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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 52, and 100

[NRC–2023–0153]

Regulatory Guide: General Site Suitability for Nuclear Power Stations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 4 to Regulatory Guide (RG), 4.7, ''General Site Suitability for Nuclear Power Stations.'' Revision 4 to RG 4.7 describes the major site characteristics related to public health and safety and environmental issues that the NRC staff considers in determining the suitability of sites for commercial nuclear power stations.

DATES: Revision 4 to RG 4.7 is available on February 29, 2024.

ADDRESSES: Please refer to Docket ID NRC–2023–0153 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0153. 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 individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
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Revision 4 to RG 4.7 and the regulatory analysis may be found in ADAMS under Accession Nos. ML23348A082 and ML23123A095, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Edward O'Donnell, Office of Nuclear Regulatory Research, telephone: 301–415–3317; email: *Edward.ODonnell@nrc.gov* and Belkys Sosa, Office of Nuclear Reactor Regulation, telephone: 301–415–3357; email: *Belkys.Sosa@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The proposed Revision 4 to RG 4.7 was issued with a temporary identification of Draft Regulatory Guide (DG)–4034. The NRC staff revised RG 4.7 to include alternative approaches to the population-density criterion and to expand the regulatory guidance developed for large light-water reactor (LWR) technology with appropriate modifications for advanced reactor designs (*e.g.,* non-LWR technologies and light-water small modular reactors). Specifically, this revision includes a new appendix A, which implements the Commission approved alternative population-related criteria in SRM–SECY–20–0045 ''Population-Related Siting Considerations for Advanced Reactors,'' (ADAMS Accession No. ML22194A885). Appendix A provides guidance on alternatives to the existing guidance in section C.1.4 of this RG that establishes a fixed distance of 20 miles out to which population density is assessed for any new application. Readers should understand that the body of this RG was developed for large LWRs, while appendix A is intended for advanced reactor designs. This revision also removes repetition and improves clarity. Text from the discussion section and the two tables in Revision 3 to the RG were brought together in Section C, ''Staff Regulatory Guidance.'' To present each topic in Section C cohesively, the document was structured to list (1) relevant statutes and regulations, (2) related guidance, and (3) considerations, regulatory experience, and staff positions.

II. Additional Information

The NRC published a notice of the availability of DG–4034 in the **Federal Register** on October 18, 2023 (88 FR 71777) for a 30-day public comment period. The public comment period closed on November 17, 2023. Public comments on DG–4034 and the staff responses to the public comments are available in ADAMS under Accession No. ML23324A007.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Rules'' section of the **Federal Register** to comply with publication requirements under chapter I of title 1 of the *Code of Federal Regulations* (CFR).

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

Issuance of this RG does not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in NRC Management Directive

(MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,'' would not affect the issue finality of any approval issued under 10 CFR part 52; and would not constitute forward fitting as that term is defined and described in MD 8.4. This RG will not apply to any construction permits, operating licenses, early site permits, limited work authorizations issued under 10 CFR 50.10, or combined licenses, for which the NRC issued a final environmental impact statement (EIS) preceded by a draft EIS under 10 CFR 51.76 or 51.75, any of which were issued by the NRC prior to issuance of this final RG. The NRC has already completed its siting determination for those construction permits, operating licenses, early site permits, limited work authorizations, and combined licenses. Therefore, no further NRC regulatory action on siting will occur for those licenses, permits, and authorizations, for which the guidance in the RG would be relevant. The methods described in this RG will be used in evaluating applications for construction permits, early site permits, combined operating licenses and limited work authorizations, which includes information under 10 CFR 51.49(b) or (f), with respect to compliance with applicable regulations governing the siting of new nuclear power plants and testing facilities, unless the applicant proposes an acceptable alternative method for complying with those regulations. Methods that differ from those described in this RG may be deemed acceptable if the applicant provides sufficient basis and information for the NRC staff to verify that the proposed alternative complies with the applicable NRC regulations.

V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: February 23, 2024.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2024–04223 Filed 2–28–24; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2023–0183]

RIN 1625–AA09

Drawbridge Operation Regulation; River Rouge, Detroit, MI; Correction

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Correcting amendment.

SUMMARY: The Coast Guard is correcting regulations that published in the **Federal Register** on December 28, 2023. The final rule announced changes to the operations of all movable bridges over the River Rouge, Detroit, MI, to improve communications and establish winter hours. This correction fixes incorrect language in the regulations. The language in the final rule inadvertently stated the draw of the Dix Avenue Bridge, mile 2.73, is remotely operated, when it is not equipped or authorized to operate remotely.

DATES: This correcting amendment is effective February 29, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions on this correcting amendment, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2023–28645, appearing on page 89574 in the **Federal Register** of December 28, 2023, the final rule inadvertently identified in paragraph (h) that the bridge is remotely operated. The Coast Guard did not intend to include this text in § 117.645(h). Therefore, we are correcting paragraph (h) by removing the words ''is remotely operated''.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard corrects 33 CFR part 117 by making the following correcting amendment:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and DHS Delegation No. 00170.1, Revision No. 01.3.

■ 2. Amend § 117.645 by revising paragraph (h) to read as follows:

§ 117.645 River Rouge.

* * * * *

(h) The draw of the Dix Avenue Bridge, mile 2.73, is required to operate a radiotelephone, and shall open on signal except from January 1 through March 31 when the bridge shall open on signal if provided a 12-hour advance notice.

Jonathan Hickey,

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

[FR Doc. 2024–04273 Filed 2–28–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2023–0189]

RIN 1625–AA09

Drawbridge Operation Regulation; Ashtabula River, Ashtabula, OH

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Fifth Street Bridge, mile 0.15, and the Norfolk Southern Railroad Bridge, mile 1.5, both over the Ashtabula River. The Coast Guard is also changing signaling and signage requirements for the Norfolk Southern Railroad Bridge, mile 1.5. The Coast Guard is modifying these rules in response to complaints received concerning the operations of one or more bridges over the waterway and a desire to improve safety, remove barriers to interstate commerce, improve communications, and standardize winter operations associated with these bridges.

DATES: This rule is effective April 1, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov.* Type USCG–2023–0189 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
IGLD85 International Great Lakes Datum of 1985
LWD Low Water Datum based on IGLD85
OMB Office of Management and Budget
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On May 8, 2023, the Coast Guard published an NPRM, with a request for comments, entitled ''Drawbridge Operation Regulation; Ashtabula River, Ashtabula, OH'' in the **Federal Register** (88 FR 29591) to seek your comments on whether the Coast Guard should consider modifying the current operating schedule. During the comment period that ended July 7, 2023, we did not receive any comments.

The Ashtabula River flows into Lake Erie at the City of Ashtabula, Ohio. The Ashtabula River is 40 miles in length but only the first 2 miles of the river is navigable. Large commercial vessels, passenger vessels, and recreational vessels use the waterway. There are three bridges crossing the Ashtabula River. The Norfolk Southern Railroad, mile 0.5, is a fixed overhead conveyor with a horizontal clearance of over 50 feet and a vertical clearance of 100 feet above LWD. The Fifth Street Bridge, mile 1.4, is a single leaf bascule bridge with a reported horizontal clearance of 50 feet and a vertical clearance of 11 feet above LWD in the closed position and an unlimited clearance in the open position. The Norfolk Southern Railroad Bridge, mile 1.5, is a single leaf bascule bridge with a horizontal clearance of 112 feet and a vertical clearance of 11 feet above LWD in the closed position and an unlimited clearance in the open position. There is no alternative route for vessels traveling the Ashtabula River beyond mile 0.5 to prevent them from passing under or through one or all these bridges. Commercial vessels over 600 feet utilize moorings just outside of the river's mouth. Several of the vessels in the Ashtabula River are small passenger vessels and other small craft over 21-feet.

The two bascule bridges across the Ashtabula River are regulated by 33 CFR 117.847. The draw of the Fifth Street Bridge, mile 1.4, is required to open on signal for the passage of commercial and emergency vessels and on the hour and half for all other vessels. The Norfolk Southern Railroad Bridge, mile 1.5, is authorized to operate remotely, and is required to open on signal from April 1 through November 30 from 7 a.m. to 11 p.m. and requires a 24-hour advance notice outside of this time.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Coast Guard is also issuing new rules that will help mariners signal for and anticipate bridge openings.

On a typical summer weekend over thirty vessels can be seen waiting at the bridge for an opening while there is no train crossing the bridge. Mariners repeatedly expressed uncertainty regarding how to request an opening citing poor radio communications with the bridge and vague signage at the bridge which does not explain how to request a bridge opening. This new regulation will require the remote drawtender to monitor and answer a telephone in addition to the other signals required by regulation to help improve communications at the bridge, reducing unnecessary delays and the risks posed by poor communications.

IV. Discussion of Comments, Changes, and the Final Rule

The Coast Guard did not receive any comments from the NPRM.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice and the requirement for signage has been in effect since April 24, 1984 (49 FR 17452), without any complaint to the burden of cost to the bridge owner.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship

between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

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

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and DHS Delegation No. 00170.1, Revision No. 01.3.

■ 2. Revise § 117.847 to read as follows:

§ 117.847 Ashtabula River.

(a) The draw of the Fifth Street Bridge, mile 1.4, over the Ashtabula River shall open on signal for the passage of vessels on the hour and half hour, except from October 10 through May 1 when no drawtender is required to be in attendance and the bridge will open on signal with a 12-hour advance notice from vessels.

(b) The draw of the Norfolk Southern Railroad Bridge, mile 1.5, over the Ashtabula River shall open on signal and may be remotely operated. The bridge owner shall maintain and monitor a 2-way public address system, VHF–FM Marine Radio, and telephone. From October 10 through May 1 the bridge will open on signal with a 12-hour advance notice from vessels. The bridge shall display a sign readable from vessels approaching the bridge from upriver or down river and readable for 500 feet that states: the name of the bridge; the river mile; that the bridge is remotely operated; and that mariners may signal the bridge to open by sounding one prolonged blast followed by one short blast of the horn, calling via VHF–FM Marine Radio Channel 16, or by calling the number posted by the owner. The sign shall also include language notifying mariners that from October 10 through May 1 the bridge requires a 12-hour advance notice for openings by calling the number posted by the owner.

Johnathan Hickey,

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

[FR Doc. 2024–04274 Filed 2–28–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS–R7–SM–2021–0039; FXFR13350700640–245–FF07J00000]

RIN 1018–BF19

Subsistence Management Regulations for Public Lands in Alaska—2023–24 and 2024–25 Subsistence Taking of Wildlife and Fish and Shellfish Regulations

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises regulations for seasons, harvest limits, methods, and means related to taking of fish for subsistence uses in Alaska during the 2023–2024 and 2024–2025 regulatory years and the customary and traditional use determinations for fish and shellfish. This rule also revises the regulations for subsistence taking of wildlife, in response to deferred proposals from the 2022–2024 wildlife regulations cycle. The Federal Subsistence Management Program provides a preference for customary and traditional uses by rural Alaska residents of wild, renewable resources on Federal public lands and waters in Alaska.

DATES: This rule is effective February 29, 2024.

ADDRESSES: Federal Subsistence Board meeting transcripts are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, AK 99503; on the Office of Subsistence Management website (*https://www.doi.gov/subsistence*); and at *https://www.regulations.gov* in Docket No. FWS–R7–SM–2021–0039. The comments received in response to the proposed rule are available at *https://www.regulations.gov* in Docket No. FWS–R7–SM–2021–0039.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Amee Howard, Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Gregory Risdahl, Subsistence Program Leader, U.S.

Department of Agriculture (USDA), Forest Service, Alaska Region; (907) 302–7354 or *gregory.risdahl@usda.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:

Background

Under title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. The Program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The term ''subsistence uses'' means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation or for other specified purposes. The Secretaries published temporary regulations to carry out the Program in the **Federal Register** on June 29, 1990 (55 FR 27114) and published final regulations in the **Federal Register** on May 29, 1992 (57 FR 22940).

The Program managers have subsequently amended these regulations many times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): title 36, ''Parks, Forests, and Public Property,'' and title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–242.28 and 50 CFR 100.1–100.28, respectively. Consequently, to indicate that identical changes affect regulations in both titles 36 and 50, in this document we present references to specific sections of the CFR as shown in the following example: § ____.24.

The Program regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife. Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board comprises:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service (FWS);
- The Alaska Regional Director, National Park Service (NPS);
- The Alaska State Director, Bureau of Land Management (BLM);
- The Alaska Regional Director, Bureau of Indian Affairs (BIA);
- The Alaska Regional Forester, USDA Forest Service (USDA–FS); and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility, including determinations of which areas or communities in Alaska are nonrural, and specific harvest seasons and limits. The Board receives analytical and administrative assistance from the Interagency Staff Committee, which comprises senior technical experts from FWS, NPS, BLM, BIA, and USDA–FS (per § ____.10(d)(7)).

