percent and \$1,053.61 annualized as summarized in table 10.

TABLE 10—COST TO GOVERNMENT OF REVIEWING SEMI-ANNUAL PERFORMANCE REPORTS FOR APPRENTICES
[Pre-guidance; 2022 dollars]

Year	Reports	Total pre-guidance hours	Wage of reviewer	Pre-guidance baseline cost	7-Percent	3-Percent
	[A]	[B]	[C]	[D = A * B * C]		
2018	20	0.33	\$113.95	\$759.64	\$995.73	\$854.98
2019	18	0.33	113.95	683.67	837.53	747.07
2020	22	0.33	113.95	835.60	956.68	886.49
2021	9	0.33	113.95	341.84	365.76	352.09
2022	18	0.33	113.95	683.67	683.67	683.67
2023	18	0.33	113.95	683.67	638.95	663.76
2024	18	0.33	113.95	683.67	597.15	644.43
2025	18	0.33	113.95	683.67	558.08	625.66
2026	18	0.33	113.95	683.67	521.57	607.43
2027	18	0.33	113.95	683.67	487.45	589.74
2028	18	0.33	113.95	683.67	455.56	572.56
2029	18	0.33	113.95	683.67	425.76	555.89
2030	18	0.33	113.95	683.67	397.90	539.70
2031	18	0.33	113.95	683.67	371.87	523.98
2032	18	0.33	113.95	683.67	347.54	508.72
Total .....	.....	.....	.....	10,141.13	8,641.19	9,356.15
Annualized .....	.....	.....	.....	.....	1,053.61	676.06

* **Note:** Components may not add to the totals due to rounding

Removing Monthly Availability Reports

This proposed rule would remove the requirement in § 401.260 that pilots and apprentices submit monthly availability reports. Often these availability reports

do not communicate meaningful information because in practice pilots are listed as always available if they could be called in. Therefore, the Coast Guard no longer sees a benefit in

requiring these reports. Based on information from a Coast Guard SME, these monthly reports have been submitted by industry since the mid-1960's.²⁷ To capture the recent burden

²⁶ The loaded wage of \$113.95 (rounded) comes from the base hourly wage of \$68.55 for a GS-14 Step 5 from the DC region multiplied by a load factor of 1.66, per https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB_h.pdf. To calculate the load factor of 1.66, we divide total hourly compensation for workers with master's degrees as shown in table 4, \$74.80, by the average hourly wage for workers

with master's degrees as shown in table 2, or \$45.00. $\$74.80 \div \$45.00 = 1.6622$. See "Comparing the Compensation of Federal and Private Sector Employees, 2011–2015," <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52637-federalprivatepay.pdf>.

²⁷ § 401.260(c) that deals with monthly availability reports was initially added to the CFR

via 31 FR 9065 (July 1, 1966). To read the referenced final rule, see <https://archives.federalregister.gov/issue/slice/1966/7/1/9063-9067.pdf#page=3>. For more information on the history of how the requirement was redesignated and amended through the years, see <https://www.ecfr.gov/current/title-46/chapter-III/part-401/subpart-B/section-401.260>.

these reports have had on industry, the Coast Guard has chosen to use data from the last 5 years (2018–2022). From 2018 to 2022, the Coast Guard received an average of 672 monthly availability reports. Each report takes an estimated 2.5 hours to submit. Given this practice did not begin in 2018 and is not a cost attributable to guidance, the Coast Guard has zeroed out the hours from 2018 to 2022. If the Coast Guard continued to require these reports, we could expect to receive 650 annually,

one report for each of the 6 apprentice pilots, 56 pilots, and 3 temporary pilots for the 10 months of the active shipping season (650 reports = $(6+56+3) \times 10$ months). The loaded wage of pilot submitters is \$73.17 from a base wage of \$50.09 and a load factor of 1.46.²⁸

Continuing to require these reports would result in an hour burden of 2.5 hours per submission. By entirely removing this regulatory requirement, this acts as a marginal decrease in burden of 2.5 hours per submission. Since this marginal change in hour

burden is based in a change to existing regulatory text rather than codifying or modifying industry practice stemming from 2018 guidance, our annual Pre-Guidance reduction in hourly burden in 2023–2032 is equal to that of our annual No Baseline hourly burden (2.5 hours). For the Pre-Guidance period of analysis (2018–2032), we estimate the total net cost savings to be \$(835,065.99) discounted to 7 percent and \$(65,370.68) annualized as summarized in table 11.

TABLE 11—COST OF SUBMITTING MONTHLY AVAILABILITY REPORTS
[Pre-guidance; 2022 dollars]

Year	Reports	Total pre-guidance hours	Wage of submitter	Pre-guidance baseline cost	7-Percent	3-Percent
	[A]	[B]	[C]	[D = A × B × C]		
2018	670	*0	\$73.17	\$0.00	\$0.00	\$0.00
2019	620	*0	73.17	0.00	0.00	0.00
2020	720	*0	73.17	0.00	0.00	0.00
2021	630	*0	73.17	0.00	0.00	0.00
2022	720	*0	73.17	0.00	0.00	0.00
2023	650	2.5	73.17	(118,894.61)	(111,116.46)	(115,431.66)
2024	650	2.5	73.17	(118,894.61)	(103,847.16)	(112,069.57)
2025	650	2.5	73.17	(118,894.61)	(97,053.42)	(108,805.41)
2026	650	2.5	73.17	(118,894.61)	(90,704.13)	(105,636.32)
2027	650	2.5	73.17	(118,894.61)	(84,770.21)	(102,559.54)
2028	650	2.5	73.17	(118,894.61)	(79,224.50)	(99,572.36)
2029	650	2.5	73.17	(118,894.61)	(74,041.59)	(96,672.20)
2030	650	2.5	73.17	(118,894.61)	(69,197.75)	(93,856.50)
2031	650	2.5	73.17	(118,894.61)	(64,670.79)	(91,122.82)
2032	650	2.5	73.17	(118,894.61)	(60,439.99)	(88,468.76)
Total .....	.....	.....	.....	(1,188,946.11)	(835,065.99)	(1,014,195.15)
Annualized .....	.....	.....	.....	.....	(65,370.68)	(73,283.50)

Note: Components may not add to the totals due to rounding. Cited hours with “*” indicate that this practice did not begin with the onset of guidance in 2018. To avoid inappropriately categorizing this as a new cost attributable to 2018 guidance, the Coast Guard has opted to zero out hours in applicable cases.

Disputes

Under § 401.431(b), the Coast Guard changes “in writing” to “official correspondence” and specifies that the letter expressing the dispute must include the vessel name, date of service, and reference number for the invoice/bill, the exact amount of dispute, regulatory citation for dispute, and the requested resolution. Per a Coast Guard SME, disputes have been submitted long since the mid-1960’s in accordance with § 401.431.²⁹ However, the Coast Guard

previously received these disputes in varying formats. From 2018 to 2022, the Coast Guard received 6 unique disputes (some including multiple charges). Note that no unique disputes were submitted from 2019 to 2022. According to a Coast Guard SME, the agency expects one trip charge dispute submission per year starting in 2023. The loaded wage of pilot submitters is \$73.17, from a base wage of \$50.09 and a load factor of 1.46.³⁰

During 2018–2022, each dispute required 30 minutes to submit.

However, given this practice did not begin in 2018 and is, therefore, not a cost attributable to guidance, the Coast Guard has zeroed out the hours from 2018 to 2022. With the proposed changes, the Coast Guard estimates that future submissions will take 1 hour each, an additional 30 minutes per report. Since this marginal change in hour burden is based in a change to existing regulatory text rather than codifying or modifying industry practice stemming from 2018 guidance, our annual Pre-Guidance hourly burden in

²⁸ The base wage of captains, mates, and pilots of water vessels is \$50.09 as of May 2022, per <https://www.bls.gov/oes/2022/may/oes535021.htm>. The load factor of 1.46 is obtained by dividing total hourly compensation for Transportation and Material Moving Occupations of \$33.07 by hourly wages (CMU2010000520000D) and salaries of \$22.64 (CMU2020000520000D). Access these series by searching the series number at <https://beta.bls.gov/dataQuery/search>. Last accessed August 2023.

²⁹ § 401.431 was initially added to the CFR via 29 FR 10467 (July 28, 1964). To read the referenced final rule, see https://archives.federalregister.gov/issue_slice/1964/7/28/10461-10468.pdf#page=7. For more information on the history of how the requirement was redesignated and amended through the years, see <https://www.ecfr.gov/current/title-46/chapter-III/part-401/subpart-D/section-401.431>.

³⁰ The base wage of captains, mates, and pilots of water vessels is 50.09 as of May 2022, per <https://www.bls.gov/oes/2022/may/oes535021.htm>. The load factor of 1.46 is obtained by dividing total hourly compensation for Transportation and Material Moving Occupations of \$33.07 by hourly wages (CMU2010000520000D) and salaries of \$22.64 (CMU2020000520000D). Access these series by searching the series number at <https://beta.bls.gov/dataQuery/search>. Last accessed August 2023.

2023–2032 is equal to that of our annual No Baseline hourly burden (0.5 hours). For the Pre-Guidance period of analysis

(2018–2032), we estimate the grand total cost to be \$256.94 discounted to 7

percent and \$20.11 annualized as summarized in table 12.

TABLE 12—COST OF SUBMITTING TRIP CHARGE DISPUTES

[Pre-guidance; 2022 dollars]

Year	Submissions	Total pre-guidance hours	Wage of submitter	Pre-guidance baseline cost	7-percent	3-percent
	[A]	[B]	[C]	[D = A × B × C]		
2018	6	*0	\$73.17	\$0.00	\$0.00	\$0.00
2019	0	*0	73.17	0.00	0.00	0.00
2020	0	*0	73.17	0.00	0.00	0.00
2021	0	*0	73.17	0.00	0.00	0.00
2022	0	*0	73.17	0.00	0.00	0.00
2023	1	0.5	73.17	36.58	34.19	35.52
2024	1	0.5	73.17	36.58	31.95	34.48
2025	1	0.5	73.17	36.58	29.86	33.48
2026	1	0.5	73.17	36.58	27.91	32.50
2027	1	0.5	73.17	36.58	26.08	31.56
2028	1	0.5	73.17	36.58	24.38	30.64
2029	1	0.5	73.17	36.58	22.78	29.75
2030	1	0.5	73.17	36.58	21.29	28.88
2031	1	0.5	73.17	36.58	19.90	28.04
2032	1	0.5	73.17	36.58	18.60	27.22
Total .....	.....	.....	.....	365.83	256.94	312.06
Annualized .....	.....	.....	.....	.....	20.11	22.55

Note: Numbers may not sum due to rounding. Cited hours with “*” emphasize that this practice did not begin with the onset of guidance in 2018. To avoid inappropriately categorizing this as a new cost attributable to 2018 guidance, the Coast Guard has opted to zero out hours in applicable cases.

Submission of Medical Certificates

Medical certificates are already required as part of an application for an MMC under 46 CFR part 10, subpart C, which is an existing requirement to apply to be an Apprentice Pilot as noted in § 401.110 and § 401.210. The proposed change in text would clarify that the requirement applies to Apprentice Pilots, which was not specified before. This change would directly impact mariners who submit Apprentice Pilot applications to the Director. On average, the Coast Guard

receives 15 such applications annually. According to a Coast Guard SME, this practice began in 2018 through informal program guidance. This guidance was issued following a recommendation from the Great Lakes Pilotage Advisory Committee in 2018.