In administering the Program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Council). The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

The Board conducts rulemaking for the Program on a biennial schedule with the process of revising the fish and shellfish regulations and the process for revising the wildlife regulations occurring during opposite years. The Board addresses ''customary and traditional use'' determinations during the applicable biennial cycle. The regulations at § ____.4 define ''customary and traditional use'' as ''a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation.'' Since establishment of the Program regulations in 1992, the Board has made a number of customary and traditional use determinations at the request of affected subsistence users. These determinations have resulted in revisions to the regulations at § ____.24. The modifications for fish and shellfish, along with some administrative corrections, were published in the **Federal Register** as follows:

TABLE 1—MODIFICATIONS TO § ____.24, CUSTOMARY AND TRADITIONAL USE DETERMINATIONS

Federal Register citation	Date of publication	Rule made changes to the following provisions of ____.24
59 FR 27462	May 27, 1994	Wildlife and Fish/Shellfish.
59 FR 51855	October 13, 1994	Wildlife and Fish/Shellfish.
60 FR 10317	February 24, 1995	Wildlife and Fish/Shellfish.
61 FR 39698	July 30, 1996	Wildlife and Fish/Shellfish.
62 FR 29016	May 29, 1997	Wildlife and Fish/Shellfish.
63 FR 35332	June 29, 1998	Wildlife and Fish/Shellfish.
63 FR 46148	August 28, 1998	Wildlife and Fish/Shellfish.
64 FR 1276	January 8, 1999	Fish/Shellfish.
66 FR 10142	February 13, 2001	Fish/Shellfish.
67 FR 5890	February 7, 2002	Fish/Shellfish.
68 FR 7276	February 12, 2003	Fish/Shellfish.
69 FR 5018	February 3, 2004	Fish/Shellfish.
70 FR 13377	March 21, 2005	Fish/Shellfish.
71 FR 15569	March 29, 2006	Fish/Shellfish.
72 FR 12676	March 16, 2007	Fish/Shellfish.
72 FR 73426	December 27, 2007	Wildlife/Fish.
74 FR 14049	March 30, 2009	Fish/Shellfish.
76 FR 12564	March 8, 2011	Fish/Shellfish.
77 FR 35482	June 13, 2012	Wildlife.

TABLE 1—MODIFICATIONS TO § ____.24, CUSTOMARY AND TRADITIONAL USE DETERMINATIONS—Continued

Federal Register citation	Date of publication	Rule made changes to the following provisions of ____.24
79 FR 35232	June 19, 2014	Wildlife.
81 FR 52528	August 8, 2016	Wildlife.
83 FR 3079	January 23, 2018	Fish.
83 FR 50758	October 9, 2018	Wildlife.
84 FR 39744	August 12, 2019	Fish.
85 FR 74796	November 23, 2020	Wildlife.
87 FR 44846	July 26, 2022	Wildlife.

Current Rulemaking Action

The Departments published a proposed rule, Subsistence Management Regulations for Public Lands in Alaska—2023–24 and 2024–25 Subsistence Taking of Fish Regulations, on March 17, 2022 (87 FR 15155), to amend the fish and shellfish sections of subparts C and D of 36 CFR part 242 and 50 CFR part 100. As stated in the proposed rule, during the rulemaking cycle for the fish and shellfish regulations, the Board also accepts proposals for nonrural determinations.

The proposed rule opened a comment period, which closed on May 16, 2022. The Departments advertised the proposed rule on the Program's web page and by mail, email, social media, radio, and newspaper. During that period, the Councils met and, in addition to other Council business, received suggestions for proposals from the public. The Board received a total of 10 proposals for changes to the subpart C regulations (which pertain to Board determinations for subsistence resource regions, rural determinations, and customary and traditional use determinations). Nine of those proposals were for changes to customary and traditional use determinations, and one was for a change to nonrural determinations. Nine proposals were submitted for changes to the subpart D regulations (which provide specific provisions regarding the taking of fish and wildlife). Two of those proposals were later withdrawn by their proponents. In addition, 19 fisheries closure reviews were presented for comment as required by Board policy that specifies a review of each closure at least every 4 years. Seven of the closure reviews were deferred from the previous fish and shellfish proposed rule (85 FR 9430, February 19, 2020).

The public submitted 20 comments, which are available for review at *https://www.regulations.gov* in Docket No. FWS–R7–SM–2021–0039. We reviewed and considered all public comments received on the proposed rule. Most of the comments were proposal submissions in response to the request for proposals outlined in the proposed rule. Most other comments reflected the same concerns or issues that were also included in those proposals that were presented to the Board and were, therefore, considered during Board deliberations on the proposals. The remaining public comments pertained to issues outside the scope of this rulemaking action.

After the comment period closed, the Board prepared a booklet describing the proposals and distributed it to the public. The proposals were also published on the Program's website. The public then had 30 days, until July 27, 2022, to comment on the proposed regulatory changes. The 10 Councils met again, received public comments, and formulated their recommendations to the Board on proposals for their respective regions. Therefore, the public received extensive opportunity to review and comment on all changes.

The Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, a Council Chair, or a designated representative, presented each Council's recommendations at the Board's public meeting of January 31–February 3, 2023.

Summary of Board Actions on Proposals and Closure Reviews

The Board's actions on each fisheries proposal and closure review are listed in table 2 below. When making decisions, the Board may use, but is not limited to, the following guidelines for consideration of whether a proposal:

- provides a subsistence priority on public lands;
- is supported by substantial scientific and traditional ecological knowledge (TEK) evidence;
- recognizes principles of fish and wildlife conservation;
- provides opportunity; and
- would not be detrimental or place undue burden on rural Alaskan subsistence users.

Consensus agenda: The consensus agenda is made up of proposals and closure reviews for which there is agreement among the affected Councils, a majority of the Interagency Staff Committee members, and the Alaska Department of Fish and Game (ADF&G) concerning a proposed regulatory action. Anyone may request that the Board remove a proposal or a closure review from the consensus agenda and place it on the non-consensus agenda. Proposals or closure reviews taken off the consensus agenda follow the Board process for non-consensus items and are deliberated and voted on individually. Of the 16 fishery proposals and 19 fishery closure reviews, 23 were on the Board's non-consensus agenda, and 12 were on the consensus agenda. The Board votes *en masse* on the consensus agenda after deliberation and action on all other proposals.

Of the proposals on the consensus agenda, the Board adopted three, rejected two, and took no action on two. Of the closure reviews on the consensus agenda, the Board retained the status quo on four and rescinded one. Analysis and justification for the action taken on each proposal on the consensus agenda can be found in the Board meeting book and transcripts. Documents are available for review at the Office of Subsistence Management (OSM), 1011 East Tudor Road, Mail Stop 121, Anchorage, AK 99503; at *https://www.regulations.gov* in Docket No. FWS–R7–SM–2021–0039; or on the OSM website (*https://www.doi.gov/subsistence*).

Non-consensus agenda: Of the proposals on the non-consensus agenda, the Board adopted two, adopted two with modification, rejected four, and took no action on one. Of the closure reviews on the non-consensus agenda, the Board rescinded seven, modified two, retained the status quo on two, deferred one, and took no action on two. Because all Board actions on non-consensus proposals and closure reviews aligned with recommendations of the affected Council(s), Board justifications for these actions can be found by reading the Council recommendation(s) in the respective proposal analysis and reviewing the Board meeting transcripts. Documents are available for review at the Office of

Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, AK 99503; at *https://www.regulations.gov* in Docket No. FWS–R7–SM–2021–0039; or on the OSM website (*https://www.doi.gov/subsistence*).

Deferred proposals: Of the four wildlife proposals that were deferred from the April 12–15, 2022, Board meeting (see 87 FR 44846, July 26, 2022; Subsistence Management Regulations for Public Lands in Alaska—2022–23 and 2023–24 Subsistence Taking of Wildlife Regulations), the Board rejected three Unit 4 deer proposals that were supported by the affected Council and adopted with modification a wolf and wolverine trapping proposal that was supported by the affected Councils for Units 9 and 17.

Nonrural proposal: The Board determined that the Ketchikan nonrural proposal met the threshold requirements for full analysis. Office of Subsistence Management staff are preparing a full analysis and holding public meetings in the affected communities. The Board will make a final decision at their 2025 fish and shellfish regulatory meeting.

TABLE 2—FEDERAL SUBSISTENCE BOARD ACTIONS ON PROPOSED REVISIONS TO THE REGULATIONS FOR THE FEDERAL SUBSISTENCE MANAGEMENT PROGRAM

[C&T = customary and traditional use]

Proposal	Species or issue	Fisheries management area	General description	Federal Subsistence Board action
FP23–01	All fish other than salmon; grayling.	Yukon-Northern Area	Rescind the Jim River drainage closure and modify to allow for the use of rod and reel only; establish a grayling harvest limit.	Adopt.
FP23–02	Salmon	Yukon-Northern Area	C&T use determination Chevak, Hooper Bay, and Scammon Bay.	Adopt.
FP23–05a	Salmon	Kodiak Area	C&T revision	Reject.
FP23–05b	Salmon	Kodiak Area	Revisions to area descriptors	Reject.
FP23–06a	Salmon	Kodiak Area	Rescind closure to subsistence salmon fishing in Women's Bay Federal marine waters and modify to allow use of rod and reel and match State sport fishing limits.	Adopt.
FP23–06b	Salmon	Kodiak Area	Rescind closure to subsistence salmon fishing in Buskin River Federal marine waters and modify to allow use of rod and reel and match State sport fishing limits.	Adopt with modification to allow rod and reel and remove reference to season dates and harvest limits shall be the same as taking fish under State of Alaska sport fishing regulations.
FP2307	Chinook salmon	Cook Inlet Area	Match State sport fishing size limits and gear restrictions for Kenai River Chinook salmon.	Reject.
FP23–08	All fish	Cook Inlet Area	C&T for residents of Moose Pass	Adopt.
FP23–09	All fish	Cook Inlet Area	C&T for residents of Moose Pass	Take no action based on action on FP23–08.
FP23–12	All fish	Cook Inlet Area	C&T for residents of Moose Pass	Take no action based on action on FP23–08.
FP23–14	Salmon	Prince William Sound Area.	C&T for residents of Richardson Highway	Reject.
FP23–15	Salmon	Prince William Sound Area.	C&T for residents of Alaska Highway (from the Canadian border to Dot Lake).	Reject.
FP23–16	Salmon	Prince William Sound Area.	C&T for residents of Alaska Highway (from the Canadian border to Dot Lake).	Take no action based on action on FP23–15.
FP23–19	Salmon	Prince William Sound Area.	Rescind lower Copper River salmon fishery	Reject.
FP23–20	All shellfish	Southeastern Alaska Area.	C&T use determination for shellfish in the Southeastern and Yakutat Areas.	Adopt.
FP23–21	Sockeye salmon	Southeastern Alaska Area.	Close Kah Sheets River and Lake to the harvest of sockeye salmon except by federally qualified subsistence users.	Adopt as modified by OSM to close Kah Sheets Creek to non-federally qualified subsistence users from July 1 to July 31.
FCR23–02	All fish	Yukon-Northern Area	Review Kanuti River closure to subsistence fishing upstream from a point 5 miles downstream of the State highway crossing.	Adopted and modified closure to non-salmon species only.
FCR23–03	All fish	Yukon-Northern Area	Review closure to subsistence fishing in the Bonanza Creek drainage.	Adopted and modified closure by rescinding to non-salmon species only.
FCR23–05	All fish	Yukon-Northern Area	Review closure to subsistence fishing in the Delta River.	Deferred to next fisheries regulatory meeting.
FCR21–08	Salmon	Aleutian Islands Area	Review closure to subsistence salmon fishing in the waters of Unalaska Lake, its tributaries and outlet streams.	Retain status quo.
FCR21–09	Salmon	Aleutian Islands Area	Review closure to subsistence salmon fishing in the waters of Summers and Morris Lakes and their tributaries and outlet streams.	Retain status quo.
FCR21–11	Salmon	Aleutian Islands Area	Review closure to subsistence salmon fishing in the waters of McLees Lake and its tributaries and outlet streams.	Retain status quo.
FCR23–11	Salmon	Aleutian Islands Area	Review closure to subsistence salmon fishing in all streams supporting anadromous fish runs that flow into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point.	Retain status quo.
FCR23–12	Salmon	Aleutian Islands Area	Review closure to subsistence salmon fishing in all Federal freshwaters on Adak and Kagalaska Islands in the Adak District.	Rescind.

TABLE 2—FEDERAL SUBSISTENCE BOARD ACTIONS ON PROPOSED REVISIONS TO THE REGULATIONS FOR THE FEDERAL SUBSISTENCE MANAGEMENT PROGRAM—Continued

[C&T = customary and traditional use]

Proposal	Species or issue	Fisheries management area	General description	Federal Subsistence Board action
FCR21–13	Salmon	Alaska Peninsula Area	Review closure to subsistence salmon fishing in the waters of Russel Creek and Nurse Lagoon and within 500 yards outside of the mouth of Nurse Lagoon.	Rescind.
FCR23–13	Salmon	Alaska Peninsula Area	Review closure to subsistence salmon fishing in Trout Creek and within 500 yards outside its mouth.	Rescind.
FCR23–15	Salmon	Kodiak Area	Review closure to subsistence salmon fishing in Women's Bay Federal marine waters.	Take no action based on FP23–06a.
FCR21–16	Salmon	Kodiak Area	Review closure to subsistence salmon fishing in Buskin River Federal marine waters.	Take no action based on FP23–06b.
FCR21–18	Salmon	Kodiak Area	Review closure to subsistence salmon fishing in all waters of Afognak Bay north and west of a line from the tip of Last Point to the tip of River Mouth Point.	Rescind.
FCR21–19	Salmon	Kodiak Area	Review closure to subsistence salmon fishing in all freshwater systems of Afognak Island.	Rescind.
FCR23–19	Salmon	Kodiak Area	Review closure to subsistence salmon fishing in all Selief Bay Creek waters closed to commercial salmon fishing within 100 yards of the terminus of the creek.	Rescind.
FRC23–21	King crab	Kodiak Area	Review closure to king crab fishing by non-federally qualified users in all Federal marine waters around Kodiak and Afognak Islands.	Retain status quo.
FCR23–22	Salmon	Kodiak Area	Review closure to subsistence salmon fishing in waters 500 yards seaward of the mouth of Little Kitoi Creek.	Rescind.
FCR23–23	Salmon	Southeastern Alaska Area.	Review closure to subsistence salmon fishing in the Taku River.	Rescind.
FCR23–24	Sockeye salmon	Southeastern Alaska Area.	Review closure to subsistence salmon fishing in Neva Lake, Neva Creek, and South Creek.	Retain status quo.

The final regulations in this document reflect Board review and consideration of Regional Advisory Council recommendations, Tribal and Alaska Native corporation consultations, and public and ADF&G comments. The proposals indicated above in table 2 as ''adopted'' are reflected in the rule portion of this document as revisions to the Program regulations. Because this rule concerns public lands managed by a bureau or bureaus in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Conformance With Statutory and Regulatory Authorities

Administrative Procedure Act Compliance

The Board has provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act requirements, including publishing a proposed rule in the **Federal Register**, participation in multiple Council meetings, additional public review and comment on all proposals for regulatory change, and opportunity for additional public comment during the Board meeting prior to deliberation. Additionally, an administrative mechanism exists (and has been used by the public) to request reconsideration of the Board's decision on any proposal for regulatory change (36 CFR 242.20 and 50 CFR 100.20). Therefore, the Board believes that sufficient public notice and opportunity for involvement have been given to affected persons regarding Board decisions.

In the more than 30 years that the Program has been operating, no benefit to the public has been demonstrated by delaying the effective date of the subsistence regulations. A lapse in regulatory control could affect the continued viability of fish or wildlife populations and future subsistence opportunities for rural Alaskans and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(d)(3) to make this rule effective upon the date set forth in **DATES** to ensure continued operation of the Subsistence Management Program.

National Environmental Policy Act Compliance

A draft environmental impact statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The final environmental impact statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section

810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with section 810. That evaluation also supported the Secretaries' determination that the rule will not reach the ''may significantly restrict'' threshold that would require notice and hearings under ANILCA section 810(a).

Paperwork Reduction Act of 1995 (PRA)

This rule does not contain any new collections of information that require Office of Management and Budget (OMB) approval under the PRA (44 U.S.C. 3501 *et seq.*). OMB has reviewed and approved the collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100 and assigned OMB Control Number 1018–0075. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

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

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 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 final rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and 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. OIRA has determined that this rule is not significant.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, this amount would equate to about $6 million in food value Statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Congressional Review Act

Under the Congressional Review Act (5 U.S.C. 804(2)), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and 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.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of the Program is limited by definition to certain public lands. Accordingly, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and there is no cost imposed on any State or local entities or Tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

Title VIII of ANILCA, does not provide specific rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Board provided Federally recognized Tribes and Alaska Native corporations opportunities to consult on this rule. Consultation with Alaska Native corporations are based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: ''The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian Tribes under Executive Order No. 13175.''

The Secretaries, through the Board, provided a variety of opportunities for consultation: commenting on proposed changes to the existing rule; engaging in dialogue at the Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

On January 31, 2023, the Board provided federally recognized Tribes and Alaska Native Corporations a specific opportunity to consult on this rule prior to the start of its public regulatory meeting. Federally recognized Tribes and Alaska Native Corporations were notified by mail and telephone and were given the opportunity to attend via teleconference.

Executive Order 13211

This Executive order requires agencies to prepare statements of energy effects when undertaking certain actions. However, this rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no statement of energy effects is required.

Drafting Information

Justin Koller drafted these regulations under the guidance of Amee Howard of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by

• Paul McKee, Alaska State Office, Bureau of Land Management;

• Eva Patton, Alaska Regional Office, National Park Service;

• Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;

• Jill Klein, Alaska Regional Office, U.S. Fish and Wildlife Service; and

• Gregory Risdahl, Alaska Regional Office, USDA Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, the Federal Subsistence Board amends title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART ____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

■ 2. Amend § ____.24 in table 2 to paragraph (a)(2) by revising the entries for ''YUKON-NORTHERN AREA'' and ''COOK INLET AREA'' and revising table 3 to paragraph (a)(3) to read as follows:

§ ____.24

(a) * * *

(2) * * *

TABLE 2 TO PARAGRAPH (a)(2)

Area	Species	Determination
* * *	* * *	* * *
YUKON-NORTHERN AREA:		
Yukon River drainage	Salmon	Residents of the Yukon River drainage and the communities of Chevak, Hooper Bay, Scammon Bay, and Stebbins.
Yukon River drainage	Freshwater fish (other than salmon).	Residents of the Yukon-Northern Area.
Remainder of the Yukon-Northern Area	All fish	Residents of the Yukon-Northern Area, excluding the residents of the Yukon River drainage and excluding those domiciled in Unit 26B.
Tanana River drainage contained within the Tetlin National Wildlife Refuge and the Wrangell-St. Elias National Park and Preserve.	Freshwater fish (other than salmon).	Residents of the Yukon-Northern Area and residents of Chistochina, Mentasta Lake, Slana, and all residents living between Mentasta Lake and Chistochina.
* * *	* * *	* * *
COOK INLET AREA:		
Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.	All fish	Residents of the communities of Cooper Landing, Hope, Moose Pass, and Ninilchik.
Waters within the Kasilof River drainage within the Kenai National Wildlife Refuge.	All fish	Residents of the community of Ninilchik.
Waters within Lake Clark National Park draining into and including that portion of Tuxedni Bay within the park.	Salmon	Residents of the Tuxedni Bay Area.
Cook Inlet Area	Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot.	Residents of the Cook Inlet Area.
Remainder of the Cook Inlet Area	Salmon, Dolly Varden, trout, char, grayling, and burbot.	All rural residents.
* * *	* * *	* * *

(3) * * *

TABLE 3 TO PARAGRAPH (a)(3)

Area	Species	Determination
Bering Sea Area	All shellfish	Residents of the Bering Sea Area.
Alaska Peninsula-Aleutian Islands Area	Shrimp; Dungeness and Tanner crab.	Residents of the Alaska Peninsula-Aleutian Islands Area.
Kodiak Area	Shrimp; Dungeness and Tanner crab.	Residents of the Kodiak Area.

TABLE 3 TO PARAGRAPH (a)(3)—Continued

Area	Species	Determination
Kodiak Area, except for the Semidi Island, the North Mainland, and the South Mainland Sections.	King crab	Residents of the Kodiak Island Borough, except those residents on the Kodiak Coast Guard base.
Cook Inlet Area:		
Federal waters in the Tuxedni Bay Area within the boundaries of Lake Clark National Park.	Shellfish	Residents of Tuxedni Bay, Chisik Island, and Tyonek.
Prince William Sound Area	Shrimp; clams; Dungeness, king, and Tanner crab.	Residents of the Prince William Sound Area.
Southeastern Alaska—Yakutat Area	All shellfish	Residents of Southeastern Alaska and Yakutat Fishery Management Areas.

Subpart D—Subsistence Taking of Fish and Wildlife

■ 3. Amend § ____.26 by revising paragraphs (n)(9) and (17) to read as follows:

§ ____.26 Subsistence taking of wildlife.

* * * * *

(n) * * *

(9) *Unit 9.*

(i) Unit 9 consists of the Alaska Peninsula and adjacent islands, including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9A consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve.

(B) Unit 9B consists of the Kvichak River drainage except those lands drained by the Kvichak River/Bay between the Alagnak River drainage and the Naknek River drainage.

(C) Unit 9C consists of the Alagnak (Branch) River drainage, the Naknek River drainage, lands drained by the Kvichak River/Bay between the Alagnak River drainage and the Naknek River drainage, and all land and water within Katmai National Park and Preserve.

(D) Unit 9D consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay, including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands.

(E) Unit 9E consists of the remainder of Unit 9.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in Katmai National Park; and

(B) You may not use motorized vehicles, except aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts from Aug. 1 through Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9C within the Naknek River drainage upstream from and including the King Salmon Creek drainage; however, you may use a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail, and on frozen surfaces of the Naknek River and Big Creek.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 9B from April 1 through May 31 and in the remainder of Unit 9 from April 1 through 30.

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in Unit 9B, except that portion within the Lake Clark National Park and Preserve, if you have obtained a State registration permit prior to hunting.

(C) In Unit 9B, Lake Clark National Park and Preserve, residents of Iliamna, Newhalen, Nondalton, Pedro Bay, Port Alsworth, and that portion of the park resident zone in Unit 9B and 13.440 permit holders may hunt brown bear by Federal registration permit in lieu of a resident tag. The season will be closed when 4 females or 10 bears have been taken, whichever occurs first. The permits will be issued and closure announcements made by the Superintendent Lake Clark National Park and Preserve.

(D) Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth may take up to a total of 10 bull moose in Unit 9B for ceremonial purposes, under the terms of a Federal registration permit from July 1 through June 30. Permits will be issued to individuals only at the request of a local organization. This 10-moose limit is not cumulative with that permitted for potlatches by the State.

(E) For Units 9C and 9E only, a federally qualified subsistence user (recipient) of Units 9C and 9E may designate another federally qualified subsistence user of Units 9C and 9E to take bull caribou on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report and turn over all meat to the recipient. There is no restriction on the number of possession limits the designated hunter may have in his/her possession at any one time.

(F) For Unit 9D, a federally qualified subsistence user (recipient) may designate another federally qualified subsistence user to take caribou on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than four harvest limits in his/her possession at any one time.

(G) The communities of False Pass, King Cove, Cold Bay, Sand Point, and Nelson Lagoon annually may each take, from October 1 through December 31 or May 10 through 25, one brown bear for ceremonial purposes, under the terms of a Federal registration permit. A permit will be issued to an individual only at the request of a local organization. The brown bear may be taken from either Unit 9D or Unit 10 (Unimak Island) only.

(H) You may hunt brown bear in Unit 9E with a Federal registration permit in lieu of a State locking tag if you have obtained a Federal registration permit prior to hunting.

(I) In Units 9B and 9C, a snowmachine may be used to approach and pursue a wolf or wolverine provided the snowmachine does not contact a live animal.

TABLE 9 TO PARAGRAPH (n)(9)

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 9B, Lake Clark National Park and Preserve—Rural residents of Iliamna, Newhalen, Nondalton, Pedro Bay, Port Alsworth, residents of that portion of the park resident zone in Unit 9B; and 13.440 permit holders—1 bear by Federal registration permit only.	July 1–June 30.
The season will be closed by the Lake Clark National Park and Preserve Superintendent when 4 females or 10 bear have been taken, whichever occurs first.	
Unit 9B, remainder—1 bear by State registration permit only	Sep. 1–May 31.
Unit 9C—1 bear by Federal registration permit only	Oct. 1–May 31.
The season will be closed by the Katmai National Park and Preserve Superintendent in consultation with BLM and FWS land managers and ADF&G, when 6 females or 10 bear have been taken, whichever occurs first.	
Unit 9E—1 bear by Federal registration permit	Sep. 25–Dec. 31; Apr. 15–May 25.
Caribou:	
Unit 9A—up to 2 caribou by State registration permit	Season may be announced between Aug. 1–Mar. 15.
Unit 9B—up to 2 caribou by State registration permit	Season may be announced between Aug. 1–Mar. 31.
Unit 9C, that portion within the Alagnak River drainage—up to 2 caribou by State registration permit	Season may be announced between Aug. 1–Mar. 15.
Unit 9C, that portion draining into the Naknek River from the north, and Graveyard Creek and Coffee Creek—up to 2 caribou by State registration permit.	Season may be announced between Aug. 1–Mar. 15.
Unit 9C, remainder—1 bull by Federal registration permit or State permit. Federal public lands are closed to the taking of caribou except by residents of Unit 9C and Egegik.	May be announced.
Unit 9D—1–4 caribou by Federal registration permit only	Aug. 1–Sep. 30; Nov. 15–Mar. 31.
Unit 9E—1 bull by Federal registration permit or State permit. Federal public lands are closed to the taking of caribou except by residents of Unit 9E, Nelson Lagoon, and Sand Point.	May be announced.
Sheep:	
Unit 9B, that portion within Lake Clark National Park and Preserve—1 ram with ¾ curl or larger horn by Federal registration permit only. By announcement of the Lake Clark National Park and Preserve Superintendent, the summer/fall season will be closed when up to 5 sheep are taken and the winter season will be closed when up to 2 sheep are taken.	July 15–Oct. 15; Jan. 1–Apr. 1.
Unit 9B, remainder—1 ram with 7/8 curl or larger horn by Federal registration permit only	Aug. 10–Oct. 10.
Unit 9, remainder—1 ram with 7/8 curl or larger horn	Aug. 10–Sep. 20.
Moose:	
Unit 9A—1 bull by State registration permit	Sep. 1–15.
Unit 9B—1 bull by State registration permit	Sep. 1–20; Dec. 1–Jan. 15.
Unit 9C, that portion draining into the Naknek River from the north—1 bull by State registration permit	Sep. 1–20; Dec. 1–31.
Unit 9C, that portion draining into the Naknek River from the south—1 bull by State registration permit. Public lands are closed during December for the hunting of moose, except by federally qualified subsistence users hunting under these regulations.	Aug. 20–Sep. 20; Dec. 1–31.
Unit 9C, remainder—1 bull by State registration permit	Sep. 1–20; Dec. 15–Jan. 15.
Unit 9D—1 bull by Federal registration permit. Federal public lands will be closed by announcement of the Izembek Refuge Manager to the harvest of moose when a total of 10 bulls have been harvested between State and Federal hunts.	Dec. 15–Jan. 20.
Unit 9E—1 bull by State registration permit; however, only antlered bulls may be taken Dec. 1–Jan. 31	Sep. 1–25; Dec. 1–Jan. 31.
Beaver: Unit 9B and 9E—2 beaver per day	Apr. 15–May 31.
Coyote: 2 coyotes	Sep. 1–Apr. 30.
Fox, Arctic (Blue and White): No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sep. 1–Feb. 15.
Hare:	
Snowshoe hare: No limit	July 1–June 30.
Alaska hare: 1 per day, 4 per season	Nov. 1–Mar. 31.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sep. 1–Mar. 31.
Grouse (Spruce): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 10 per day, 20 in possession	Aug. 10–last day of Feb.
Trapping	
Beaver:	
No limit	Oct. 10–Mar. 31.
2 beaver per day; only firearms may be used	Apr. 15–May 31.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White): No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Nov. 10–Feb. 28.