The medical certificate part of the application takes approximately 18 minutes to draft and submit, as detailed in Information Collection Request OMB Control Number 1625–0040, “Applications for Merchant Mariner Credentials and Medical Certificate.” Given this information collection both

accounts for all medical certificates that have been received and periodically updated, this uptick in medical certificates is already accounted for in 1625–0040. Therefore, this is a regulatory cost but not an information collection cost. The loaded wage of submitters is \$73.17, from a base wage of \$50.09 and a load factor of 1.46.³¹ For the Pre-Guidance period of analysis (2018–2032), we estimate the grand total cost to be \$4,162.92 discounted to 7 percent and \$325.88 annualized as summarized in table 13.

TABLE 13—TOTAL COST OF MEDICAL CERTIFICATES FOR APPRENTICE PILOT APPLICATIONS

[Pre-guidance; 2022 dollars]

Year	Submissions	Total pre-guidance hours	Wage of submitter	Pre-guidance baseline cost	7-percent	3-percent
	[A]	[B]	[C]	[D = A * B * C]		
2018	17	0.3	\$73.17	\$373.15	\$489.12	\$419.98
2019	15	0.3	73.17	329.25	403.34	359.78
2020	11	0.3	73.17	241.45	276.43	256.15
2021	15	0.3	73.17	329.25	352.29	339.12
2022	15	0.3	73.17	329.25	329.25	329.25
2023	15	0.3	73.17	329.25	307.71	319.66
2024	15	0.3	73.17	329.25	287.58	310.35

³¹ The base wage of captains, mates, and pilots of water vessels is 50.09 as of May 2022, per <https://www.bls.gov/oes/2022/may/oes535021.htm>. The load factor of 1.46 is obtained by dividing total

hourly compensation for Transportation and Material Moving Occupations of 33.07 by hourly wages (CMU2010000520000D) and salaries of 22.64 (CMU2020000520000D). Access these series by

searching the series number at <https://beta.bls.gov/dataQuery/search>. Last accessed August 2023.

TABLE 13—TOTAL COST OF MEDICAL CERTIFICATES FOR APPRENTICE PILOT APPLICATIONS—Continued
[Pre-guidance; 2022 dollars]

Year	Submissions	Total pre-guidance hours	Wage of submitter	Pre-guidance baseline cost	7-percent	3-percent
	[A]	[B]	[C]	[D = A * B * C]		
2025	15	0.3	73.17	329.25	268.76	301.31
2026	15	0.3	73.17	329.25	251.18	292.53
2027	15	0.3	73.17	329.25	234.75	284.01
2028	15	0.3	73.17	329.25	219.39	275.74
2029	15	0.3	73.17	329.25	205.04	267.71
2030	15	0.3	73.17	329.25	191.62	259.91
2031	15	0.3	73.17	329.25	179.09	252.34
2032	15	0.3	73.17	329.25	167.37	244.99
Total				4,894.80	4,162.92	4,512.82
Annualized					325.88	326.09

* Note: Components may not add to the totals due to rounding.

Costs: No Action Baseline.

This section outlines regulatory costs relative to the No Action baseline scenario. The No Action analysis period is 2023–2032. Our No Action baseline differs from the Pre-Guidance baseline in its exclusion of any costs that are not directly stemming from the proposed rulemaking. In other words, the No Action baseline represents the current state of the world that exists solely under pre-existing regulatory text and prior guidance. This results in many items having non-zero costs in our Pre-Guidance baseline that are no-cost items in the No Action baseline. For example, the Coast Guard began receiving individualized training plans as a byproduct of informal guidance in 2018. While the proposed rulemaking codifies this practice through a proposed addition to the CFR (§ 401.110), there is no additional regulatory burden that results from said codification. In other words, all applicable costs across 2018–2032 for individualized training plans can be attributed specifically to the 2018 guidance. Therefore, this is a no-cost provision in our No Action baseline.

The following items had non-zero costs in our Pre-Guidance baseline but

are no-cost provisions in the No Action Baseline: (1) Individual training plans for Apprentice Pilots (§ 401.110 and § 401.211(g)); (2) Semi-annual Performance Evaluation Report for Apprentice Pilots (§ 401.211(h)); and (3) Submission of Medical Certificates (§ 402.210(a)). These three-line items all began as a byproduct of informal guidance from 2018 and have no alteration in burden stemming from this rulemaking that differs from the guidance. See table 6 (the “No Action Baseline (2023–2032)” column) for more context on each of these items.

The following items have non-zero costs in our No Action Baseline: (1) Removing monthly availability reports (§ 401.260) and (2) Submitting Trip Charge Disputes (§ 401.431(b)). Both items have associated costs or cost savings that stem directly from changes made from this proposed rulemaking.

Removing Monthly Availability Reports

This proposed rule would remove the requirement in § 401.260 that pilots and apprentices submit monthly availability reports. Often these availability reports do not communicate meaningful information because in practice pilots

are listed as always available if they could be called in. Therefore, the Coast Guard no longer sees a benefit in requiring these reports. Based on information from a Coast Guard SME, these monthly reports have been submitted by industry since the mid-1960's.³² If the Coast Guard continued to require these reports, we could expect to receive 650 annually, one report for each of the 6 apprentice pilots, 56 pilots, and 3 temporary pilots for the 10 months of the active shipping season (650 reports = (6+56+3) × 10 months).

Continuing to require these reports would result in an hour burden of 2.5 hours per submission. By entirely removing this regulatory requirement through this proposed rulemaking, this acts as a marginal decrease in burden of 2.5 hours per submission. The loaded wage of submitters is \$73.17, from a base wage of \$50.09 and a load factor of 1.46.³³ For the No Action period of analysis (2023–2032), we estimate the total net cost savings to be \$(835,065.99) discounted to 7 percent and \$(118,894.61) annualized as summarized in table 14.

³² § 401.260(c) that deals with monthly availability reports was initially added to the CFR via 31 FR 9065 (July 1, 1966). To read the referenced final rule, see https://archives.federalregister.gov/issue_slice/1966/7/1/9063-9067.pdf#page=3. For more information on the history of how the requirement was redesignated

and amended through the years, see <https://www.ecfr.gov/current/title-46/chapter-III/part-401/subpart-B/section-401.260>.

³³ The base wage of captains, mates, and pilots of water vessels is \$50.09 as of May 2022, per <https://www.bls.gov/oes/2022/may/oes535021.htm>. The load factor of 1.46 is obtained by dividing total

hourly compensation for Transportation and Material Moving Occupations of \$33.07 by hourly wages (CMU2010000520000D) and salaries of \$22.64 (CMU2020000520000D). Access these series by searching the series number at <https://beta.bls.gov/dataQuery/search>. Last accessed August 2023.

TABLE 14—COST OF SUBMITTING MONTHLY AVAILABILITY REPORTS

[No action baseline; 2022 dollars]

Year	Reports	Total no action baseline hours	Wage of submitter	No action baseline cost	7-percent	3-percent
	[A]	[B]	[C]	[D = A * B * C]		
2023	650	2.5	\$73.17	\$(118,894.61)	\$(111,116.46)	\$(115,431.66)
2024	650	2.5	73.17	(118,894.61)	(103,847.16)	(112,069.57)
2025	650	2.5	73.17	(118,894.61)	(97,053.42)	(108,805.41)
2026	650	2.5	73.17	(118,894.61)	(90,704.13)	(105,636.32)
2027	650	2.5	73.17	(118,894.61)	(84,770.21)	(102,559.54)
2028	650	2.5	73.17	(118,894.61)	(79,224.50)	(99,572.36)
2029	650	2.5	73.17	(118,894.61)	(74,041.59)	(96,672.20)
2030	650	2.5	73.17	(118,894.61)	(69,197.75)	(93,856.50)
2031	650	2.5	73.17	(118,894.61)	(64,670.79)	(91,122.82)
2032	650	2.5	73.17	(118,894.61)	(60,439.99)	(88,468.76)
Total .....	.....	.....	.....	(1,188,946.11)	(835,065.99)	(1,014,195.15)
Annualized .....	.....	.....	.....	.....	(118,894.61)	(118,894.61)

* **Note:** Components may not add to the totals due to rounding.

Disputes

Under § 401.431(b), the Coast Guard proposes changing “in writing” to “official correspondence” and specifies that the letter expressing the dispute must include the vessel name, date of service, and reference number for the invoice/bill, the exact amount of dispute, regulatory citation for dispute, and the requested resolution. Per a Coast Guard SME, disputes have been

submitted long since the mid-1960’s in accordance with § 401.431.³⁴ However, the Coast Guard previously received these disputes in varying forms. According to a Coast Guard SME, the agency expects one trip charge dispute submission per year starting in 2023.

With the proposed 1changes, the Coast Guard estimates that forthcoming submissions will take one hour each. This is an increase in 30 minutes when

compared to the Coast Guard’s estimate for submission time associated with prior disputes that lack these new changes (30 minutes). The loaded wage of submitters is \$73.17, from a base wage of \$50.09 and a load factor of 1.46.³⁵ For the No Action period of analysis (2023–2032), we estimate the grand total cost to be 256.94 discounted to 7 percent and 36.58 annualized as summarized in table 15.

TABLE 15—COST OF SUBMITTING TRIP CHARGE DISPUTES

[No action; 2022 dollars]

Year	Submissions	Total no action baseline hours	Wage of submitter	No action baseline cost	7-Percent	3-Percent
	[A]	[B]	[C]	[D = A * B * C]		
2023	1	0.5	\$73.17	\$36.58	\$34.19	\$35.52
2024	1	0.5	73.17	36.58	31.95	34.48
2025	1	0.5	73.17	36.58	29.86	33.48
2026	1	0.5	73.17	36.58	27.91	32.50
2027	1	0.5	73.17	36.58	26.08	31.56
2028	1	0.5	73.17	36.58	24.38	30.64
2029	1	0.5	73.17	36.58	22.78	29.75
2030	1	0.5	73.17	36.58	21.29	28.88
2031	1	0.5	73.17	36.58	19.90	28.04
2032	1	0.5	73.17	36.58	18.60	27.22
Total .....	.....	.....	.....	365.83	256.94	312.06
Annualized .....	.....	.....	.....	.....	36.58	36.58

* **Note:** Components may not add to the totals due to rounding.

³⁴ § 401.431(b) was initially added to the CFR via 29 FR 10467 (July 28, 1964). To read the referenced final rule, see https://archives.federalregister.gov/issue_slice/1964/7/28/10461-10468.pdf#page=7. For more information on the history of how the requirement was redesignated and amended through the years, see <https://www.ecfr.gov/current/>

title-46/chapter-III/part-401/subpart-D/section-401.431.

³⁵ The base wage of captains, mates, and pilots of water vessels is 50.09 as of May 2022, per <https://www.bls.gov/oes/2022/may/oes535021.htm>. The load factor of 1.46 is obtained by dividing total hourly compensation for Transportation and

Material Moving Occupations of \$33.07 by hourly wages (CMU2010000520000D) and salaries of \$22.64 (CMU2020000520000D). Access these series by searching the series number at <https://beta.bls.gov/dataQuery/search>. Last accessed August 2023.

Summary of Total Net Costs

To foster transparency, the Coast Guard has decided to summarize total net costs by each baseline Pre-Guidance

and No Action. Table 16 accounts for net private costs to industry and the associations for our Pre-Guidance baseline. For the Pre-Guidance period of analysis (2018–2032), we estimate the

net private cost to industry to be (\$720,755.13) discounted to 7 percent and (\$56,422.19) annualized as summarized in table 16.

TABLE 16—NET PRIVATE COSTS TO INDUSTRY
[Pre-guidance; 2022 dollars]

Year	Individual training plans for apprentice pilots	Semi-annual performance evaluation reports for apprentice pilots	Removing monthly availability reports	Disputes	Submission of medical certificates	Total net private costs	7-Percent	3-Percent
	[A]	[B]	[C]	[D]	[E]	[F = SUM(A:E)]		
2018	\$585.33	\$8,779.91	\$0.00	\$0.00	\$373.15	\$9,738.38	\$12,765.03	\$10,960.64
2019	731.66	7,901.92	0.00	0.00	329.25	8,962.82	10,979.85	9,793.92
2020	731.66	9,657.90	0.00	0.00	241.45	10,631.01	12,171.44	11,278.44
2021	439.00	3,950.96	0.00	0.00	329.25	4,719.20	5,049.55	4,860.78
2022	877.99	7,901.92	0.00	0.00	329.25	9,109.16	9,109.16	9,109.16
2023	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(102,569.04)	(106,552.30)
2024	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(95,858.91)	(103,448.84)
2025	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(89,587.77)	(100,435.76)
2026	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(83,726.89)	(97,510.45)
2027	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(78,249.43)	(94,670.34)
2028	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(73,130.31)	(91,912.95)
2029	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(68,346.08)	(89,235.88)
2030	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(63,874.84)	(86,636.77)
2031	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(59,696.11)	(84,113.37)
2032	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(55,790.76)	(81,663.47)
Total .....	.....	.....	.....	.....	.....	(1,054,328.14)	(720,755.13)	(890,177.21)
Annualized .....	.....	.....	.....	.....	.....	.....	(56,422.19)	(64,322.24)

* Note: Components may not add to the totals due to rounding.

Table 17 accounts for net costs to government for our Pre-Guidance baseline. For the Pre-Guidance period of

analysis (2018–2032), we estimate the net cost to government to be \$12,540.65

discounted to 7 percent and \$981.71 annualized.

TABLE 17—NET COSTS TO GOVERNMENT
[Pre-guidance; 2022 dollars]

Year	Individual training plans for apprentice pilots	Semi-annual performance evaluation reports for apprentice pilots	Total net government cost	7-Percent	3-Percent
	[A]	[B]	[C = A + B]		
2018	\$227.89	\$759.64	\$987.53	\$1,294.45	\$1,111.47
2019	284.86	683.67	968.54	1,186.50	1,058.34
2020	284.86	835.60	1,120.46	1,282.82	1,188.70
2021	170.92	341.84	512.75	548.65	528.14
2022	341.84	683.67	1,025.51	1,025.51	1,025.51
2023	341.84	683.67	1,025.51	958.42	995.64
2024	341.84	683.67	1,025.51	895.72	966.64
2025	341.84	683.67	1,025.51	837.12	938.49
2026	341.84	683.67	1,025.51	782.36	911.15
2027	341.84	683.67	1,025.51	731.17	884.61
2028	341.84	683.67	1,025.51	683.34	858.85
2029	341.84	683.67	1,025.51	638.63	833.83
2030	341.84	683.67	1,025.51	596.85	809.55
2031	341.84	683.67	1,025.51	557.81	785.97
2032	341.84	683.67	1,025.51	521.32	763.07
Total .....	.....	.....	14,869.87	12,540.65	13,659.95
Annualized .....	.....	.....	.....	981.71	987.04

* Note: Components may not add to the totals due to rounding.

By aggregating values from table 16 and table 17, the Coast Guard estimates the total net costs associated with our

Pre-Guidance baseline. For the Pre-Guidance period of analysis (2018–2032), we estimate the total net costs to

be (\$708,214.47) discounted to 7 percent and (\$55,440.48) annualized as summarized in table 18.

TABLE 18—TOTAL NET COSTS

[Pre-guidance; 2022 dollars]

Year	Total net private costs [A]	Total net government costs [B]	Total net annual costs [C = A + B]	7-Percent	3-Percent
2018	9,738.38	987.53	10,725.91	14,059.48	12,072.11
2019	8,962.82	968.54	9,931.36	12,166.34	10,852.27
2020	10,631.01	1,120.46	11,751.47	13,454.26	12,467.13
2021	4,719.20	512.75	5,231.96	5,598.19	5,388.91
2022	9,109.16	1,025.51	10,134.66	10,134.66	10,134.66
2023	(109,748.87)	1,025.51	(108,723.36)	(101,610.62)	(105,556.66)
2024	(109,748.87)	1,025.51	(108,723.36)	(94,963.20)	(102,482.20)
2025	(109,748.87)	1,025.51	(108,723.36)	(88,750.65)	(99,497.28)
2026	(109,748.87)	1,025.51	(108,723.36)	(82,944.53)	(96,599.30)
2027	(109,748.87)	1,025.51	(108,723.36)	(77,518.26)	(93,785.73)
2028	(109,748.87)	1,025.51	(108,723.36)	(72,446.97)	(91,054.11)
2029	(109,748.87)	1,025.51	(108,723.36)	(67,707.45)	(88,402.04)
2030	(109,748.87)	1,025.51	(108,723.36)	(63,277.99)	(85,827.23)
2031	(109,748.87)	1,025.51	(108,723.36)	(59,138.31)	(83,327.40)
2032	(109,748.87)	1,025.51	(108,723.36)	(55,269.44)	(80,900.39)
Total .....	.....	.....	(1,039,458.28)	(708,214.47)	(876,517.26)
Annualized .....	.....	.....	.....	(55,440.48)	(83,014.78)

* **Note**—Components may not add to the totals due to rounding.

Now, we will repeat this process but for costs relative to our No Action baseline. Table 19 accounts for net private costs to industry and the

pilotage associations relative to our No Action baseline. For the No Action period of analysis (2023–2032), we estimate the net private cost to industry

to be (\$834,809.05) discounted to 7 percent and (\$118,858.03) annualized as summarized in table 19.

TABLE 19—NET PRIVATE COSTS TO INDUSTRY

[No action; 2022 dollars]

Year	Removing monthly availability reports [A]	Disputes [B]	Net private cost [C = A + B]	7-Percent	3-Percent
2023	(\$118,894.61)	36.58	(\$118,858.03)	(\$111,082.27)	(\$115,396.14)
2024	(118,894.61)	36.58	(118,858.03)	(103,815.20)	(112,035.09)
2025	(118,894.61)	36.58	(118,858.03)	(97,023.56)	(108,771.93)
2026	(118,894.61)	36.58	(118,858.03)	(90,676.22)	(105,603.82)
2027	(118,894.61)	36.58	(118,858.03)	(84,744.13)	(102,527.98)
2028	(118,894.61)	36.58	(118,858.03)	(79,200.12)	(99,541.73)
2029	(118,894.61)	36.58	(118,858.03)	(74,018.81)	(96,642.45)
2030	(118,894.61)	36.58	(118,858.03)	(69,176.45)	(93,827.62)
2031	(118,894.61)	36.58	(118,858.03)	(64,650.89)	(91,094.78)
2032	(118,894.61)	36.58	(118,858.03)	(60,421.39)	(88,441.54)
Total .....	.....	.....	(1,188,580.28)	(834,809.05)	(1,013,883.09)
Annualized .....	.....	.....	.....	(118,858.03)	(118,858.03)

* **Note**: Components may not add to the totals due to rounding.

Note that there are no costs to government relative to the No Action baseline, as costs associated with government review of both individual

training plans and semiannual performance evaluation reports stem from 2018 informal guidance. Therefore, for the No Action period of analysis

(2023–2032), we estimate the total net cost to be (\$834,809.05) discounted to 7 percent and (\$118,858.03) annualized as summarized in table 20.

TABLE 20—TOTAL NET COSTS

[No action; 2022 dollars]

Year	Net private costs	Net government costs	Total net annual costs	7-Percent	3-Percent
	[A]	[B]	[C = A + B]		
2023	(118,858.03)	0.00	(118,858.03)	(111,082.27)	(115,396.14)
2024	(118,858.03)	0.00	(118,858.03)	(103,815.20)	(112,035.09)
2025	(118,858.03)	0.00	(118,858.03)	(97,023.56)	(108,771.93)
2026	(118,858.03)	0.00	(118,858.03)	(90,676.22)	(105,603.82)
2027	(118,858.03)	0.00	(118,858.03)	(84,744.13)	(102,527.98)
2028	(118,858.03)	0.00	(118,858.03)	(79,200.12)	(99,541.73)
2029	(118,858.03)	0.00	(118,858.03)	(74,018.81)	(96,642.45)
2030	(118,858.03)	0.00	(118,858.03)	(69,176.45)	(93,827.62)
2031	(118,858.03)	0.00	(118,858.03)	(64,650.89)	(91,094.78)
2032	(118,858.03)	0.00	(118,858.03)	(60,421.39)	(88,441.54)
Total .....	.....	.....	(1,188,580.28)	(834,809.05)	(1,013,883.09)
Annualized .....	.....	.....	.....	(118,858.03)	(118,858.03)

* **Note:** Components may not add to the totals due to rounding

Table 21 gives a summary of the total net costs by baseline. The figures shown for each baseline are in 2022 dollars and are discounted at 7-percent.

TABLE 21—SUMMARY OF NET COSTS BY BASELINE

[2022 dollars]

	Pre-guidance baseline (2018–2032; discounted 7-percent)	No action baseline (2023–2032; discounted 7-percent)
Net Private Costs to Industry	<i>Net Costs to Industry:</i> (\$720,755.13)	<i>Net Costs to Industry:</i> (\$834,809.05).
	<i>Annualized Net Costs to Industry:</i> (\$56,422.19)	<i>Annualized Net Costs to Industry:</i> (\$118,858.03).
Net Costs to Government	<i>Net Costs to Government:</i> \$12,540.65	<i>Net Costs to Government:</i> \$0.00
	<i>Annualized Net Costs to Government:</i> \$981.71	<i>Annualized Net Costs to Government:</i> \$0.00.
Total Net Costs	<i>Total Net Costs:</i> (\$708,214.47)	<i>Total Net Costs:</i> (\$834,809.05).
	<i>Annualized Net Costs:</i> (\$55,440.48)	<i>Annualized Net Costs:</i> (\$118,858.03).

* **Note:** Components may not add to the totals due to rounding.

Benefits

The Coast Guard also considered the benefits of this proposed rule relative to both the Pre-Guidance and No Action baselines. The Pre-Guidance baseline refers to the state of the world prior to any 2018 informal guidance. This baseline captures provisions from both the 2018 informal guidance as well as the proposed rulemaking. Therefore, the Pre-Guidance period of analysis is 2018–2032. The No Action baseline refers to a world absent the proposed rulemaking. When referring to this baseline, we only measure the impact of new provisions stemming directly from the proposed rulemaking, relative to the current state of the world. The No Action baseline period of analysis is 2023–2032. For both baselines, the benefits are solely qualitative.

Benefits: Pre-Guidance Baseline

There are qualitative benefits associated with both the 2018 informal guidance as well as this proposed rulemaking. The overarching benefit is

codifying current industry practices to foster transparency between Coast Guard regulations and the U.S. pilot associations. Many changes outlined in this rulemaking are meant to improve understanding by clarifying current CFR text or creating new regulatory text that outlines existing practices. This is especially true of the numerous administrative changes that result in no cost (outlined in table 5). Additionally, this rulemaking codifies and modifies some practices that predate 2018 guidance, to clarify the pilotage terms and practices used by the Coast Guard and U.S. pilot association operations. The Coast Guard outlines the qualitative benefits for items that have associated costs in our Pre-Guidance baseline.

Individual Training Plans

Prior to 2018, associations used the same template plan for the entire district, rather than individualizing plans. Individualized training plans better ensure that Apprentice Pilots are gaining experience in all relevant transit

areas, when compared to the prior template plans. This improves safety for the pilots and supports pilots during the training program by ensuring that Apprentice Pilots are qualified for Full Registration at the end of their training.