TABLE 9 TO PARAGRAPH (n)(9)—Continued

Harvest limits	Open season
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

* * * * *

(17) *Unit 17.*

(i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points including Hagemeister Island and the Walrus Islands:

(A) Unit 17A consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17B consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage and the Wood River drainage upstream from the outlet of Lake Beverley; and

(C) Unit 17C consists of the remainder of Unit 17.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legal hunting camps, you may not use any motorized vehicle for hunting ungulates, bear, wolves, and wolverine, including transportation of hunters and parts of ungulates, bear, wolves, or wolverine in the Upper Mulchatna Controlled Use Area consisting of Unit 17B, from Aug. 1 through Nov. 1.

(B) [Reserved]

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting.

(C) If you have a trapping license, you may use a firearm to take beaver in Unit 17 from April 15 through May 31. You may not take beaver with a firearm under a trapping license on National Park Service lands.

(D) In Unit 17, a snowmachine may be used to assist in the taking of a caribou, and caribou may be shot from a stationary snowmachine. ''Assist in the taking of a caribou'' means a snowmachine may be used to approach within 300 yards of a caribou at speeds under 15 miles per hour, in a manner that does not involve repeated approaches or that causes a caribou to run. A snowmachine may not be used to contact an animal or to pursue a fleeing caribou.

(E) In Unit 17, a snowmachine may be used to approach and pursue a wolf or wolverine provided the snowmachine does not contact a live animal.

TABLE 17 TO PARAGRAPH (n)(17)

Harvest limits	Open season
Hunting	
Black Bear: 2 bears	Aug. 1–May 31.
Brown Bear: Unit 17—1 bear by State registration permit only	Sep. 1–May 31.
Caribou: Unit 17A, all drainages west of Right Hand Point—up to 2 caribou by State registration permit	Season may be announced between Aug. 1–Mar. 31.
Units 17A and 17C, that portion of 17A and 17C consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—up to 5 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by federally qualified users unless the population estimate exceeds 900 caribou.	Aug. 1–Mar. 31.
Units 17A, remainder and 17C, remainder—selected drainages; a harvest limit of up to 2 caribou by State registration permit will be determined at the time the season is announced.	Season may be announced between Aug. 1 and Mar. 31.
Units 17B and 17C, that portion of 17C east of the Wood River and Wood River Lakes—up to 2 caribou by State registration permit.	Season may be announced between Aug. 1–Mar. 31.
Sheep: 1 ram with full curl or larger horn	Aug. 10–Sep. 20.
Moose: Unit 17A—1 bull by State registration permit; or	Aug. 25–Sep. 25.
1 antlerless moose by State registration permit; or	Aug. 25–Sep. 25.
Unit 17A—up to 2 moose; one antlered bull by State registration permit, one antlerless moose by State registration permit.	Up to a 31-day season may be announced between Dec. 1 and the last day of Feb.
Units 17B and 17C—one bull	Aug. 20–Sep. 15. Dec. 1–31.
During the period Aug. 20–Sep. 15—one bull by State registration permit; or During the period Sep. 1–15—one bull with spike-fork or 50-inch antlers or antlers with three or more brow tines on at least one side with a State harvest ticket; or During the period Dec. 1–31—one antlered bull by State registration permit.	
Coyote: 2 coyotes	Sep. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sep. 1–Feb. 15.
Hare:	
Snowshoe hare: No limit	July 1–June 30.

TABLE 17 TO PARAGRAPH (n)(17)—Continued

Harvest limits	Open season
Alaska hare: 1 per day, 4 per season	Nov. 1–Mar. 31.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sep. 1–Mar. 31.
Grouse (Spruce and Ruffed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock and Willow): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: Unit 17—No limit	Oct. 10–Mar. 31.
Unit 17—2 beaver per day. Only firearms may be used	Apr. 15–May 31.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Lynx: No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: 2 muskrats	Nov. 10–Feb. 28.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

* * * * *

■ 4. Amend § ____.27 by revising paragraphs (e)(3), (6), (7), (9), and (13) to read as follows:

§ ____.27 Subsistence taking of fish.

* * * * *

(e) * * *

(3) *Yukon-Northern Area.* The Yukon-Northern Area includes all waters of Alaska between the latitude of Point Romanof and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea, and all waters of Alaska north of the latitude of the westernmost tip of Point Hope and west of 141° West longitude, including those waters draining into the Arctic Ocean and the Chukchi Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Yukon-Northern Area at any time. In those locations where subsistence fishing permits are required, only one subsistence fishing permit will be issued to each household per year. You may subsistence fish for salmon with rod and reel in the Yukon River drainage 24 hours per day, 7 days per week, unless rod and reel are specifically otherwise restricted in this paragraph (e)(3).

(ii) For the Yukon River drainage, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska statutes (AS 16.05.060), unless superseded by a Federal special action.

(iii) In the following locations, you may take salmon during the open weekly fishing periods of the State commercial salmon fishing season and may not take them for 24 hours before the opening of the State commercial salmon fishing season:

(A) In District 4, excluding the Koyukuk River drainage;

(B) In Subdistricts 4B and 4C from June 15 through September 30, salmon may be taken from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday;

(C) In District 6, excluding the Kantishna River drainage, salmon may be taken from 6 p.m. Friday until 6 p.m. Wednesday.

(iv) During any State commercial salmon fishing season closure of greater than 5 days in duration, you may not take salmon during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk River drainage, salmon may not be taken from 6 p.m. Friday until 6 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5D, salmon may not be taken from 6 p.m. Sunday until 6 p.m. Tuesday.

(v) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(vi) In Districts 1, 2, 3, and Subdistrict 4A, excluding the Koyukuk and Innoko River drainages, you may not take salmon for subsistence purposes during the 24 hours immediately before the opening of the State commercial salmon fishing season.

(vii) In Districts 1, 2, and 3:

(A) After the opening of the State commercial salmon fishing season through July 15, you may not take salmon for subsistence for 18 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period;

(B) After July 15, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period.

(viii) In Subdistrict 4A after the opening of the State commercial salmon fishing season, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period; however, you may take Chinook salmon during the State commercial fishing season, with drift gillnet gear only, from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday.

(ix) You may not subsistence fish for salmon in the following drainages located north of the main Yukon River:

(A) Kanuti River upstream from a point 5 miles downstream of the State highway crossing;

(B) Bonanza Creek;

(C) Jim River including Prospect and Douglas Creeks.

(x) You may not subsistence fish in the Delta River.

(xi) In Beaver Creek downstream from the confluence of Moose Creek, a gillnet with mesh size not to exceed 3 inches stretch-measure may be used from June 15 through September 15. You may subsistence fish for all non-salmon species but may not target salmon during this time period (retention of salmon taken incidentally to non-salmon directed fisheries is allowed). From the mouth of Nome Creek downstream to the confluence of Moose Creek, only rod and reel may be used.

From the mouth of Nome Creek downstream to the confluence of O'Brien Creek, the daily harvest and possession limit is 5 grayling; from the mouth of O'Brien Creek downstream to the confluence of Moose Creek, the daily harvest and possession limit is 10 grayling. The Nome Creek drainage of Beaver Creek is closed to subsistence fishing for grayling.

(xii) You may take salmon only by gillnet, beach seine, dip net, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(A) In the Yukon River drainage, you may not take salmon for subsistence fishing using gillnets with stretched mesh larger than 7.5 inches.

(B) In Subdistrict 5D, you may take salmon once the mid-range of the Canadian interim management escapement goal and the total allowable catch goal are projected to be achieved.

(C) Salmon may be harvested by dip net at any time, except during times of conservation when the Federal in-season manager may announce restrictions on time, areas, and species.

(xiii) In District 4, if you are a commercial fisherman, you may not take salmon for subsistence purposes during the State commercial salmon fishing season using gillnets with stretched-mesh larger than 6 inches after a date specified by ADF&G emergency order issued between July 10 and July 31.

(xiv) In Districts 5 and 6, you may not take salmon for subsistence purposes by drift gillnets.

(xv) In District 4, salmon may be taken by drift gillnet not more than 150 feet in length unless restricted by special action or as modified by regulations in this section.

(xvi) Unless otherwise specified in this section, you may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the State commercial salmon fishing season, if you are a commercial fisherman, you may not operate more than one type of gear at a time, for commercial, personal use, and subsistence purposes.

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms, and each drift gillnet may not exceed 50 fathoms in length.

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other fishing gear operating for commercial, personal, or subsistence use except that, at the site approximately 1 mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the ''Slide,'' you may set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear, and in District 4, from Old Paradise Village upstream to a point 4 miles upstream from Anvik, there is no minimum distance requirement between fish wheels.

(D) During the State commercial salmon fishing season, within the Yukon River and the Tanana River below the confluence of the Wood River, you may use drift gillnets and fish wheels only during open subsistence salmon fishing periods.

(E) In Birch Creek, gillnet mesh size may not exceed 3 inches stretch-measure from June 15 through September 15.

(F) In Racetrack Slough on the Koyukuk River and in the sloughs of the Huslia River drainage, from when each river is free of ice through June 15, the offshore end of the set gillnet may not be closer than 20 feet from the opposite bank except that sloughs 40 feet or less in width may have 3/4-width coverage with set gillnet, unless closed by Federal special action.

(G) In the Jim River drainage, including Prospect and Douglas Creeks, you may harvest fish other than salmon with rod and reel only; the grayling harvest and possession limit is 10 per day.

(xvii) In District 4, from September 21 through May 15, you may use jigging gear from shore ice.

(xviii) You must possess a subsistence fishing permit for the following locations:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from the upstream mouth of 22 Mile Slough to the U.S.-Canada border;

(C) Only for salmon in the Tanana River drainage above the mouth of the Wood River.

(xix) Only one subsistence fishing permit will be issued to each household per year.

(xx) In Districts 1, 2, and 3, from June 1 through July 15, if ADF&G has announced that Chinook salmon can be sold in the commercial fisheries, you may not possess Chinook salmon taken for subsistence purposes unless both tips (lobes) of the tail fin have been removed before the person conceals the salmon from plain view or transfers the salmon from the fishing site.

(xxi) In the Yukon River drainage, Chinook salmon must be used primarily for human consumption and may not be targeted for dog food. Dried Chinook salmon may not be used for dog food anywhere in the Yukon River drainage. Whole fish unfit for human consumption (due to disease, deterioration, and deformities), scraps, and small fish (16 inches or less) may be fed to dogs. Also, whole Chinook salmon caught incidentally during a subsistence chum salmon fishery in the following time periods and locations may be fed to dogs:

(A) After July 10 in the Koyukuk River drainage;

(B) After August 10, in Subdistrict 5D, upstream of Circle City.

* * * * *

(6) *Aleutian Islands Area.* The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° East longitude, and south of 54°36′ North latitude.

(i) You may take fish other than salmon, rainbow/steelhead trout, or char at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6 a.m. until 9 p.m. from January 1 through December 31, except as may be specified on a subsistence fishing permit.

(iii) In the Adak, Akutan, Atka-Amlia, and Umnak Districts, you may take salmon at any time.

(iv) You may not subsistence fish for salmon in the following waters:

(A) The waters of Unalaska Lake, its tributaries and outlet stream;

(B) The waters of Summers and Morris Lakes and their tributaries and outlet streams;

(C) All streams supporting anadromous fish runs that flow into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point; and

(D) Waters of McLees Lake and its tributaries and outlet stream.

(v) You may take salmon by seine and gillnet, or with gear specified on a subsistence fishing permit.

(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon, trout, and char only under the terms of a

subsistence fishing permit, except that you do not need a permit in the Akutan, Umnak, and Atka-Amlia Islands Districts.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit, except that in the Unalaska and Adak Districts, you may take no more than 25 salmon plus an additional 25 salmon for each member of your household listed on the permit. You may obtain an additional permit.

(x) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(7) *Alaska Peninsula Area.* The Alaska Peninsula Area includes all waters of Alaska on the north side of the Alaska peninsula southwest of a line from Cape Menshikof (57°28.34′ North latitude, 157°55.84′ West longitude) to Cape Newenham (58°39.00′ North latitude, 162° West longitude) and east of the longitude of Cape Sarichef Light (164°55.70′ West longitude) and on the south side of the Alaska Peninsula from a line extending from Scotch Cape through the easternmost tip of Ugamak Island to a line extending 135° southeast from Kupreanof Point (55°33.98′ North latitude, 159°35.88′ West longitude).