Semi-Annual Performance Evaluation Reports

Requiring the associations to submit Semi-annual Performance Evaluation Reports allows the Coast Guard and the Director's office to better track the progression of the apprentice through the training program. The reports show (1) if an apprentice is meeting expectations and (2) if an apprentice is ultimately a good fit for the pilotage program. Where an apprentice does not meet these two conditions, reports help the Director more quickly determine if further training or dismissal from training is appropriate.

Removing Monthly Availability Reports

Often availability reports do not communicate meaningful information

because in practice pilots are listed as always available if they need to be called in. Eliminating this requirement will benefit the pilots and apprentices through saved time, as shown in the discounted cost savings of (\$835,065.99) over the 2018–2032 Pre-Guidance time horizon.

Disputes

By changing “in writing” to “official correspondence” in § 401.431(b) for disputes, the Coast Guard provides more flexibility in how a dispute can be formally submitted. The proposed revisions to the regulatory text more explicitly outline that the letter expressing the dispute must include the vessel name, date of service, and reference number for the invoice/bill, the exact amount of dispute, regulatory citation for dispute, and the requested resolution. Outlining these requirements should result in a more standardized, higher-quality submission that expedites the Director’s decision on the dispute leading to a quicker resolution for the submitter of the dispute.

Submission of Medical Certificates

The proposed rulemaking aligns medical and vision requirements for Apprentice Pilots, United States Registered Pilots, and Temporary Registered pilots with the existing MMC medical certification standards. This proposed change was a recommendation from the Great Lakes Pilotage Advisory Committee in 2018. Therefore, this practice began in 2018. Alignment of these requirements would prevent confusion and avoid delays when submitting and processing an apprentice pilot’s application.

The Coast Guard recognizes that, per Executive Order 13563,³⁶ agencies are called to quantify anticipated benefits “as accurately as possible” but may discuss benefits qualitatively when determining a numerical metric is not possible. Note that the proposed rulemaking does not inhibit the ability for industry, associations, or the Coast Guard to reap benefits that stem from prior guidance. The Coast Guard welcomes comments on any additional ways to evaluate these benefits.

Benefits: No Action Baseline

The No Action baseline highlights benefits that stem solely from the proposed rulemaking. Therefore, any benefits that are solely attributed to prior guidance will not be highlighted

here. The No Action baseline refers to a world absent the proposed rulemaking. Since many provisions of this proposed rule codify industry practices that arose from previous guidance, the qualitative benefits of the No Action baseline are very similar to those of the Pre-Guidance baseline.

Removing Monthly Availability Reports

Often, availability reports do not communicate meaningful information because in practice pilots are listed as always available if they need to be called in. Eliminating this requirement would benefit the pilots and apprentices through saved time, as shown in the discounted cost savings of (\$835,065.99) over the 2023–2032 No Action time horizon.

Disputes

By changing “in writing” to “official correspondence” in § 401.431(b) for disputes, the Coast Guard would provide more flexibility in how a dispute can be formally submitted. The proposed revisions to the regulatory text more explicitly outline that the letter expressing the dispute must include the vessel name, date of service, and reference number for the invoice/bill, the exact amount of dispute, regulatory citation for dispute, and the requested resolution. Outlining these requirements should result in a more standardized, higher-quality submission that expedites the Director’s decision on the dispute leading to a quicker resolution for the submitter of the dispute.

The Coast Guard recognizes that, per Executive Order 13563,³⁷ agencies are called to quantify anticipated benefits “as accurately as possible” but may discuss benefits qualitatively when determining a numerical metric is not possible. Note that the proposed rulemaking does not inhibit the ability for industry, associations, or The Coast Guard to reap benefits that stem from prior guidance. The Coast Guard welcomes comments on any additional ways to evaluate these benefits.

Alternatives Considered

Alternative 1. The primary alternative to this rulemaking would be to take no action and not alter any of the processes for issuing Limited Registration. The Coast Guard rejected this alternative because it would leave outdated text in the CFR and perpetuate confusion as industry practices continue to evolve past what is detailed in current regulations.

Alternative 2. The second alternative would require Apprentice Pilots to

complete a test before receiving their Limited Registration. Currently, tests are only administered when a mariner tests to receive Full Registration, and tests are administered when test administrators are already in the area and can conduct a test for multiple Apprentice Pilots at once. Tests are administered by the Great Lakes Pilotage Office at the nearest Coast Guard Regional Exam Center (REC) to the Apprentice Pilot, usually REC Toledo. The exam is administered individually to each Apprentice Pilot, and the answer sheet is returned to the Great Lakes Pilotage Office for grading.

Adding tests for each Limited Registration would require the Coast Guard to generate a test for each area in which a Limited Registration is requested, because Limited Registrations are issued for specific geographic areas. The Coast Guard would then need to administer the generated test, requiring travel for both the test administrator and the test taker. The Coast Guard estimates there are an average of 17 requests for Limited Registration annually. Each request would require 1.5 to 4 hours of testing for both the test taker and the test administrator, with an average of 2 hours for each test.³⁸ For both parties, the Coast Guard has decided to use the conservative estimate of 4 hours for the testing burden. In addition, both the test taker and test administrator must travel, which is an average of 2 hours for the test taker and 6 hours for the test administrator.³⁹ The Coast Guard estimates an annual cost of \$7,462.92 for test takers, using a loaded wage of \$73.17 for test takers and assuming 4 hours for testing, 2 hours for travel, and 17 tests annually.⁴⁰ For test administration, the Coast Guard estimates an annual cost of \$19,370.71, using a loaded wage of \$113.95 for test administrators and assuming 4 hours for testing, 6 hours for travel, and 17 tests annually.⁴¹

³⁸ Phone communication with Marine Transportation Specialist of the Great Lakes Pilotage Division.

³⁹ Ibid.

⁴⁰ The base wage of captains, mates, and pilots of water vessels is \$50.09 as of May 2022, per <https://www.bls.gov/oes/2022/may/oes535021.htm>. The load factor of 1.46 is obtained by dividing total hourly compensation for Transportation and Material Moving Occupations of \$33.07 by hourly wages (CMU2010000520000D) and salaries of \$22.64 (CMU2020000520000D). Access these series by searching the series number at <https://beta.bls.gov/dataQuery/search>. Last accessed August 2023.

⁴¹ The loaded wage of \$113.95 (rounded) comes from the base hourly wage of \$68.55 for a GS–14 Step 5 from the DC region multiplied by a load factor of 1.66, per <https://www.opm.gov/policy->

³⁶ To access Executive Order 13573 (“Improving Regulation and Regulatory Review”), please see <https://www.federalregister.gov/documents/2011/01/21/2011-1385/improving-regulation-and-regulatory-review>.

³⁷ Ibid.

The Coast Guard rejected this alternative because it would increase the burden upon the pilots and the pilot associations without a commensurate increase in safety. The Coast Guard believes the documentation currently received from the pilots and the associations is adequate to determine if an Apprentice Pilot should be granted a Limited Registration.

Alternative 3. The Coast Guard also considered removing the requirement for Apprentice Pilots to submit Performance Evaluation Reports semi-annually (for example, once at the end of the shipping season and once mid-season) to obtain a Limited Registration. Instead, the Coast Guard would only require Apprentice Pilots to submit a Performance Evaluation Report annually (*i.e.*, only once at the end of the shipping season). The Coast Guard rejected this option because we do not believe that annual reporting alone would allow us to accurately evaluate the performance of an Apprentice Pilot, which could potentially contribute to a decrease in safety. The Coast Guard receives annual evaluations once a year, by January 15th. If an Apprentice Pilot requested a Limited Registration that required evidence of trips completed that were not included in the most recent performance evaluation, then the Coast Guard could not issue the limited endorsement. Using Semi-annual Performance Evaluation Reports allows greater flexibility in issuing Limited Registrations, as the Semi-annual Performance Evaluation Reports are more likely to have relevant and timely information to evaluate qualifications for Limited Registration. The semi-annual evaluations also allow for greater tailoring of training resulting in safer operations because performance in a particular area or on a particular route can be evaluated while there is time to increase focus on that area for the remaining trips to be completed for the season.

Alternative 4. Preferred Alternative. The preferred alternative is the one put forth in this proposed rulemaking. The Coast Guard selected this alternative because it would be less costly than the other alternatives, give the Coast Guard more relevant and timely information to evaluate qualifications for Limited

Registration, and update the CFR to remove outdated references.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The affected population for this proposed rule includes 51 U.S. Great Lakes pilots, 9 Apprentice Pilots, and 3 Temporary Registered Pilots, all represented by 3 pilot associations.

The three associations are the St. Lawrence Seaway Pilots Association representing District One, the Lakes Pilot Association representing District Two, and the Western Great Lakes Pilots Association representing District Three. Together, the associations are jointly referred to as the Lake Carriers’ Association. All these associations classify under the North American Industry Classification System (NAICS) Code 81391002 for Business Associations.⁴² The size standard for Business Associations of \$8 million was current during the development of the 2023 annual rulemaking and utilized in the final rule (88 FR 12226).⁴³ Based on revenue figures reported as part of the 2023 annual rulemaking, none of the associations have revenue under \$8 million. To further analyze the impacts these associations may face, the Coast Guard is parsing this out based on the two baselines in the regulatory analysis. The figures referenced are discounted using a 7-percent discount rate.

Under the Pre-Guidance baseline, the annualized cost to industry from the proposed rulemaking amounts to \$8,948.49. This is not more than 1 percent of revenue for any of the associations and would be offset by the annualized cost savings under the same baseline of (\$65,370.68). Therefore, the annualized net cost to industry is (\$56,422.19) for the Pre-Guidance baseline’s period of analysis.

Relative to our No Action baseline, the annualized cost to industry from the

proposed rulemaking amounts to \$36.58. This is not more than 1 percent of revenue for any of the associations and would be offset by the annualized cost savings under the same baseline of (\$118,894.61). Therefore, the annualized net cost to industry is (\$118,858.03) for costs relative to the No Action baseline’s period of analysis.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the docket at the address listed in the **ADDRESSES** section of this preamble. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

D. Collection of Information

This proposed rule would call for a revision to an existing collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering, and maintaining the data needed, and completing and reviewing the collection.

Title: Great Lakes Pilotage.

OMB Control Number: 1625–0086.

data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB_h.pdf. To calculate the load factor of 1.66, we divide total hourly compensation for workers with master’s degrees as shown in table 4, \$74.80, by the average hourly wage for workers with master’s degrees as shown in table 2, or \$45.00. $\$74.80 \div \$45.00 = 1.6622$. See “Comparing the Compensation of Federal and Private Sector Employees, 2011–2015,” <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52637-federalprivatepay.pdf>.

⁴² NAICS codes were found using ReferenceUSA for the Lakes Pilot Association and the Lake Carrier’s Association. Coast Guard assumes that the code for the joint association is representative of all associations.

⁴³ <https://www.federalregister.gov/documents/2023/02/27/2023-03212/great-lakes-pilotage-rates-2023-annual-ratemaking-and-review-of-methodology>.

Summary of the Collection of Information: The Director requires that pilot associations provide data relating to bridge hours; vessel delay, detention, cancellation, and moorage; pilot travel; revenues; and pilot availability. This proposed rule adds additional collections which includes the collection of individual training plans and Semi-annual Performance Evaluation Reports, codifies responses by Apprentice Pilots and Temporary Registered Pilots that were previously not detailed, and codifies disputes and dispute appeals on trip charges.

Need for Information: Pursuant to 46 CFR part 404, the Director of the Great Lakes Pilotage is required to set pilotage rates on the Great Lakes. In meeting this requirement, the Director requires that pilot associations provide data relating to bridge hours; vessel delay, detention, cancellation, and moorage; pilot travel; revenues; and pilot availability. The new information proposed to be collected in this rule assists in estimating the number of pilots that may be available in a season by accurately tracking their progress through training (training plans and performance evaluations).