(i) You may take fish, other than salmon, rainbow/steelhead trout, or char, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iii) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(iv) You may take salmon at any time, except in those districts and sections open to commercial salmon fishing where salmon may not be taken during the 24 hours before and 12 hours following each State open weekly commercial salmon fishing period, or as may be specified on a subsistence fishing permit.

(v) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit. You may also take salmon without a permit by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand.

(vi) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(vii) You may not use a set gillnet exceeding 100 fathoms in length.

(viii) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

* * * * *

(9) *Kodiak Area.* The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58°51.10′ North latitude), west of 150° West longitude, north of 55°30.00′ North latitude, and north and east of a line extending 135° southeast for 3 miles from a point near Kilokak Rocks at 57°10.34′ North latitude, 156°20.22′ West longitude (the longitude of the southern entrance of Imuya Bay), then due south.

(i) You may take fish other than salmon, rainbow/steelhead trout, char, bottomfish, or herring at any time unless restricted by the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may take salmon for subsistence purposes 24 hours a day from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, you may not use salmon seine vessels to take subsistence salmon for 24 hours before or during, and for 24 hours after, any State open commercial salmon fishing period. The use of skiffs from any type of vessel is allowed.

(B) From June 1 through September 15, you may use purse seine vessels to take salmon only with gillnets, and you may have no other type of salmon gear on board the vessel.

(iii) You may subsistence fish for salmon with rod and reel only in the following locations:

(A) Womens Bay—All waters inside a line from the tip of the Nyman Peninsula (57°43.23′ North latitude, 152°31.51′ West longitude), to the northeastern tip of Mary's Island (57°42.40′ North latitude, 152°32.00′ West longitude), to the southeastern shore of Womens Bay at 57°41.95′ North latitude, 152°31.50′ West longitude.

(1) King salmon: bag and possession limit of two fish; no size limit; no annual limit.

(2) Salmon, other than king salmon, that are:

(i) 20 inches or greater in length; bag and possession limit of five fish, of which only two may be coho salmon and only two may be sockeye salmon.

(ii) Less than 20 inches in length; bag and possession limit of 10 fish.

(iii) From September 16 through December 31, the bag and possession limit for coho salmon, 20 inches or greater in length, is one fish.

(B) Buskin River marine waters—All waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80′ North latitude, 152°28.38′ West longitude, to a point offshore at 57°45.35′ North latitude, 152°28.15′ West longitude, to a marker located onshore south of the river mouth at approximately 57°45.15′ North latitude, 152°28.65′ West longitude.

(iv) You must have a subsistence fishing permit for taking salmon, trout, and char for subsistence purposes. You must have a subsistence fishing permit for taking herring and bottomfish for subsistence purposes during the State commercial herring sac roe season from April 15 through June 30.

(v) The annual limit for a subsistence salmon fishing permit holder is as follows:

(A) In the road-accessible Zone (Northeastern Kodiak Island), east of the line from Crag Point south to the westernmost point of Saltery Cove, including the inland waters of Spruce, Woody and Long Islands, and the Federal marine waters of and around Womens Bay, 25 salmon for the permit holder plus an additional 25 salmon for each member of the same household whose names are listed on the permit: an additional permit may be obtained upon request.

(B) In the remainder of the Kodiak Area not described in paragraphs (e)(9)(iii)(A) and (e)(9)(v)(A) of this section, there is no annual harvest limit for a subsistence salmon fishing permit holder.

(vi) You must record on your subsistence permit the number of subsistence fish taken. You must record all harvested fish prior to leaving the fishing site and must return the permit by the due date marked on the permit.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon only by gillnet, rod and reel, or seine.

(ix) You must be physically present at the net when the net is being fished.

* * * * *

(13) *Southeastern Alaska Area.* The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing

permit, you may take fish other than salmon, trout, grayling, and char in the Southeastern Alaska Area at any time.

(ii) You must possess a subsistence fishing permit to take salmon, trout, grayling, or char. You must possess a subsistence fishing permit to take eulachon from any freshwater stream flowing into fishing District 1.

(iii) In the Southeastern Alaska Area, a rainbow trout is defined as a fish of the species *Oncorhyncus mykiss* less than 22 inches in overall length. A steelhead is defined as a rainbow trout with an overall length of 22 inches or larger.

(iv) In areas where use of rod and reel is allowed, you may use an artificial fly, lure, or bait when fishing with rod and reel, unless restricted by Federal permit. If you use bait, you must retain all federally regulated fish species caught, and they apply to your applicable daily, seasonal, and annual harvest limits for that species.

(A) For streams with steelhead, once your daily, seasonal, or annual limit of steelhead is harvested, you may no longer fish with bait for any species.

(B) Unless otherwise specified in this paragraph (e)(13), allowable gear for salmon or steelhead is restricted to gaffs, spears, gillnets, seines, dip nets, cast nets, handlines, or rod and reel.

(v) Unless otherwise specified in this paragraph (e)(13), you may use a handline for snagging salmon or steelhead.

(vi) You may fish with a rod and reel within 300 feet of a fish ladder unless the site is otherwise posted by the USDA Forest Service. You may not fish from, on, or in a fish ladder.

(vii) You may not accumulate Federal subsistence harvest limits authorized for the Southeastern Alaska Area with any harvest limits authorized under any State of Alaska fishery with the following exception: Annual or seasonal Federal subsistence harvest limits may be accumulated with State sport fishing harvest limits provided that accumulation of harvest limits does not occur during the same day.

(viii) If you take salmon, trout, or char incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your subsistence fishing permit.

(ix) Nets are prohibited in streams flowing across or adjacent to the roads on Wrangell and Mitkof Islands, and in streams flowing across or adjacent to the road systems connected to the community of Sitka.

(x) You may not possess subsistence-taken and sport-taken fish of a given species on the same day.

(xi) If a harvest limit is not otherwise listed for sockeye in this paragraph (e)(13), the harvest limit for sockeye salmon is the same as provided for in adjacent State subsistence or personal use fisheries. If a harvest limit is not established for the State subsistence or personal use fisheries, the possession limit is 10 sockeye and the annual harvest limit is 20 sockeye per household for that stream.

(xii) The Sarkar River system above the bridge is closed to the use of all nets by both federally qualified and non-federally qualified users.

(xiii) You may take Chinook, sockeye, and coho salmon in the mainstem of the Stikine River only under the authority of a Federal subsistence fishing permit. Each Stikine River permit will be issued to a household. Only dip nets, spears, gaffs, rod and reel, beach seine, or gillnets not exceeding 15 fathoms in length may be used. The maximum gillnet stretched mesh size is 8 inches during the Chinook salmon season and 5½ inches during the sockeye salmon season. There is no maximum mesh size during the coho salmon season.

(A) You may take Chinook salmon from May 15 through June 20. The annual limit is five Chinook salmon per household.

(B) You may take sockeye salmon from June 21 through July 31. The annual limit is 40 sockeye salmon per household.

(C) You may take coho salmon from August 1 through October 1. The annual limit is 20 coho salmon per household.

(D) You may retain other salmon taken incidentally by gear operated under terms of this permit. The incidentally taken salmon must be reported on your permit calendar.

(E) Fishing nets must be checked at least twice each day.

(xiv) You may take coho salmon with a Federal salmon fishing permit. There is no closed season. The daily harvest limit is 20 coho salmon per household. Only dip nets, spears, gaffs, handlines, and rod and reel may be used. There are specific rules to harvest any salmon on the Stikine River, and you must have a separate Stikine River subsistence salmon fishing permit to take salmon on the Stikine River.

(xv) Unless noted on a Federal subsistence harvest permit, there are no harvest limits for pink or chum salmon.

(xvi) Unless otherwise specified in this paragraph (e)(13), you may take steelhead under the terms of a subsistence fishing permit. The open season is January 1 through May 31. The daily household harvest and possession limit is one with an annual household limit of two. You may use only a dip net, gaff, handline, spear, or rod and reel. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xvii) You may take steelhead trout on Prince of Wales and Kosciusko Islands under the terms of Federal subsistence fishing permits. You must obtain a separate permit for the winter and spring seasons.

(A) The winter season is December 1 through the last day of February, with a harvest limit of two fish per household; however, only one steelhead may be harvested by a household from a particular drainage. You may use only a dip net, handline, spear, or rod and reel. You must return your winter season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(B) The spring season is March 1 through May 31, with a harvest limit of five fish per household; however, only two steelhead may be harvested by a household from a particular drainage. You may use only a dip net, handline, spear, or rod and reel. You must return your spring season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xviii) In addition to the requirement for a Federal subsistence fishing permit, the following restrictions for the harvest of Dolly Varden, brook trout, grayling, cutthroat trout, and rainbow trout apply:

(A) The daily household harvest and possession limit is 20 Dolly Varden; there is no closed season or size limit.

(B) The daily household harvest and possession limit is 20 brook trout; there is no closed season or size limit.

(C) The daily household harvest and possession limit is 20 grayling; there is no closed season or size limit.

(D) The daily household harvest limit is 6 and the household possession limit is 12 cutthroat or rainbow trout in combination; there is no closed season or size limit.

(E) You may use only a rod and reel.

(F) The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(xix) The Klawock River drainage is closed to the use of seines and gillnets during July and August.

(xx) The Federal public waters in the Makhnati Island area, as defined in § ____.3(b)(5) are closed to the harvest of herring and herring spawn, except by federally qualified users.

(xxi) Only federally qualified subsistence users may harvest sockeye salmon in Neva Lake, Neva Creek, and South Creek.

(xxii) The Federal public waters of Kah Sheets Creek are closed from July 1 to July 31, except by federally qualified users.

Amee Howard,

Acting Assistant Regional Director, U.S. Fish and Wildlife Service.

Gregory Risdahl,

Subsistence Program Leader, USDA–Forest Service.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1090

[EPA–HQ–OAR–2022–0513; FRL–9845–02–OAR]

RIN 2060–AV73

Request From States for Removal of Gasoline Volatility Waiver

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to provisions specified by the Clean Air Act (CAA), the Governors of Illinois, Iowa, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin submitted petitions requesting that EPA remove the 1-pound per square inch (psi) Reid vapor pressure (RVP) waiver for summer gasoline-ethanol blended fuels containing 10 percent ethanol (E10). EPA is acting on those petitions by removing the 1-psi waiver in those States effective April 28, 2025. This action also finalizes regulatory amendments to implement the removal of the 1-psi waiver for E10 in those States, as well as a regulatory process by which a State may request to reinstate the 1-psi waiver. Finally, consistent with a decision issued by the United States Court of Appeals for the D.C. Circuit on July 2, 2021, this action removes regulations that extended the 1-psi waiver to gasoline-ethanol blends between 10 and 15 percent ethanol (E15).

DATES: This rule is effective on April 29, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2022–0513. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material is not available on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions regarding this action, contact Lauren Michaels, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4640; email address: *michaels.lauren@epa.gov.*

SUPPLEMENTARY INFORMATION:

Does this action apply to me?

Entities potentially affected by this final rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel. Potentially affected categories include:

Category	NAICS [1] code	Examples of potentially affected entities
Industry	211130	Natural gas liquids extraction and fractionation.
Industry	221210	Natural gas production and distribution.
Industry	324110	Petroleum refineries (including importers).
Industry	325110	Butane and pentane manufacturers.
Industry	325193	Ethyl alcohol manufacturing.
Industry	325199	Manufacturers of gasoline additives.
Industry	424710	Petroleum bulk stations and terminals.
Industry	424720	Petroleum and petroleum products wholesalers.
Industry	447110, 447190	Fuel retailers.
Industry	454310	Other fuel dealers.
Industry	486910	Natural gas liquids pipelines, refined petroleum products pipelines.
Industry	493190	Other warehousing and storage—bulk petroleum storage.

[1] North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your entity would be affected by this action, you should carefully examine the applicability criteria in 40 CFR part 1090. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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K. Congressional Review Act (CRA)

I. Executive Summary

In this action, EPA is responding to petitions from eight State Governors to remove the 1-psi (pound per square inch) waiver for gasoline-ethanol blends containing 10 percent ethanol (E10). The Governors made their requests pursuant to Clean Air Act (CAA) section 211(h)(5), which provides that EPA shall remove the 1-psi waiver by regulation upon a demonstration by a Governor that the 1-psi waiver increases emissions in their State.

After review of the modeling results presented by the Governors in their petitions, on March 6, 2023, EPA proposed to remove the 1-psi waiver with an effective date of April 28, 2024—and sought comment on delaying the effective date to April 28, 2025—in the following eight States: Illinois, Iowa, Nebraska, Minnesota, Missouri, Ohio, South Dakota, and Wisconsin.[1] On March 21, 2023, EPA held a public hearing on the proposal, at which various perspectives on the proposed action were presented, and subsequently many comments were submitted to EPA on the proposed action. After the close of the public comment period, EPA also received numerous petitions to delay the proposed effective date of the removal of the 1-psi waiver.[2] Following review of public comments on the proposal and the extension petitions received, in this action EPA is removing the 1-psi waiver and instead applying the 9.0 psi RVP (Reid Vapor Pressure) standard under CAA section 211(h)(1) effective April 28, 2025, in the following eight States: Illinois, Iowa, Nebraska, Minnesota, Missouri, Ohio, South Dakota, and Wisconsin.