Proposed Use of Information: The Director of Great Lakes Pilotage uses the data stored in the Great Lakes Pilot Management System and on Form CG-4509 to carry out operational and ratemaking oversight of pilotage activities on the Great Lakes.

Description of the Respondents: The respondents are mariners and pilots operating on the Great Lakes, and employees of the pilot associations. The population of mariners and pilots varies year to year. There are three pilot associations, representing each of the three pilotage districts: St Lawrence Seaway Pilots Association, Lakes Pilot Association, and Western Great Lakes Pilots Association, with the collective Lake Carrier's Association representing the three associations together.

Number of Respondents: This proposed rule would increase the number of respondents by 9, comprising 6 Apprentice Pilots and 3 Temporary Registered Pilots.

Frequency of Response: Individualized training plans would be submitted annually. Semi-annual Performance Evaluation Reports would be submitted twice annually with follow-up as needed. Applicant trainee applications would be submitted as needed,⁴⁴ with 8 submitted annually on

average. Written marine accidents would be submitted as necessary,⁴⁵ with 3 submitted annually on average. Disputes and dispute appeals⁴⁶ would be submitted as necessary, with 1 anticipated annually per SME guidance.

Burden of Response: Individualized training plans would take 2 hours to submit, for an increased annual burden of 12 hours. Semi-annual Performance Evaluation Reports would take 6 hours to submit, for an increased annual burden of 108 hours. The additional applications for the Applicant Trainees would take 30 minutes each to submit, for an increased annual burden of 4 hours. Written marine accident reports would take an hour to submit, for an increased annual burden of 3 hours. Disputes would take 1 hour to submit, with an increased annual burden of 3 hours. Dispute appeals would take thirty minutes, with an increased annual burden of 1.5 hours.

Estimate of Total Annual Burden: The total increase in burden from this proposed rule is 138 hours.

As required by 44 U.S.C. 3507(d), we will submit a copy of this proposed rule to OMB for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine, among other things—

- How useful is the information;
- Whether the information can help us perform our functions better;
- How we can improve the quality, usefulness, and clarity of the information;

and are not a result of this proposed rulemaking. The clarifying text proposed in this rulemaking (acts to codify a long-standing practice. For these reasons, this line item is only an information collection cost and not a regulatory cost present in the cost model.

⁴⁵ The submission requirement for written marine accident reports found in § 401.260 originated in 31 FR 9065 (July 1, 1966). Therefore, this is a longstanding requirement which was not previously captured in ICR 1625–0086. For this reason, this line item is only an information collection cost and not a regulatory cost present in the cost model. To access 31 FR 9065, see https://archives.federalregister.gov/issue_slice/1966/7/1/9063-9067.pdf. Note the while reports of marine casualties are generally accounted for in ICR 1625–0001 (“Report of Marine Casualty & Chemical Testing of Commercial Vessel Personnel”), a Coast Guard SME confirmed the scope of the marine accident reports provided to the Director differs from those in 1625–0001. To access ICR 1625–0001, see https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202204-1625-009.

⁴⁶ Dispute appeals (found in 401.431(b)) originated in 29 FR 10467 (July 28, 1964). Therefore, this is a longstanding requirement which was not previously captured in ICR 1625–0086. For this reason, this line item is only an information collection cost and not a regulatory cost present in the cost model. To access 31 FR 9065, see https://archives.federalregister.gov/issue_slice/1964/7/28/10461-10468.pdf#page=7.

- Whether the information is readily available elsewhere;
- How accurate our estimate is of the burden of collection;
- How valid our methods are for determining the burden of collection; and
- How we can minimize the burden of collection.

If you submit comments on the collection of information, submit them to the docket where indicated under **ADDRESSES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this proposed rule, OMB would need to approve the Coast Guard's request to collect this information.

E. Federalism

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

In 46 U.S.C. 9303, Congress directs the Coast Guard to regulate Great Lakes pilot applicants' standards of competency, Certificates of Registration, duration of validity of registration, and the conditions for service by United States Registered Pilots, including availability for service. These regulations are issued pursuant to that statute and is preemptive of State law as specified in 46 U.S.C. 9306. Under 46 U.S.C. 9306, a “State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.” As a result, States or local governments are expressly prohibited from regulating within this category. Therefore, this proposed rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's reporting obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. *See Locke v.*

⁴⁴ Applicant Trainees have already been submitting these, but the regulatory text did not reference Applicant Trainees specifically. These submissions pre-date any guidance issued in 2018

United States, 529 U.S. 89, 115–16 (2000). Additionally, for rules with implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under Executive Order 13132, please contact the person listed in the **FOR FURTHER INFORMATION** section of this preamble.

F. Unfunded Mandates

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

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

This proposed rule would be categorically excluded under paragraphs A3, L54 and L56 of Appendix A, table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. Paragraph A3 pertains to the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars,

and other guidance documents of the following nature:

(a) Those of a strictly administrative or procedural nature;

(b) Those that implement, without substantive change, statutory or regulatory requirements;

(c) Those that implement, without substantive change, procedures, manuals, and other guidance documents;

(d) Those that interpret or amend an existing regulation without changing its environmental effect;

(e) Technical guidance on safety and security matters; or

(f) Guidance for the preparation of security plans.

Paragraph L54 pertains to regulations which are editorial or procedural. Paragraph L56 pertains to regulations concerning the training, qualifying, licensing, and disciplining of maritime personnel.

This proposed rule involves the potential amendment of certain Great Lakes Pilotage regulatory requirements to align them with current Coast Guard and U.S. pilot association operations and related pilotage practices. In particular, this proposed rule would add or amend definitions for pertinent terms in order to clarify the different phases of training and registrations for pilots who work on the Great Lakes. All of these changes are consistent with the Coast Guard’s maritime safety missions. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 402

Great Lakes, Navigation (water), Seamen.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 46 CFR parts 401 and 402 as follows:

Title 46—Shipping

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. The authority citation for part 401 is revised to read as follows:

Authority: 46 U.S.C. 2103, 2104(a), 6101, 7701, 8105, 9303, 9304; DHS Delegation No. 00170.1, Revision No. 01.3, paragraph (II)(92)(a), (92)(d), (92)(e), (92)(f).

§ 401.100 [Amended]

■ 2. In § 401.100, remove the words “pools by voluntary associations of United States registered pilots and the establishment of rates, charges, and other conditions or terms for services performed by registered pilots” and add, in their place, the words “pilotage pools by voluntary associations of United States Registered Pilots and the establishment of rates, charges, and other conditions or terms for services performed by United States Registered Pilots”.

■ 3. Revise § 401.110 to read as follows:

§ 401.110 Definitions.

As used in this chapter:

Act means the Great Lakes Pilotage Act of 1960, as amended (Pub. L. 86–555, 74 Stat. 259–262; 46 U.S.C. 216 through 216i).

Applicant means a person who has submitted a Form CG–4509 to the Director of Great Lakes Pilotage (“Director”), to be considered for placement in an approved U.S. Great Lakes pilot training and qualification program at one of the established pilotage pools.

Applicant Trainee means a person approved by the Director who is participating in an approved U.S. Great Lakes pilot training and qualification program. This individual meets the minimum requirements listed in 46 CFR 401.214 but does not have the necessary service or experience on their MMC in the Great Lakes to qualify as an Apprentice Pilot. The Applicant Trainee is not eligible for a Limited or Temporary Registration.

Apprentice Pilot means a person approved by the Director who is participating in an approved U.S. Great Lakes pilot training and qualification program. This individual meets all the minimum requirements listed in 46 CFR 401.211.

Association means any organization that holds a Certificate of Authorization issued by the Director to operate a pilotage pool on the Great Lakes.

Canadian Registered Pilot means a person, other than a member of the regular complement of a vessel, who holds an appropriate Canadian license issued by an agency of Canada, and is registered by a designated agency of Canada on substantially the same basis as registration under the provisions of Subpart B of this part.

Chemical test means a scientifically recognized test that analyzes an individual’s breath, blood, urine, saliva, bodily fluids, or tissues for evidence of dangerous drug or alcohol use.

Commandant means Commandant (CCG), Attn: Commandant, U.S. Coast

Guard Stop 7000, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7000.

Comparable experience means knowledge and previous performance that is similar to the knowledge and technical skills obtained by serving as an officer on vessels of at least 4,000 gross tonnage. Training and experience while participating in a pilot training program of an authorized pilot organization is considered equivalent on a day for day basis to experience as an officer on a vessel. The training program of the authorized pilot organization must, however, include regularly scheduled trips on vessels of at least 4,000 gross tonnage or over in the company of a United States Registered Pilot.

Director means Director, Great Lakes Pilotage. Communications with the Director may be sent to the following address: Director, Great Lakes Pilotage, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509.

Full Registration is the issuance of a Certificate of Registration, by the Director, to an Apprentice Pilot who meets all the requirements in 46 CFR 401.210 and 401.211 and completes all the requirements in 46 CFR 402.210 and 402.220 and so becomes a United States Registered Pilot.

Great Lakes means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the St. Lawrence River as far east as Saint Regis, and adjacent port areas.

Gross Tonnage or GT means the gross tonnage measurement of the vessel under 46 U.S.C. chapter 143, Convention Measurement.

Individual Training Plan is an outline of specific requirements reviewed and approved by the Director for an Apprentice Pilot, including but not limited to the length of time to complete the training, the minimum number of round trips required, the association’s determination of proficiency, the officer endorsement on the MMC, and the Apprentice Pilot’s pilotage experience on the Great Lakes. The plan communicates the qualifications and demonstrates skills the mariners must complete to meet the proficiency requirements for which the mariner is training.

Limited Registration is an authorization issued by the Director, upon the request of the respective pilot association, to an Apprentice Pilot to provide pilotage service without direct supervision from a United States Registered Pilot or Temporary Registered Pilot in a specific area or waterway.

Marine accident is any of the following that occurs while a U.S. Registered Pilot, Apprentice Pilot, Apprentice Pilot with Limited Registration, or Temporary Registration Pilot is providing pilotage services in U.S. or Canadian waters:

(a) Any allision or collision;

(b) Any grounding;

(c) A loss of main propulsion, primary steering, or any associated component or control system that, due to its duration or other circumstance, significantly impacts the maneuverability of the vessel;

(d) An occurrence, directly related to the provision of pilotage services, involving significant harm to the environment as defined in 46 CFR 4.03–65 (including Canadian waters); or

(e) Any other incident, directly related to the provision of pilotage services, causing property damage in excess of \$75,000 (including the cost of labor and material to restore the property to its condition before the incident, but excluding the cost of such things as salvage, cleaning, gas-freeing, drydocking, or demurrage).

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner’s document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner’s qualification document, certificate of identification, and certificate of service.

Minimum number of round trips is the fewest number of successful round trips an Apprentice Pilot must perform under the direct supervision of a fully registered United States Registered Pilot or Temporary Registered Pilot, according to their individual training plan. 46 CFR 402.220 contains the minimum number of round trips for certain officer endorsements.

Officer endorsement means an annotation on an MMC that allows a mariner to serve in the capacities listed in 46 CFR 10.109.

Person means an individual, pilot, partnership, corporation, association, voluntary association, authorized pilotage pool, or public or private organization, other than a government agency.

Pilotage pool means an organization holding a Certificate of Authorization issued by the Director to provide pilotage services.

Rate computation definitions to determine Weighting Factors:

(a) *Length* means the distance between the forward and after extremities of the ship.

(b) *Breadth* means the maximum breadth to the outside of the shell plating of the ship.

(c) *Depth* means the vertical distance at amidships from the top of the keel plate to the uppermost continuous deck, fore and aft, and which extends to the sides of the ship. The continuity of a deck is not considered to be affected by the existence of tonnage openings, engine spaces, or a step in the deck.

Round trip means providing pilotage service, in both directions, from one change point to another change point, or inbound and outbound in a port designated by an authorized pilotage pool.

Secretary means the Secretary of the department in which the Coast Guard is operating.

Semi-annual Performance Evaluation Report is an assessment performed on an Apprentice Pilot twice a year, by the association, to report the Apprentice Pilot's progress in the approved U.S. Great Lakes pilot training and qualification program at the established pilotage pool.

Temporary Registered Pilot means a person who is issued a Temporary Registration by the Director in accordance with 46 CFR 401.222. A Temporary Registered Pilot holds a valid MMC, meets the requirements of § 401.222, has previously held a Full Registration, is requested to provide pilotage services by the pilotage association, and has either:

(a) Reached the age of 70 and desires to continue providing pilotage services; or

(b) Retired from pilotage service and desires to provide pilotage services.

United States Registered Pilot or *U.S. Registered Pilot* means a person, other than a member of the regular complement of a vessel, who holds an MMC with an officer endorsement authorizing navigation on the Great Lakes and suitably endorsed for pilotage on areas and routes specified therein, issued under the authority of the provisions of Title 46 of the United States Code, and who also currently holds a Certificate of Registration ID card under the provisions of Subpart B of this part.

§ 401.120 [Amended]

■ 4. Amend § 401.120 as follows:

■ a. In the first sentence, remove the word “shall” and add, in its place, the word “may”.

■ b. In the second sentence, remove the word “Arrangements” and add, in its place, the word “Understanding”.

■ 5. Revise § 401.200 to read as follows:

§ 401.200 Application for registration.

An application for registration as a U.S. Registered Pilot must be made on Form CG-4509, which must be submitted via email to: *GreatLakesPilotage@uscg.mil*; or by physical mail to: Great Lakes Pilotage Office, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593-7509. This form may be obtained from the Director.

■ 6. Amend § 401.210 as follows:

■ a. Revise the section heading and paragraph (a); and

■ b. In paragraph (b), remove the word “shall” and add, in its place, the word “will”.

The revisions read as follows:

§ 401.210 Requirements and qualifications for to be fully registered.

(a) No person may be fully registered as a United States Registered Pilot unless:

(1) The individual holds an MMC with an officer endorsement as a master, mate, or pilot, issued under the provisions of subpart B of 46 CFR part 11, and has acquired at least twenty-four months service as a deck officer or comparable experience on vessels or integrated tug and barge, of at least 4,000 gross tonnage, operating on the Great Lakes or oceans. Those applicants qualifying with other than Great Lakes service must have obtained at least 6 months of service as a deck officer or comparable experience on the Great Lakes. Those applicants qualifying with comparable experience must have served a minimum of twelve months as a deck officer under the authority of their MMC.

(2) The individual is a citizen of the United States.

(3) The individual is of good moral character and temperate habits.

(4) The individual is physically competent to perform the duties of a U.S. Registered Pilot and meets the applicable medical requirements and standards prescribed by the Commandant in subpart C of 46 CFR part 10.

(5) The individual has not reached the age of 70.

(6) The individual agrees to be available for service under the terms and conditions as may be approved or prescribed by the Commandant.

(7) The individual has complied with the requirements set forth in § 401.220(b) for Apprentice Pilots.

(8) The individual meets the chemical testing requirements as defined in 46 CFR part 16.

(9) The individual agrees to comply with all applicable provisions of this part and amendments thereto.

* * * * *

■ 7. Revise § 401.211, including the section heading, to read as follows:

§ 401.211 Requirements for training of Apprentice Pilots and Limited Registration Authorization.

(a) The Director will determine the number of Apprentice Pilots required to be in training by each association authorized to form a pilotage pool in order to assure an adequate number of United States Registered Pilots.

(b) No Apprentice Pilot will be selected for training unless:

(1) The individual meets the requirements and qualifications set forth in paragraphs (a)(1) through (4), (6), (8), and (9) of § 401.210.

(2) The individual must not have reached the age of 60.

(3) The individual possesses a radar observer (unlimited) endorsement on their MMC in accordance with § 11.480.

(c) For purpose of determining whether an applicant meets the experience requirements contained in § 401.210(a)(1), not more than twelve months of “comparable experience” may be used in fulfilling the twenty-four-month experience requirement.

(d) The Director must approve the United States Registered Pilots or Temporary Registered Pilots designated by the authorized pilot organization to provide training to those pilots in training to be United States Registered Pilots.

(e) Persons desiring to be considered as an Apprentice Pilot must file with the Director a completed Application Form CG-4509 by email to:

GreatLakesPilotage@uscg.mil; or by mail to: Great Lakes Pilotage Office, 2703 Martin Luther King Jr. Ave. SE, Mail Stop 7509, Washington, DC 20593-7509. Upon the request of the Director, the person desiring to be considered as an Apprentice Pilot must submit two full-face passport style photographs, signed on the photo, vertically, as close to the head as possible.

(f) Applicants meeting the minimum requirements of this section who are both selected by the association and approved by the Director will be issued a U.S. Coast Guard Apprentice Pilot Identification Card. Such Card is valid until such time as:

(1) The expiration of a term determined by the Director;

(2) The Apprentice Pilot is registered as a pilot under § 401.210;

(3) The Apprentice Pilot withdraws from the training program; or

(4) The card is ordered withdrawn by the Director.

(g) The Apprentice Pilot must have a Director-approved individual training plan. The Apprentice Pilot, along with the pilotage association, will record all their round trips, as per their individual training plan, and provide this information to the Director for review. Round trips completed as an Apprentice Pilot will count toward Full Registration.

(h) The appropriate pilot association must perform a Semi-annual Performance Evaluation Report on the Apprentice Pilot twice a year, to assess the Apprentice Pilot's progress in the approved U.S. Great Lakes pilot training and qualification program at the established pilotage pool. The evaluation must be submitted to the Director by August 15 and January 15 of each year. The report should provide a recommendation to the Director on whether to keep the Apprentice Pilot in the training program.

(i) The Apprentice Pilot must be enrolled in the association's chemical testing program. The chemical testing program must meet the requirements of 46 CFR part 16. For the purposes of this Part, the association is deemed to be the Sponsoring Organization.

(j) To facilitate the training of the Apprentice Pilot, the Director may authorize Limited Registration to the Apprentice Pilot, upon the request from the pilot association. The Apprentice Pilot obtains a Limited Registration by completing and recording the requirements set forth in § 401.220(b)(1). Limited Registration periods will not exceed 6 months before the need to request a renewal; the specific period is determined by the Director per 46 CFR 401.110(9). The Apprentice Pilot must maintain a favorable performance evaluation via their Semi-annual Performance Evaluation Reports and the Director must determine a need for the pilot. At any time, this authorization may be revoked at the discretion of the Director.

(k) An Apprentice Pilot may be eligible for a Certificate of Registration, after:

(1) The mariner completes an approved U.S. Great Lakes pilot training and qualification program in one of the Great Lakes' pilot associations;

(2) The appropriate pilot association gives the mariner a positive endorsement;

(3) The mariner passes the Director's exam; and

(4) The Director determines that the association needs an additional pilot.

■ 8. Add new § 401.214 to read as follows:

§ 401.214 Training requirements for Applicant Trainees.

(a) The Director will determine the number of Applicant Trainees required to be in training by each association authorized to form a pilotage pool in order to assure an adequate number of United States Registered Pilots.

(b) No Applicant Trainee may be selected for training unless:

(1) The individual meets the requirements and qualifications set forth in paragraphs (a)(2) through (4), (6), (8), and (9) of § 401.210.

(2) The individual must not have reached the age of 60.

(3) The individual possesses a radar observer (unlimited) endorsement on their MMC in accordance with § 11.480.

(c) An individual with other than Great Lakes service must obtain at least 6 months of service as a credentialed officer, or comparable experience, on the Great Lakes with the pilot association in the District waters assigned before they are eligible to become an Apprentice Pilot. Round trips and related activities completed during this training phase will not count towards Full Registration.

(d) The Director must approve the United States Registered Pilots or Temporary Registered Pilots that are designated by the authorized pilot organization to provide training to those pilots that are in training to be United States Registered Pilots.

(e) Persons desiring to be considered as an Applicant Trainee must file with the Director a completed Application Form CG-4509 via email to: *GreatLakesPilotage@uscg.mil* or by mail to: Great Lakes Pilotage Office, 2703 Martin Luther King Jr. Ave. SE, Mail Stop 7509, Washington, DC 20593-7509. Upon the request of the Director, the person desiring to be considered as an Applicant Trainee must submit two full-face passport style photographs, signed on the photo, vertically, as close to the head as possible.

(f) Applicants must meet the pre-employment chemical testing requirements as defined in 46 CFR 16.210.

(g) Applicants meeting the minimum requirements of this section who are both selected by the association and approved by the Director will be issued a U.S. Coast Guard Applicant Trainee Identification Card. Such Card is valid until such time as:

(1) The expiration of a term determined by the Director;

(2) The Applicant Trainee is registered as an Apprentice Pilot under § 401.211;

(3) The Applicant Trainee withdraws from the training program; or

(4) The card is ordered withdrawn by the Director.

■ 9. Amend § 401.220 as follows:

■ a. In the introductory text of paragraph (a), remove the word "shall" and add, in its place, the word "must";

■ b. Revise paragraphs (b), (c), and (d); and

■ c. Remove paragraph (e).

The revisions read as follows:

§ 401.220 Registration of pilots.

* * * * *

(b) Registration of pilots must be made from among those Apprentice Pilots who have:

(1) Completed the minimum number of round trips prescribed by the Commandant over the waters for which application is made on oceangoing vessels, in company with a United States Registered Pilot or Temporary Registered Pilot, and in accordance with the Apprentice Pilot's approved individual training plan;

(2) Completed the approved course of instruction for Apprentice Pilots prescribed by the association authorized to establish the pilotage pool; and

(3) After completing the requirements in paragraphs (b)(1) and (2) of this section, satisfactorily completed a written examination prescribed by the Director, evidencing their knowledge and understanding of the Great Lakes Pilotage Act of 1960, Great Lakes Pilotage Regulations, Rules and Orders; the Memorandum of Understanding, Great Lakes Pilotage, between the United States and Canada; and other related matters including the working rules and operating procedures of the district, given at such time and place as the Director may designate within the pilotage district of the Apprentice Pilot.

(c) The pilot association authorized to establish a pilotage pool in which an Apprentice Pilot has qualified for registration under paragraph (b) of this section must submit to the Director in writing its recommendations together with its reasons for or against the registration of the Apprentice Pilot.

(d) Subject to the provisions of paragraphs (a), (b), and (c) of this section, an Apprentice Pilot found to be qualified under this subpart may be considered fully registered and issued a Certificate of Registration, valid for a term of five (5) years or until the expiration of their master's, mate's, or pilot's endorsement, or until the pilot reaches age 70, whichever occurs first.

■ 10. Add a new § 401.222 to read as follows:

§ 401.222 Temporary Registered Pilots on the Great Lakes.

(a) The Director may, when necessary to ensure safe, efficient, and reliable

pilotage service for maritime commerce, issue a Temporary Registration to any person found qualified under this subpart who:

- (1) Holds a valid MMC;
- (2) Meets the requirements of 46 CFR 401.210 (except paragraph (a)(5));
- (3) Has previously held a Full Registration;
- (4) Meets the requirements of 46 CFR part 16;
- (5) Is requested by the pilotage association; and
- (6) Either:
 - (i) Has reached the age of 70 and desires to continue providing pilotage services; or
 - (ii) Has retired from pilotage service and desires to provide pilotage services.