Throughout this document we discuss key comments provided by stakeholders on the proposal and provide our response. Additional detail is provided in the Response to Comments (RTC) document and Technical Support Document (TSD) [3] for this action.

II. Volatility Control Background and History

EPA first took regulatory action to control the volatility of gasoline in 1987.[4] Because higher gasoline volatility leads to higher evaporative emissions, EPA regulates the RVP—a measure of fuel volatility—of gasoline during summer months in order to reduce volatile organic compound (VOC) emissions that contribute to the formation of smog (ground-level ozone).[5] The volatility of fuel depends on the refinery's decisions in formulating its gasoline. Subsequent to EPA's actions, Congress enacted the CAA Amendments of 1990, which included statutory volatility provisions for summer gasoline. These provisions largely codified EPA's regulatory approach, including establishing a 9.0 psi RVP standard for gasoline volatility in the summer.[6] Because blending ethanol into gasoline increases the volatility of the resulting fuel blend due to chemical differences between ethanol and gasoline, Congress also codified a 1-psi waiver for E10, allowing such blends to have a 1.0-psi higher RVP than otherwise allowed for gasoline, consistent with EPA's prior regulatory approach.[7] This allowance only applies to gasoline-ethanol blends containing between 9 and 10 percent ethanol, and does not extend to gasoline-ethanol blends containing greater than 10 percent ethanol.[8] The 1-psi waiver also does not apply to reformulated gasoline (RFG).

At the time the provision was enacted, the 1-psi waiver applied to a relatively small portion of the gasoline sold in the United States. Today, however, almost all gasoline sold is E10, and thus the 1-psi waiver increases the volatility of most gasoline.

On April 28, 2022, the Governors of Illinois, Iowa, Kansas, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin submitted a petition for the removal of the 1-psi waiver for E10 in their States beginning in the summer of 2023, pursuant to CAA section 211(h)(5).[9] On June 10, 2022, the Governor of Ohio also submitted a petition requesting the removal of the 1-psi waiver in that State.[10] On July 21, 2022, the Governor of Kansas notified EPA that they were rescinding their petition for removal of the 1-psi waiver in Kansas.[11] On October 13, 2022, the Governor of North Dakota notified EPA that they were rescinding their petition for removal of the 1-psi waiver in North Dakota.[12] On December 21, 2022, the Governor of Missouri submitted a petition requesting the removal of the 1-psi waiver in that State.[13] This action refers to the eight remaining States of Illinois, Iowa, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin as the ''petitioning states.'' The petitions included modeling results indicating reductions in VOCs, nitrogen

[1] 88 FR 13758.

[2] We refer to these petitions as ''extension petitions'' throughout this preamble.

[3] ''Request From States for Removal of Gasoline Volatility Waiver: Technical Support Document and Cost Analysis,'' available in the docket for this action.

[4] See 52 FR 31274 (August 19, 1987); Subsequent regulatory actions occurred in 1989 and 1990. 54 FR 11868 (March 22, 1989); 55 FR 23658 (June 11, 1990).

[5] Gasoline must have volatility in the proper range to prevent driveability, performance, and emissions problems. If the volatility is too low, the gasoline will not ignite properly; if the volatility is too high, the vehicle may experience vapor lock. Importantly for this action, excessively high volatility also leads to increased evaporative emissions from the vehicle. Vehicle evaporative emission control systems are designed and certified on gasoline with a volatility of 9.0 psi RVP. Higher volatility gasoline may overwhelm the vehicle's evaporative control system, leading to a condition described as ''breakthrough'' of the cannister and mostly uncontrolled evaporative emissions.

[6] CAA section 211(h)(1). CAA section 211(h)(1) requires EPA to establish volatility requirements—that is, a restriction on RVP—during the high ozone season. To implement these requirements, EPA defines ''high ozone season'' or ''summer season'' at 40 CFR 1090.80 as ''the period from June 1 through September 15 for retailers and wholesale purchaser consumers, and May 1 through September 15 for all other persons, or an RVP control period specified in a state implementation plan if it is longer.'' In general practice by industry and for purposes of this preamble, the high ozone season is referred to as the ''summer'' or ''summer season'' and gasoline produced to be used during the high ozone season is called ''summer gasoline.'' EPA's regulations do not impose any volatility requirements on any type of blend of gasoline outside of the summer season.

[7] CAA section 211(h)(4).

[8] The statutory 1-psi waiver is codified at 40 CFR 1090.215(a).

[9] ''April 28, 2022 Letter from Eight States,'' available in the docket for this action.

[10] ''June 10, 2022 Letter from Ohio,'' available in the docket for this action.

[11] ''July 21, 2022 Letter from Kansas,'' available in the docket for this action.

[12] ''October 12, 2022 Letter from North Dakota,'' available in the docket for this action.

[13] ''December 21, 2022 Letter from Missouri,'' available in the docket for this action.

oxides (NO_X), and carbon monoxide (CO).

III. Statutory Authority and Provisions To Remove the 1-psi Waiver

This rulemaking modifies EPA's fuel quality regulations in 40 CFR part 1090 to remove the 1-psi waiver that is applicable to fuel blends containing gasoline and 10 percent ethanol for the petitioning States. While we proposed to make such a change effective for the summer of 2024, after further careful consideration of comments and consultation with various agencies we are instead finalizing removal of the 1-psi waiver in these States beginning April 28, 2025.

CAA section 211(h)(1) requires EPA to ''promulgate regulations making it unlawful . . . during the high ozone season . . . to sell . . . or introduce into commerce gasoline with a Reid Vapor Pressure in excess of 9.0 pounds per square inch (psi).'' For nonattainment areas, CAA section 211(h)(1) also allows EPA to set a lower (*i.e.,* more stringent) RVP standard, as well as to define the term ''high ozone season.'' CAA section 211(h)(4) provides in relevant part that ''[f]or fuel blends containing gasoline and 10 percent denatured anhydrous ethanol, the Reid vapor pressure limitation under this subsection shall be one pound per square inch (psi) greater than the applicable Reid vapor pressure limitations established under [section 211(h)(1)].'' CAA section 211(h)(5), which was enacted as part of the Energy Policy Act of 2005 (EPAct), provides in relevant part that ''[u]pon notification, accompanied by supporting documentation, from the Governor of a State that the [waiver in section 211(h)(4)], will increase emissions that contribute to air pollution in any area of the State, the Administrator shall, by regulation, apply, [the volatility limit under section 211(h)(1)].'' Thus, regulatory action under CAA section 211(h)(5) would remove the 1-psi waiver for E10 and generally apply the RVP standard under CAA section 211(h)(1).

Prior to the April 28, 2022 petition, no Governor had ever submitted a petition under CAA section 211(h)(5) to EPA, and thus we are interpreting this statutory provision for the first time in this action. In this context, we find that the use of the prescriptive statutory language ''shall'' provides limited, if any, discretion for EPA to consider other issues such as economic impacts of removing the 1-psi waiver. Such impacts may instead be taken into consideration by a Governor when deciding whether to submit a petition to EPA.[14] Here, EPA's role is only to evaluate the supporting documentation provided by the Governors.[15] If EPA concludes that the supporting documentation, as required by the statute, demonstrates emissions increases with the 1-psi waiver in place, then CAA section 211(h)(5) requires EPA to promulgate regulations to remove the 1-psi waiver as requested.

In response to the proposal, we received comments suggesting that the Governors cannot meet the statutory criteria in CAA section 211(h)(5) because E10 is now the dominant fuel in the marketplace. Commenters suggested that the statutory language that the 1-psi waiver ''will increase emissions'' cannot be satisfied, because any emissions impacts from the 1-psi waiver have already occurred. We disagree with the comment. CAA section 211(h)(5)(A)—which was promulgated in 2005—requires EPA to remove the 1-psi waiver if it ''will increase emissions that contribute to air pollution . . . during the high ozone season.'' The term ''will'' connotes consideration of emissions that are expected in the future and as relevant here during the ''high ozone season.'' [16] Further, as instructed in CAA section 211(h)(1), we have defined ''high ozone season'' as the period from ''June 1 through September 15 for retailers and [whole purchaser consumers], and May 1 through September 15 for all other persons.'' [17] We therefore read the phrase as calling for the consideration of emissions that are expected in the petitioning States during future high ozone seasons and conclude that because the Governors have demonstrated that the 1-psi waiver will increase VOC emissions during the high ozone season, the statutory criteria for removal of the 1-psi waiver has been met. We further address this comment in the RTC document.

Additionally, as we posited in the proposal, we do not interpret this provision as requiring a demonstration of a reduction in emissions of all pollutants that contribute to air pollution in the petitioning States, as advocated for by some commenters. Such a demonstration could not have been contemplated by Congress, as lowering the volatility of fuel was specifically the intent set out in CAA section 211(h)(1), which calls for EPA to set RVP standards to address ''evaporative emissions.'' As such, reducing the volatility of gasoline would be expected to have differing impacts on emissions of different pollutants.[18] Further, Congress was silent on the air pollutants that EPA should consider in responding to petitions for removal of the 1-psi waiver. Specifically, under CAA section 211(h)(5), EPA is to remove the 1-psi waiver if it ''increase[s] emissions that contribute to air pollution.'' This contrasts with, for example, CAA section 110(a)(2)(D)(i), which prohibits sources in a State from emitting ''any air pollutant which will contribute significantly to nonattainment'' in another State. Air pollution could result from a myriad of sources, including listed hazardous air pollutants, criteria pollutants, and greenhouse gases, and thus would appear to be a rather expansive term. Reducing RVP, however, is a volatility control measure as explained earlier in Section II. In short, CAA section 211(h)(1) requires EPA to set RVP standards to address ''evaporative emissions.'' Additionally, EPA has consistently explained that adding 10 percent ethanol to gasoline causes roughly a 1.0 psi RVP increase in the blend's volatility, which is the premise for the 1-psi waiver contained in CAA section 211(h)(4) and the subject of this action.[19] EPA is of the view, therefore, that it is reasonable to consider ''air pollution'' emanating from emissions of such gasoline and thus, that it may be most appropriate to evaluate the impact of the 1-psi waiver for E10 on VOC emissions in addressing petitions to remove the 1-psi waiver under CAA section 211(h)(5). We thus find that demonstration of increased VOC emissions with the 1-psi waiver in place is sufficient to grant the petitions for

[14] Considerations like this were cited by the Governors of Kansas and North Dakota in rescinding their petitions.

[15] Legislative history suggests that the supporting documentation need not be as stringent as that called for under CAA section 211(c)(4)(C). See Senate Report 106–426 at 12 (September 28, 2000). Under CAA section 211(c)(4)(C) a state must make a ''necessity'' showing prior to EPA approval of a fuel measure into the state implementation plan. The ''Guidance on Use of Opt-in to RFG and Low RVP Requirements in Ozone SIPs,'' August 1997, gives further guidance on factors EPA is likely to consider in making a finding of ''necessity'' under CAA section 211(c)(4)(C).

[16] This reading is like, for example, our reading of ''will'' in CAA section 110(a)(2)(D)(i). (The term ''will'' in CAA section 110(a)(2)(D) means that State implementation plans are required to eliminate the appropriate amounts of emissions that presently, or that are expected in the future, contribute significantly to nonattainment downwind. 63 FR 57375 (October 27, 1998)).

[17] 40 CFR 1090.80.

[18] For an example of analysis and modeling of emission impacts available at the time CAA section 211(h)(5) was enacted, see ''User's Guide to MOBILE6.1 and MOBILE6.2: Mobile Source Emission Factor Model,'' EPA–420–R–02–028, October 2002.

[19] See, *e.g.,* 52 FR 31274 at 31292 (August 19, 1987).

removal of the waiver. Even were EPA to look at the modeled emissions impacts on several other pollutants (*e.g.,* CO and NO_X), those reductions, in addition to the reduction in VOCs, also satisfy the requirements of the statute and justify granting the petitions.

Further, EPA views the Motor Vehicle Emissions Simulator (MOVES) as an appropriate tool for use in modeling the emission impacts required by CAA section 211(h)(5). The MOVES runs performed by the petitioning States compared emissions from motor vehicles and nonroad vehicles and equipment with and without the 1-psi waiver for E10 in each State in the summer. In the past, similar analyses have been used to support prior EPA actions for Federal and State fuel programs.[20]

IV. Petitions for Removal of the 1-psi Waiver and Supporting Documentation

A. Petition Background and History

During the fall of 2021, EPA received several letters from States requesting that EPA engage in a dialogue about mechanisms to provide parity between E10 and E15 with respect to gasoline volatility standards.[21] Specifically, the letters referred to CAA section 211(h)(5) and inquired about as to what type of ''supporting documentation'' should accompany such a request. EPA organized and participated in a series of meetings with representatives from various Midwestern States that had expressed interest in removing the 1-psi waiver. In those meetings, EPA indicated that MOVES modeling would be an appropriate tool to use for this purpose given its ability to model the emissions impacts of changes in gasoline volatility and given our past reliance on MOVES modeling runs in similar contexts.