(b) A Temporary Registration is valid for a length of time to be determined by the Director, but not to exceed one year from the date of issuance.

■ 11. Revise § 401.230 to read as follows:

§ 401.230 Certificates of Registration.

(a) A Certificate of Registration must describe the areas and routes of the Great Lakes within which the pilot is authorized to perform pilotage services and such description must be consistent with the terms of the pilotage authorization in their masters, mates, or pilot's endorsement issued under the authority of Title 46 of the United States Code.

(b) A Certificate of Registration does not authorize the holder to board any vessel, or to serve as a pilot of any vessel, without the permission of the owner or master. A Certificate of Registration must be in the possession of a pilot at all times when they are in the service of a vessel, and must be displayed upon demand of the owner or master, any United States Coast Guard officer or inspector, or a representative of the Director.

(c) A Certificate of Registration evidencing registration of the holder is the property of the U.S. Coast Guard and it may not be pledged, deposited, or surrendered to any person except as authorized by this part. A Certificate of Registration may not be copied or digitally reproduced, or be used to make a facsimile or Photostat. A Certificate which has expired without renewal, or renewal of which has been denied under the provisions of this section, must be surrendered to the Director upon demand.

(d) An application for a replacement of a lost, damaged, or defaced Certificate of Registration must be submitted to the Director, on a Form CG-4509, together with two full-face passport style photographs, signed on the photo,

vertically, as close to the head as possible. A replacement fee of five dollars (\$5) by check or money order, drawn to the order of the U.S. Coast Guard, must accompany any such application. A Certificate issued as a replacement for a lost, damaged, or defaced Certificate will be marked so as to indicate that it is a replacement. Upon receipt of a Certificate issued as a replacement, the damaged or defaced Certificate must be surrendered to the Director.

(e) A Certificate of Registration may be voluntarily surrendered to the Director by a U.S. Registered Pilot at any time such pilot no longer desires to perform pilotage services; however, in the event such U.S. Registered Pilot has been served with a notice of hearing pursuant to § 401.250, a voluntary surrender of the Certificate of Registration will be at the option of the Director.

■ 12. Amend § 401.240 as follows:

- a. Revise paragraphs (a), (b), and (d); and
- b. In paragraphs (c) and (e), remove the word "shall" wherever it appears and add, in its place, the word "must".

The revisions read as follows:

§ 401.240 Renewal of Certificates of Registration.

(a) An application for renewal of a Certificate of Registration must be submitted to the Director, on a Form CG-4509, together with two full-face passport style photographs, signed on the photo, vertically, as close to the head as possible, at least 15 days before the expiration date of the existing Certificate. The form for renewal of Certificates of Registration may be obtained from the Director. A renewal fee of five dollars (\$5) by check or money order, drawn to the order of the U.S. Coast Guard, must accompany an application for renewal of registration, which will be refunded if registration is not renewed. Failure of a U.S. Registered Pilot to comply with these requirements or file a complete and sufficient application may constitute cause for denying renewal of the Certificate of Registration.

(b) No Certificate of Registration will be renewed unless the applicant for renewal meets the requirements and qualifications set forth in § 401.210 for issuance of an original Certificate of Registration, excepting that compliance with § 401.210(a)(4) is not required if the examination was satisfactorily passed on a previous application for registration within six (6) months next preceding the date of application for renewal.

* * * * *

(d) In any case in which the applicant has made timely and sufficient application for renewal of his registration, no such registration will expire until such application has been finally determined by the Director unless the public health, interest, or safety requires otherwise.

* * * * *

■ 13. Amend § 401.250 as follows:

- a. In paragraph (a), add the word "A" before the word "Certificate"; and
- b. Revise paragraph (d).

The revision reads as follows:

§ 401.250 Suspension and revocation of Certificates of Registration.

* * * * *

(d) Every U.S. Registered Pilot must, whenever their MMC officer endorsement is revoked or suspended under the provisions of part 5 of this title, deliver their Certificate of Registration simultaneously with their MMC to the U.S. Coast Guard. If the officer endorsement is suspended, the Certificate of Registration will be held with the suspended officer endorsement and returned to the holder upon expiration of the suspension period.

■ 14. Revise § 401.260 to read as follows:

§ 401.260 Reports.

(a) A marine accident which occurs while a United States Registered Pilot, Apprentice Pilot, Apprentice Pilot with Limited Registration, or Temporary Registered Pilot is providing pilotage service to a vessel in U.S. or Canadian waters of the Great Lakes must be reported in writing by the pilot to the Director as soon as possible, but not later than 15 days after the accident. The written report must include:

- (1) Name and description of the vessel or vessels involved;
- (2) Description of the accident;
- (3) Type of accident;
- (4) Location;
- (5) Time of occurrence;
- (6) Prevailing weather;
- (7) Results of the pilot's post-casualty drug and alcohol test, if required;
- (8) Damage to the vessel or vessels or property; and
- (9) Injury to persons or lives lost.

(b) The report in paragraph (a) of this section does not relieve the pilot or others of responsibility for submitting any report required by other Coast Guard regulations or other government agencies of the United States or Canada.

(c) Every United States Registered Pilot, Apprentice Pilot, Apprentice Pilot with Limited Registration, and Temporary Registered Pilot must file with the Director any change of their mailing address, email address, or

phone number within 15 days after the change.

■ 15. Amend § 401.300 as follows:

- a. In paragraph (a), remove the text “U.S. registered pilots will be authorized to establish a pool” and add, in its place, the words “United States Registered Pilots will be authorized to establish a pilotage pool”; and
- b. Revise the section heading and paragraph (b).

The revisions read as follows:

§ 401.300 Authorization for establishment of pilotage pools.

* * * * *

(b) The Director must determine the number of pilotage pools that will be authorized for establishment by voluntary associations of United States Registered Pilots in order to assure adequate and efficient pilotage services for the United States waters of the Great Lakes.

- 16. Revise the heading and introductory text to § 401.310 to read as follows:

§ 401.310 Application for establishment of pilotage pools.

An application by a voluntary association for authorization to establish a pilotage pool must be filed on the form to be obtained from the Director. The form must require, among other things, furnishing of the following information:

* * * * *

- 17. Amend § 401.320 as follows:

- a. Revise the section heading, the introductory text, and paragraph (d)(6); and
- b. In paragraph (d)(5), add the word “pilotage” before the word “pools”.

The revisions read as follows:

§ 401.320 Requirements and qualifications for authorization to establish pilotage pools.

No voluntary association will be authorized to establish a pilotage pool unless:

* * * * *

(d) * * *

(6) It will coordinate on a reciprocal basis its pilotage pool operations with similar pilotage pool arrangements established by the Canadian Government and pursuant to the provisions of the United States-Canada Memorandum of Understanding, Great Lakes Pilotage, or any other arrangements established by the United States and Canadian Governments.

- 18. Amend § 401.330 as follows:
 - a. In paragraph (a), add the word “pilotage” before the word “pool”; and
 - b. Revise paragraph (b).

The revision reads as follows:

§ 401.330 Certificates of Authorization.

* * * * *

(b) A Certificate of Authorization must be in such form as the Director may prescribe, but must describe the area of the Great Lakes in which the pilotage pool will perform pilotage services. A Certificate of Authorization must be posted in the principal place of business of an association in such manner so as to be available for examination by members of the association and the public.

§ 401.335 [Amended]

- 19. Amend § 401.335 as follows:

- a. In paragraphs (c) and (e), remove the word “shall” and add, in its place, the word “must”; and
- b. In paragraph (d), remove the word “shall” and add, in its place, the word “will”.

- 20. Amend § 401.340 as follows:

- a. Revise the section heading and paragraphs (a) and (c); and
- b. In paragraph (b), add the word “pilotage” before the word “pool” wherever it appears.

The revisions read as follows:

§ 401.340 Compliance with working rules of pilotage pools.

(a) United States or Canadian Registered Pilots utilizing the facilities and dispatching services of any authorized pilotage pool must comply with its working rules approved under § 402.320, except to the extent inconsistent with the dispatch orders of the Director under § 401.720(b), and with other rules of the pilotage pool that are related to those facilities and services.

* * * * *

(c) United States Registered Pilots who fail to execute such an authorization will not be considered members of the U.S. pilotage pool, and are not entitled to reciprocal dispatching and related services by United States and Canadian pilotage pools as provided for by the Memorandum of Understanding. A United States Registered Pilot who fails or refuses to avail themselves of the established facilities and services will be considered as not being continuously available for service pursuant to section 4(a) of the Great Lakes Pilotage Act of 1960 (46 U.S.C. 216 through 216i) and their agreement executed on the Application for Registration as a United States Registered Pilot, and may be subject to suspension or revocation proceedings as prescribed by § 401.250.

§ 401.400 [Amended]

- 21. In § 401.400, amend the introductory text by removing the word “shall” and adding, in its place, the word “must”.

- 22. Amend § 401.420 as follows:

- a. In paragraph (a)(3), remove the word “moveage” and add, in its place, the word “transit”; and

- b. Revise paragraph (c).

The revision reads as follows:

§ 401.420 Cancellation, delay, or interruption in rendition of services.

* * * * *

(c) Between the dates of May 1 and November 30, a vessel or owner is not liable for charges under paragraphs (a)(1) or (2) of this section, if the interruption or detention was caused by ice or weather as determined by the vessel master and the United States Registered Pilot, Apprentice Pilot with Limited Registration, or Temporary Registered Pilot authorized to provide pilotage services to the vessel. When possible, the determination to interrupt, detain, or delay the vessel due to ice or weather should be made prior to the pilot departing for the vessel.

* * * * *

- 23. Revise § 401.425 to read as follows:

§ 401.425 Provision for additional pilot.

The Director may require the assignment of two pilots to a ship upon request of the ship or when the Director deems it necessary for the safe navigation of the ship, because of anticipated long transit, uncommon ship size, adverse weather or sea conditions or other abnormal circumstances. The charge to the ship will be twice the appropriate charge provided for in §§ 401.405, 401.407, 401.410, and 401.420. Each situation will be evaluated on a case-by-case basis. This authorization may occur at the opening and closing of the shipping season for a defined time period based upon the availability of the aids to navigation, ice conditions, weather forecasts, and other relevant information.

§ 401.427 [Amended]

- 24. Amend § 401.427 by removing the word “shall” and adding, in its place, the word “must”.

- 25. Revise § 401.430 to read as follows:

§ 401.430 Prohibited charges.

No rate or charge may be applied against any vessel, owner or master thereof, by a United States Registered Pilot that differs from the rates and charges set forth in this part, nor may any rates or charges be made for services performed by a United States Registered Pilot, or for support services directly related to the provision of pilotage that a United States Registered Pilot requires

a vessel to utilize, other than those for which a rate is prescribed in this part, without the approval of the Director.

■ 26. Revise § 401.431 to read as follows:

§ 401.431 Disputed charges.

(a) Any rate or charge applied against any vessel, owner, or master thereof by a registered pilot or pilot association that the owner or master disputes as a charge prohibited by § 401.430 may be appealed to the Director, within 60 business days of the date the pilot association issues the bill, for an advisory opinion as to whether such rate or charge is a prohibited charge.

(b) The appeal must be official correspondence from either the vessel owner, vessel charterer, or an agent or employee empowered to speak on behalf of the owner or charterer. The appeal must be supported by evidence that a reasonable attempt has been made to resolve the matter between the parties and that a bona fide controversy exists. The correspondence must articulate the following:

- (i) Vessel name, date of service, and reference number for the invoice/bill;
- (ii) Exact amount of dispute;
- (iii) Regulatory citation for dispute; and
- (iv) Requested resolution.

(c) The pilot association must be furnished with a copy of the appeal and be notified by the owner or charterer that the matter has been appealed for an advisory opinion.

(d) The pilot association must be allowed 20 business days from receiving the notice of appeal in which to provide any data or arguments desired to be submitted in further defense of the disputed charges.

(e) The Director must consider all relevant matters presented and issue an advisory opinion within 30 business days of receiving the pilot association's submission(s) per paragraph (d) of this section. The advisory opinion must set forth the rates and charges in dispute, a discussion of the facts and relevant information considered, and a statement of opinion.

(f) When the opinion of the Director is that the disputed rates or charges are prohibited by § 401.430, the respondent must refund moneys, adjust invoices, and otherwise conform to the advisory opinion within thirty (30) business days.

(g) Failure or refusal to comply with the advisory opinion within the time allowed may form a basis for a determination that there is a violation of the Great Lakes Pilotage Regulations subject to the provisions of § 401.500.

(h) The pilot association or vessel owner may appeal the advisory opinion

to the Director of Marine Transportation Systems (CG-5PW), no later than 10 business days after receiving the advisory opinion, for a final adjudication.

■ 27. Amend § 401.450 as follows:

- a. In the introductory text, remove the words “he is” and add, in their place, the words “the pilot is”;
- b. Revise paragraph (b);
- c. Revise paragraph (i); and
- d. In paragraph (k), remove the words “Gros Cap” and add, in their place, the text “Buoy 33”.

The revisions read as follows:

§ 401.450 Pilot change points.

* * * * *

(b) Iroquois Lock, Ogdensburg, NY;

* * * * *

(i) “Buoy 33”, St. Marys River, Point Iroquois;

* * * * *

■ 28. Revise § 401.451 to read as follows:

§ 401.451 Pilot rest periods.

(a) Except as provided in paragraph (b) of this section:

(1) Each United States Registered Pilot upon completing an assignment at a change point designated in § 401.450, and

(2) Each United States Registered Pilot upon completing a series of assignments totaling more than 10 hours with no more than 2 hours rest between assignments, must not perform pilotage services for at least 10 hours.

(b) In the event of an emergency or other compelling circumstances a pilotage pool may assign a United States Registered Pilot for service before their 10-hour rest period required under paragraph (a) of this section is completed. Pilotage pools must advise the Director of each assignment made under this paragraph.

■ 29. Revise the heading of Subpart E to read as follows:

Subpart E—Penalties; Operations Without Registered Pilots

§ 401.500 [Amended]

■ 30. Amend § 401.500 by removing the word “shall” and adding, in its place, the word “may”.

§ 401.510 [Amended]

■ 31. Amend § 401.510 as follows:

- a. In the introductory text to paragraph (b), add the word “only” between the word “Pilot” and the word “when”;
- b. In paragraph (b)(1), remove the word “admit” and add, in its place, the word “permit”, and remove the word “shall” and add, in its place, the word “must”;

■ c. In paragraph (b)(2), add the word “pilotage” before the word “pool”, and remove the words “U.S. Coast Guard” and add, in their place, the word “Director”;

■ d. Remove paragraphs (b)(3) through (b)(7);

■ e. Redesignate paragraph (b)(8) as paragraph (b)(3); and

■ f. In newly redesignated paragraph (b)(3), remove the word “shall” and add, in its place, the word “must”.

■ 32. Revise § 401.615 to read as follows:

§ 401.615 Representation.

(a) The United States Registered Pilot, Apprentice Pilot, Apprentice Pilot with Limited Registration, or Temporary Registered Pilot designated “respondent” in a suspension or revocation hearing or “applicant” in a refusal-to-renew-registration hearing, may be represented before the Administrative Law Judge by any person who is a member in good standing of the bar of the highest court of any State, Commonwealth, Territory, Possession, or the District of Columbia, upon filing with the Administrative Law Judge a written declaration that they are currently qualified and are authorized to represent the particular party in whose behalf they act.

(b) Whenever a person acting in a representative capacity appears in person or signs a paper in practice before the Administrative Law Judge, Director, Commandant, the Administrator, or other official of the U.S. Coast Guard, their personal appearance or signature constitutes a representation that under the provisions of this subpart and applicable law they are authorized and qualified to represent the particular person in whose behalf they act.

(c) When any United States Registered Pilot, Apprentice Pilot, Apprentice Pilot with Limited Registration, or Temporary Registered Pilot is represented by an attorney at law, any notice or other written communication required or permitted to be given to or by such a pilot must be given to or by such attorney. If a pilot is represented by more than one attorney, service by or upon any one of such attorneys is sufficient.

§ 401.630 [Amended]

■ 33. Amend § 401.630 as follows:

- a. In the introductory text to paragraph (a), remove the word “his” and add, in its place, the word “her/his”;
- b. In paragraphs (a)(1) and (2), and (b), remove the word “shall” wherever it

appears and add, in its place, the word “must”.

§ 401.635 [Amended]

■ 34. Amend § 401.635, including the heading, by removing the word “shall” wherever it appears and adding, in its place, the word “must”.

§ 401.640 [Amended]

■ 35. Amend § 401.640 by removing the word “shall” wherever it appears and adding, in its place, the word “will”.

■ 36. Revise § 401.645 to read as follows:

§ 401.645 Administrative Law Judge’s decision; exceptions thereto.

At the conclusion of the hearing, the parties may submit briefs and recommended conclusions and findings within such time as the Administrative Law Judge determines appropriate. The Administrative Law Judge will thereafter issue a written initial decision in the case, which decision will be final and binding upon the Director, except as provided in § 401.650.

■ 37. Revise § 401.650 to read as follows:

§ 401.650 Review of Administrative Law Judge’s initial decision.

(a) The Commandant may, on their own motion, or on the basis of a petition filed by the United States Registered Pilot, Apprentice Pilot, Apprentice Pilot with Limited Registration, or Temporary Registration Pilot in the proceedings or the Commandant, review any initial decision of the Administrative Law Judge by entering a written order stating that they elect to review the action of the Administrative Law Judge. Copies of all orders for review, replies, and decisions must be served on all parties.

(b) A petition for review must be in writing and must state the grounds upon which the petition relies. A petition for review must be limited to the record before the Administrative Law Judge. A hard copy or electronic version of such a petition for review, together with proof of service on all parties, must be filed with the Commandant (CL) within fifteen (15) days after the date of service of the initial decision of the Administrative Law Judge. Parties may file replies, in writing, to a petition for review, with proof of service on other parties in the same manner and number of copies as is provided for filing of a petition for review and within ten (10) days after the date the petition for review is timely filed. A reply must be limited to the record before the Administrative Law Judge and the petition for review.

(c) The initial decision of an Administrative Law Judge will be made final;

(1) Fifteen (15) days after the timely filing of a petition to review unless a reply is filed thereto or the Commandant enters a written order granting the petition for review; or

(2) Twenty (20) days after the date of service of the Administrative Law Judge’s decision if no petition for review is filed and the Commandant does not elect to review on his or her own motion.

(d) If the Commandant reviews the initial decision as provided in this section, they must issue a written order affirming, amending, overruling, or remanding the initial decision of the Administrative Law Judge within thirty (30) days after the date on which they take review. There is no other administrative remedy within the Department of Homeland Security.

(e) When the Commandant has sustained an order of suspension or revocation of a registration, the respondent may appeal to the National Transportation Safety Board under 49 CFR 825.5 within ten (10) days after service of the Commandant decision.

■ 38. Amend § 401.700 as follows:

■ a. Revise the section heading and introductory text; and

■ b. In paragraph (a), remove the word “his” and add, in its place, the words “their pilotage”.

The revisions read as follows:

§ 401.700 Operating requirements for United States Registered Pilots.

Each United States Registered Pilot must—

* * * * *

■ 39. Amend § 401.710 as follows:

■ a. In the introductory text, remove the word “shall” and add, in its place, the word “must”;

■ b. In paragraph (a), remove the word “his” and add in its place, the word “their”; and

■ c. Revise paragraph (b).

The revisions read as follows:

§ 401.710 Operating requirements for holders of Certificates of Authorization.

* * * * *

(b) Coordinate on a reciprocal basis its pilotage pool operations with pilotage pool operations of the Canadian Government, under the “Memorandum of Understanding, Great Lakes Pilotage, Between The United States Coast Guard and The Great Lakes Pilotage Authority,” effective September 19, 2013;

* * * * *

PART 402—GREAT LAKES PILOTAGE RULES AND ORDERS

■ 40. The authority citation for part 402 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 8105, 9303, 9304.

■ 41. Revise § 402.210 to read as follows:

§ 402.210 Requirements and qualifications for registration.

Pursuant to § 401.210(a)(4), each applicant for an original registration at the time of application and each Apprentice Pilot, United States Registered Pilot, and Temporary Registered Pilot is required to pass a physical examination in accordance with subpart C of 46 CFR part 10.

■ 42. Amend § 402.220 as follows:

■ a. Revise paragraph (a);

■ b. In the introductory text to paragraph (b), remove the word “shall” and add, in its place, the word “will”;

■ c. Remove paragraph (b)(5);

■ d. Redesignate paragraphs (b)(6), (b)(7), (b)(8), and (b)(9) as paragraphs (b)(5), (b)(6), (b)(7), and (b)(8);

■ e. Revise newly redesignated paragraph (b)(7); and

■ f. Remove paragraph (b)(10).

The revisions read as follows:

§ 402.220 Registration of pilots.

(a) Each Apprentice Pilot must complete the minimum number of round trips specified in this section prior to registration as a United States Registered Pilot. The round trips must be made in company with a United States Registered Pilot or Temporary Registered Pilot, on oceangoing vessels that have a gross tonnage of at least 4,000. The pilot association training committee, pilot association president, or Director may require additional round trips to demonstrate proficiency for a given waterway or specific port in order to ensure maritime safety. The minimum number of round trips listed here is not intended to guarantee completion of a training plan or advancement towards Full Registration.

(1) If the Apprentice Pilot holds a master’s endorsement, a minimum of five round trips are required over the waters for which registration is desired.

(2) If the Apprentice Pilot holds a chief mate’s endorsement or a second mate’s endorsement, or holds a first class pilot’s endorsement with service in the capacity of first mate or second mate, a minimum of eight round trips are required over the waters for which registration is desired.

(3) If the Apprentice Pilot holds a first class pilot’s endorsement or a third mate’s endorsement, a minimum of

twelve round trips are required over the waters for which registration is desired.

(b) * * *

(7) Instruction in the Great Lakes Pilotage Act of 1960; Great Lakes Pilotage Regulations; Presidential Proclamation of December 22, 1960; and Memorandum of Understanding, Great Lakes Pilotage, Between The United States Coast Guard and The Great Lakes Pilotage Authority, effective September 19, 2013.

* * * * *

■ 43. Revise the heading of subpart C to read as follows:

Subpart C—Establishment of Pilotage Pools by Voluntary Associations of United States Registered Pilots

■ 44. Revise § 402.320 to read as follows:

§ 402.320 Working rules.

Sections 401.320(d)(2) and (6) of this chapter require that voluntary associations of United States Registered Pilots authorized to establish pilotage pools agree to submit Working Rules for approval of the Director and that they will coordinate their pilotage pool

operations with Canada on a reciprocal basis. The approved Working Rules of each pilot district are on file in the office of the Director and may request a copy of the Working Rules by emailing *GreatLakesPilotage@uscg.mil*.

Dated: November 9, 2023.

W.R. Arguin,
Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.
[FR Doc. 2023–25425 Filed 11–20–23; 8:45 am]

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