On April 28, 2022, the Governors of Illinois, Iowa, Kansas, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin submitted a joint petition to EPA for the removal of the 1-psi waiver for E10 in their respective States. The petition specifically requested the removal of the 1-psi waiver for E10 as a permanent solution for providing year-round E15 in those States beginning in the summer of 2023. As accompanying documentation, the petition provided quantified reductions in VOC, NO_X, and CO emissions as a result of removing the 1-psi waiver in each State based on MOVES modeling. Subsequent to this submittal, the Governors of Kansas and North Dakota rescinded their petitions to remove the 1-psi waiver for E10 in those States.[22] Therefore, we are not taking any action on the 1-psi waiver for E10 in Kansas and North Dakota in this action.

On June 10, 2022, the Governor of Ohio also submitted a petition requesting the removal of the 1-psi waiver for E10 beginning in the summer of 2023. The petition provided quantified reductions in VOC, NO_X, and CO emissions in Ohio based on MOVES modeling.

On December 21, 2022, the Governor of Missouri also submitted a petition requesting the removal of the 1-psi waiver for E10 beginning in the summer of 2023. The petition provided quantified reductions in VOC, NO_X, and CO emissions in Missouri based on MOVES modeling.

Subsequent to submission of the petitions, all petitioning States except Missouri provided EPA with additional emissions modeling documentation, including for particulate matter (PM) and benzene.[23] The original data submitted showed a decrease in VOC, NO_X, and CO emissions with removal of the 1-psi waiver for E10, while the additional data demonstrated an increase in PM for both nonroad and on-road emissions with removal of the 1-psi waiver. The benzene results demonstrated an increase in benzene on-road emissions and a decrease in benzene nonroad emissions. While the additional data on modeled emissions impacts on other pollutants may not be necessary to make the statutory demonstration, it does provide additional information about the potential emissions impacts of this action.

All the petitioning States requested removal of the 1-psi waiver in all areas within their State where the limitation under CAA section 211(h)(4) applies. Therefore, the requests did not include areas within the States where RFG is required because the 1-psi waiver does not apply to RFG. The petitioning States also requested that the removal of the 1-psi waiver should take effect for the 2023 high ozone season, without further discussion. The States noted that rescinding the 1-psi waiver for E10 would support year-round sales of E15.

B. Evaluation of Petitions for Removal of the 1-psi Waiver

The petitioning States provided technical documentation with their petitions to demonstrate the reduction of emissions with the removal of the 1-psi waiver as required by CAA section 211(h)(5) in the form of MOVES modeling results.[24] The results for each State were based on a single day in July 2023, which is during the high ozone season. Comparative results demonstrate the change in emissions from the current 10.0 psi RVP standard to the alternative 9.0 psi RVP standard as contemplated by the statute.[25] A summary of the emissions impacts of removing the 1-psi waiver for E10 for each State is provided in Table V–1.[26]

[20] For example, on June 7, 2017, EPA published a final rule to relax the federal 7.8 psi RVP standard in the Nashville, TN area (82 FR 26354) and on March 12, 2021, EPA published two final rules that removed approved regulations from the Kansas and Missouri SIPs that required the sale of 7.0 psi RVP gasoline in the Kansas City, KS–MO area (86 FR 14000 and 86 FR 14007).

[21] See ''October 13, 2021 Letter from Kansas,'' and ''November 4, 2021 Letter from Seven States,'' available in the docket for this action.

[22] See ''July 21, 2022 Letter from Kansas,'' and ''October 12, 2022 Letter from North Dakota,'' available in the docket for this action.

[23] See ''Emissions Impacts of the Elimination of the 1-psi RVP Waiver for E10,'' May 9, 2022; and ''Emissions Impacts of the Elimination of the 1-psi RVP Waiver for E10 in Ohio,'' June 10, 2022, available in the docket for this action. While we did not receive additional information from Missouri about other pollutants as we received from the other petitioning states, we anticipate directionally similar trends as shown in the information from the other states. RVP reduction is a volatility control measure and EPA has consistently explained that adding 10 percent ethanol to gasoline causes roughly a 1.0 psi RVP increase in the blend's volatility. As EPA explained in its rulemakings to regulate volatility of fuel that preceded enactment of CAA section 211(h), evaporative hydrocarbon emissions are VOCs and contribute to the formation of ozone in the atmosphere, particularly in the summer months due to direct sunlight and high ambient temperatures. EPA regulated the volatility of gasoline to control the emissions of VOCs. Congress, in enacting CAA section 211(h), which largely codified EPA's volatility regulations, thus also logically intended to address VOCs by requiring volatility controls. It is therefore reasonable and most appropriate to evaluate the impact of the 1-psi volatility waiver for E10 on VOC emissions in addressing petitions to remove the 1-psi waiver under CAA section 211(h)(5). See also 52 FR 31274 (August 19, 1987); 54 FR 11868 (March 22, 1989); and 55 FR 23658 (June 11, 1990).

[24] EPA developed MOVES to estimate air pollution emissions from on-road and nonroad mobile sources.

[25] Further information about the MOVES runs, including inputs and nonroad data, is available in the docket for this action.

[26] EPA's evaluation of the MOVES model input data and assumptions, and results, can be found in the TSD.

TABLE V–1—CHANGE OF MOBILE SOURCE EMISSIONS IN 2023 MOVES3.01 SOURCES FROM 10.0 psi TO 9.0 psi RVP

State	Pollutant/precursor								
	VOCs (percent)	CO (percent)	NO_X (percent)	$PM_{2.5}$ (percent)	PM_{10} (percent)	Benzene (percent)	Toluene (percent)	Ethylbenzene (percent)	Xylene (percent)
Illinois	−0.9	−0.19	−0.05	0.09	0.10	−0.2	−1.5	−0.9	−0.9
Iowa	−1.8	−0.44	−0.09	0.14	0.15	−0.1	−3.3	−2.1	−2.1
Minnesota	−2.7	−0.52	−0.09	0.15	0.16	−1.3	−4.2	−3.0	−3.1
Missouri	−0.66	−0.41	−0.14	N/A	N/A	N/A	N/A	N/A	N/A
Nebraska	−2.6	−0.48	−0.09	0.17	0.18	−0.6	−4.4	−2.9	−3.0
Ohio	−1.6	−0.45	−0.13	0.30	0.32	0.08	−2.8	−2.0	−2.0
South Dakota	−2.9	−0.53	−0.06	0.08	0.08	−1.1	−4.8	−3.4	−3.3
Wisconsin	−1.7	−0.44	−0.10	0.21	0.22	−0.3	−2.7	−1.8	−1.8

As with the proposal, we have assessed the supporting documentation provided by the petitioning States and find that the MOVES modeling results submitted to EPA demonstrate a reduction in emissions of multiple pollutants (*e.g.,* VOCs, CO, and NO_X) that contribute to air pollution within each State upon removal of the 1-psi waiver for E10, as required under CAA section 211(h)(5).[27] We note that the same documentation also shows an increase in emissions of other pollutants such as PM. As discussed in Section III, we do not interpret the statute as requiring reductions in all pollutants. Documentation of air pollutant emissions reductions—particularly VOCs—is sufficient. While some commenters suggested that EPA should not focus on particular pollutants and ignore others, we instead conclude that demonstration of a decrease in VOC emissions is sufficient to satisfy the statutory requirements and justify granting the petitions.

Therefore, based on the Governors' petitions and the supporting documentation provided, we are removing the 1-psi waiver for E10 sold in the petitioning States and, as required by CAA section 211(h)(5), promulgating the 9.0 psi RVP standard contained in CAA section 211(h)(1) for the petitioning States. For the reasons discussed in Section VIII., such a change will be effective on April 28, 2025, given our determination of insufficient supply in 2023 and the renewal of that extension for one year based on a determination of insufficient supply in 2024.

V. Fuel System Impacts

In this section, we discuss the potential impacts of removing the 1-psi waiver in the petitioning States on the fuel production and distribution system, including impacts that would potentially affect gasoline refineries, pipelines, fuel terminals, retail outlets, and, ultimately, consumers.[28] Significant portions of this discussion were provided in the proposal, and have now been updated based on additional information provided from commenters and discussions with industry. We received comment from ethanol interests suggesting that gasoline supply concerns were overstated and manageable, even for 2023. We also received comment and supporting analysis from refining and pipeline stakeholders expressing concern over the gasoline supply and resulting cost and price impacts in support of their requests to further delay implementation of the 1-psi waiver removal, as well as additional petitions requesting delay to 2025 or later. The discussion in this section is not specific to a particular year or determination of sufficiency of supply. Section VI provides our determination of insufficient supply for 2024.

In short, this action will require a lower-volatility conventional gasoline before oxygenate blending (CBOB) [29] to be produced by refineries and distributed by pipelines and terminals, resulting in a lower-volatility blended fuel ultimately sold at retail outlets in the petitioning States.[30]

We first note that volatility controls for gasoline differ across various States and regions within States. Summer gasoline for use in the continental U.S. must comply with either the Federal RVP standard of 9.0 psi or the more stringent RVP standard of 7.8 psi, unless the summer gasoline is either for use in an RFG covered area, is subject to California's gasoline regulations, or EPA has waived preemption and approved a State request to adopt a more stringent RVP standard into a State Implementation Plan (SIP). Most of the U.S. utilizes ''conventional gasoline,'' for which the Federal RVP standard is 9.0 psi, with a 1.0 psi waiver for gasoline blended with 10 percent ethanol. There are also areas that utilize conventional gasoline for which the Federal RVP standard is 7.8 psi, and in such regions, the 1.0 psi waiver also applies for gasoline blended with 10 percent ethanol.[31] Several States have ''boutique'' low-RVP fuel programs or SIP programs [32] that allow the 1-psi waiver for gasoline blended with 10 percent ethanol.[33] Some boutique fuel programs, or SIP-approved fuel programs, however, disallow the 1-psi waiver for gasoline blended with 10 percent ethanol and in those areas, such gasoline must meet the applicable State RVP standard of either 9.0 psi, 7.8 psi, or 7.0 psi.[34] Additionally, approximately 30 percent of the

[27] Evaporative emissions from gasoline—specifically VOCs—are precursors to the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. NO_X and CO can also be ozone precursors. Exposure to ground level ozone can reduce lung function (thereby aggravating asthma or other respiratory conditions), increase susceptibility to respiratory infection, and may contribute to premature death in people with heart and lung disease.

[28] Further detail on this topic is available in the TSD.

[29] Gasoline before oxygenate blending (BOB) means gasoline for which a gasoline manufacturer has accounted for oxygenate (*e.g.,* denatured fuel ethanol) added downstream. See 40 CFR 1090.90. BOB is subject to all requirements and standards that apply to gasoline under EPA's fuel quality regulations, and refineries typically formulate their BOBs with the intent that it will be blended downstream with ten percent ethanol content to maintain compliance with EPA and industry specifications. Conventional BOB (CBOB) is BOB produced or imported for areas outside of RFG areas otherwise known as conventional areas.

[30] Because the gasoline distribution system has been configured to utilize 10 percent ethanol and optimized to utilize the octane value of ethanol, we expect ethanol will be blended at least at the same levels it is blended today. Thus, we anticipate that E10 will continue to be the dominant form of gasoline supplied to the region, but will now be blended into a lower-volatility blendstock produced by refineries.

[31] 40 CFR 1090.215(a)(2) and (b)(1).

[32] Of particular note for this action, seven counties in southeast Michigan that border Ohio have an RVP standard of 7.0 psi in the summer, with a 1-psi waiver for E10.

[33] See *https://www.epa.gov/gasoline-standards/state-fuels.*

[34] 40 CFR 1090.215(b)(3). See also *https://www.epa.gov/gasoline-standards/state-fuels.*

gasoline sold in the U.S. is RFG, which must meet a 7.4 psi RVP standard.[35] The 1-psi waiver does not apply to RFG, and thus E10 that is sold in RFG areas must meet the 7.4 psi RVP standard. This action removes the 1-psi waiver only for conventional gasoline that is sold in the petitioning States and does not apply to gasoline sold in RFG or SIP program areas. However, due to the interconnected nature of gasoline distribution, and the changes required for a new fuel type, impacts on gasoline quality and supply are expected to extend beyond the petitioning States, as further described below.

Before discussing the various steps required to produce and distribute the new lower-volatility gasoline,[36] it is useful to describe the gasoline fuel supply system that is interdependent on its different parts to bring a fuel to market. The first step is fuel production, in which refineries refine crude oil using various processing units and then blend the various blendstocks together in finished gasoline tanks. The next step is fuel distribution, in which the gasoline in these tanks is transported through the fuel distribution system to the final market, mostly by pipelines.[37] These pipelines transport a wide variety of fuels and other products (*e.g.,* gasoline, diesel fuel, jet fuel, heating oil, petroleum blendstocks, etc.), including an array of different grades and types of gasoline (*e.g.,* conventional gasoline, RFG, boutique fuels, and regular and premium grades of each). Each grade and type of gasoline must be segregated from other grades and types to preserve the physical properties of each product. When a pipeline reaches a juncture where it branches out to two different pipelines serving different gasoline markets, a set of short-term storage tanks (''breakout tanks'') are necessary to offload the fuel from the upstream pipeline to enable scheduling the various fuels through the two downstream pipelines. Pipeline systems often have many branches from upstream to downstream pipelines to enable moving the fuel to the downstream markets, and breakout tanks serve an important function in the fuel distribution system. For example, there are approximately 110 breakout tank locations within the petitioning States alone. Pipeline transportation of gasoline to market also involves downstream product terminals and bulk plants, which accumulate gasoline from pipelines and other bulk distribution systems and distribute the gasoline to retail outlets via tank trucks loaded at terminal racks. Each rack can load a premium grade and regular grade gasoline, but some racks can load additional grades and types of gasoline.

To minimize other impacts and enable production and distribution of low-RVP gasoline, refiners and fuel distributors will need time to make capital investments to optimize the fuel production and distribution system to replace the gasoline solely in the petitioning States with low-RVP gasoline. Without capital investments, which can take two years or more to complete, the limited availability of additional storage tanks for the new low-RVP gasoline grades—particularly at pipeline breakout tank locations, but also at refineries and downstream terminals—may result in low-RVP gasoline being sold within both the petitioning States and the immediately adjacent non-petitioning States. This would increase the volume of low-RVP gasoline needed to be produced and distributed to satisfy demand. Over time, we expect refiners and fuel distributors to invest in and optimize the fuel production and distribution system to more efficiently target low-RVP gasoline solely to the petitioning States.

A. Production

Refiners will need to make modifications to their refinery operations to supply low-RVP gasoline. There are 11 petroleum refineries located within the petitioning States; that number increases to 40 when refineries located in States that border the petitioning States are included. Further, additional refineries outside of the immediate region may also modify their operations to provide low-RVP gasoline, as some of the gasoline supply for the petitioning States also historically comes from refineries located further west, east, and south, such as refineries in the Gulf Coast.[38] For example, gasoline sold in Iowa is often produced by refineries located in Texas and distributed via pipeline. Therefore, this action could result in changes in refinery operations both within and outside of the petitioning States and extend to refineries in the Gulf Coast. Prior to the implementation of this rule, most refineries producing gasoline for use in the petitioning States produce a CBOB with an RVP of 9.0 psi during the summer season, with the 1-psi waiver allowing the final gasoline-ethanol blend to meet an RVP standard of 10.0 psi when 10 percent ethanol is added to the CBOB downstream. With the removal of the 1-psi waiver and to enable the final gasoline-ethanol blend to comply with the resulting 9.0 psi RVP standard, refineries that choose to continue producing CBOB for use within the petitioning States will need to make changes to their operations to reduce the volatility of the CBOB distributed to these States to ~8.0 psi.[39] For most refineries operating within and near the petitioning States, removal of the 1-psi waiver will likely result in the refinery choosing to only produce low-RVP CBOB. Refineries operating outside the petitioning States will choose to either produce only low-RVP CBOB for distribution to the petitioning and adjacent States, continue to produce only the current ~9.0 psi RVP CBOB for distribution to areas outside the petitioning States, or both. The limited availability of existing blending/storage tanks at a refinery to handle both gasoline types may prevent the refinery from producing both blendstocks without further capital investment.[40] One commenter submitted a survey with data from refiners in and around petitioning States, which provided information regarding what refiners may have to do to meet the 9.0 psi RVP standard and is further discussed below.[41] Nevertheless, at this time, we cannot predict which of the refineries that currently produce fuel for use in the petitioning States will choose to produce low-RVP CBOB for use in the petitioning States and potentially the

[35] 40 CFR 1090.215(a)(3). The Chicago and St. Louis areas are such RFG areas.

[36] We refer to this new lower-volatility gasoline as ''low-RVP gasoline'' throughout this preamble.

[37] If all gasoline in the country was required to shift to low-RVP gasoline, the impacts would be limited to just refineries. The rest of the fuel distribution system would merely distribute the replacement low-RVP gasoline instead. However, since this action only applies to the eight petitioning states, a new additional type of gasoline is required for the distribution system to also handle.

[38] According to the Energy Information Administration (EIA), 64 million barrels of gasoline were shipped from Petroleum Administration for Defense District (PADD) 3 (Gulf Coast) into PADD 2 (Midwest), which corresponds to about 8 percent of the volume of gasoline consumed in PADD 2. EIA, ''Petroleum & Other Liquids; Movements by Pipeline, Tanker, Barge and Rail between PAD Districts; PADD 3 to PADD 2,'' *https://www.eia.gov/dnav/pet/pet_move_ptb_dc_R20-R30_mbbl_m.htm.*

[39] We refer to this new lower-volatility CBOB as ''low-RVP CBOB'' throughout this preamble.

[40] Certain areas within the petitioning states and other states already have more stringent RVP standards during the summer. Gasoline that refineries produce for these areas would be unaffected by this final rule. Refineries that produce 6.8 psi RVP CBOB for 7.8 psi RVP areas, or 6.4 psi RVP RBOB for RFG areas, could expand production of these gasoline types for use in the petitioning states rather than create a new gasoline type at 8.0 psi RVP. This may reduce distribution cost complexity, but in exchange increase refinery production cost and lower gasoline production volume.

[41] Comment submitted by the American Fuel and Petrochemical Manufacturers (AFPM), Docket Item No. EPA–HQ–OAR–2022–0513–0077.

surrounding States. Unlike a nationwide change to the RVP of CBOB, the regional nature of this action means that not all refineries must adjust their refining processes to reduce the RVP of their CBOB. While it is highly likely that refineries that supply gasoline only to the petitioning States will adjust their refinery processes to reduce the RVP of their CBOB, these refineries could choose to avoid the necessary investments and provide 9.0 psi RVP CBOB to non-petitioning States instead if they are able to reach those markets.

Throughout the year, refineries must adjust the volatility of their gasoline—typically lowering the volatility of the gasoline in the summer and increasing the volatility in the winter by adjusting the quantity of light hydrocarbons in their gasoline. Refineries typically control gasoline volatility by adjusting the amount of butane in gasoline, but sometimes they need to also modify the amount of pentane or natural gas liquids (NGLs). Refineries providing fuel to the petitioning States will have to modify their summer gasoline production operations and potentially add capital equipment to accommodate the 9.0 psi RVP standard. A refinery's ability to adapt to the 9.0 psi RVP standard and the time that it takes to do so depends on the refinery's structure, operations, and the mix of crude oil types that it processes.[42]

In addition to contributing to gasoline's volatility, butane also contributes to gasoline's octane and volume. Thus, when removing butane, refineries must also make other changes to replace the lost octane to keep the gasoline consistent and in compliance with EPA regulations and industry specifications. Refineries could produce more alkylate or reformate, which are two high octane gasoline blendstocks, to make up the lost octane. We estimate that the amount of butane that would have to be removed to produce a gasoline 1-psi lower in RVP amounts to about two volume percent of the volume of gasoline. However, comments from the refining industry described how at least some refineries would need to not only remove butane, but some less-volatile hydrocarbons as well (*e.g.,* light straight run naphtha (LSR) or NGLs). Since LSR and NGLs are less volatile than butane, refineries would need to remove significantly more of those hydrocarbons to realize the same 1-psi reduction in RVP, perhaps up to 10 volume percent. Such a change would have a smaller reduction in octane, however. Removing butane and these other light hydrocarbons from the summer gasoline sold in the petitioning States would reduce the supply of gasoline in those States.

Regardless of how a refinery is modified to reduce the RVP of its gasoline, it will result in additional output of the removed butane or other light hydrocarbons. If excess onsite butane storage capacity is available, the refinery has the option of saving excess butane on-site for use in winter gasoline production, which would minimize the cost impact of producing low-RVP CBOB. However, if excess butane storage is not available, the refinery would then need to store it offsite (*e.g.,* in caverns), sell it, or export it. This may require additional butane railcars and refinery upgrades for handling railcars to transport the butane. Refineries may also utilize some portion of the butane as a feedstock to their alkylation unit. In the near term, the large influx of excess butane may exceed the existing storage capacity, transport capacity, amount desired in the markets, or alkylation unit capacity. Without an outlet for the excess butane, this could then limit the refinery's ability to produce low-RVP CBOB, further reducing the supply of low-RVP gasoline. If a refinery is removing LSR or NGLs from its gasoline, these gasoline blendstocks could be sold to another refinery that could blend them into its gasoline, but the purchasing refinery would then need to remove butane to compensate for the RVP impact of the LSR or NGLs. This gasoline blendstock switching would help to offset the volume reductions associated with producing low-RVP CBOB.

Given the high demand for gasoline in the summer months, refineries often begin producing summer gasoline for storage well ahead of the upcoming high ozone season. This process can begin as early as December of the year prior to the applicable high ozone season, and thus storage of a differing volatility of fuel could impact the refinery's ability to utilize the fuel the next summer without further modification.

B. Distribution

As discussed above, removal of the 1-psi waiver will require refineries that distribute gasoline to the petitioning States to produce low-RVP CBOB. There are three primary groups within the distribution chain that will be impacted: refineries, pipelines (with their breakout terminals), and downstream product terminals.

1. Refinery Distribution

Most refineries have an onsite terminal with numerous product storage tanks wherein they accumulate and store the range of products that they produce prior to placing the products into the distribution system. Once a refinery accumulates a sufficient volume of a gasoline type and confirms that it meets the applicable gasoline specifications, the refinery then schedules the shipment of that batch of gasoline to downstream markets. Shipment can occur via an onsite product terminal analogous to that discussed in Section V.B.3 where trucks load product and deliver to retail outlets. However, most gasoline produced by refineries is loaded onto product pipelines for delivery to downstream product terminals. In some cases, refineries also distribute product by rail or barge. For those refineries that distribute most or all of their gasoline to the petitioning States, removal of the 1-psi waiver will have little impact on their distribution operations. They can switch over their existing product tanks to hold only low-RVP CBOB. Instead of transitioning from winter CBOB RVP levels (up to 15 psi) to a 9.0 psi RVP CBOB in the summer, they would instead transition to low-RVP CBOB. However, refineries that produce gasoline for both petitioning and non-petitioning States will likely need additional tanks, pipes, manifolds, and control systems to store the additional grades of gasoline. The time needed to plan, design, permit, and construct additional tankage is typically on the order of two or more years. Until this can be accomplished, a refinery that lacks the additional tankage will likely need to shift all its production to low-RVP CBOB. However, this can be avoided if unused systems already exist or other products are discontinued.[43] The market may go through a ''sorting out'' process, wherein some refineries shift their historic markets, with some changing to producing only low-RVP CBOB and others continuing to produce only 9.0 psi RVP CBOB. This could result in some low-RVP CBOB flowing in from outside the petitioning States (*e.g.,* from Gulf Coast refineries). Due to tankage and logistical limitations, some refineries serving both markets may initially shift all their production to low-RVP CBOB. This would result in low-RVP CBOB being distributed to the surrounding States, which would ease gasoline supply availability concerns,

[42] Further discussion of the changes we expect from refineries associated with removal of the 1-psi waiver is available in the TSD.

[43] Alternatively, some refineries may shift all premium grade fuel to low-RVP CBOB, while producing both 9.0 psi and low-RVP CBOBs for regular grade fuel.

but at the same time add to the overall reduction of gasoline supply due to butane and other light hydrocarbon removal. Terminals servicing low-RVP CBOB outside the petitioning States that have butane blending facilities could purchase some of the excess butane being removed by refineries and inject it into their CBOB to bring the fuel up to 9.0 psi RVP since the gasoline in their area would not require the low-RVP fuel.

For those refineries that have excess tankage or invest in new tankage to allow the production of both 9.0 psi and low-RVP CBOB, they would also need to adjust their operations and schedules for loading gasoline blendstock onto pipelines, barges, or rail to split their production into separate product streams. These logistical changes would initially take some period of time in order to occur smoothly and safely, but should streamline over time.

2. Pipelines and Pipeline Breakout Terminals

Most fuel in the U.S. flows from refineries to consumer markets via pipeline systems. As described in the TSD, there are several pipeline systems serving the petitioning States, the vast majority of which serve both petitioning and non-petitioning States. Consequently, the addition of the low-RVP CBOB in the petitioning States will require significant changes in the operations of the pipeline systems. What is currently one large conventional fuel market distributing primarily 9.0 psi RVP CBOB will also need to distribute the new low-RVP CBOB. There will thus be a period where the pipeline systems go through a planning and optimization process to assess what gasoline type must be supplied to the pipeline to comply with the new fuel requirement. If a pipeline primarily serving the petitioning States is only equipped with breakout tanks compatible with a single gasoline type, the pipeline company will likely mandate that refiners solely provide that gasoline type. Decisions from refineries on whether they will supply low-RVP CBOB, and at what volumes, will be necessary to inform the planning and optimization process by pipeline systems. All of this can have impacts on gasoline supply not only to the petitioning States, but also to the surrounding States in the short term. Having the wrong fuel types in the wrong volume can result in an inability for the pipeline to move fuel in and out of tankage as needed, which, in turn, can result in significant supply disruption not only for the gasoline type in question, but also for all the fuels shipped on the pipeline. For the longer term, due to the market splitting into different types, some areas in the petitioning States may lose access to available markets of supply, which may then lead to more frequent shortfalls in supply during times of disruption (*e.g.,* refinery fire, pipeline outage, hurricane, etc.).

Some pipeline companies operate a fungible distribution system. This allows them to collect a standard type of gasoline from refineries into their system, ''transport'' the barrels virtually, and draw out identical barrels at their destination. The barrels delivered are not actually the purchased barrels from the refinery, but rather the same product from a different refinery meeting the same product specifications. An additional type of gasoline would disrupt their ability to function as efficiently using the fungible system. This increases the complexity associated with ensuring products can be distributed to locations in the timeframe needed to ensure supply to the market.

The most significant impact on pipeline operations caused by the removal of the 1-psi waiver, however, will be on pipeline breakout tankage operations. Breakout tankage is required at junctions where pipelines connect with other pipelines that have differing schedules and flow rates. Thus, the pipelines typically need tankage to store every grade and type of product distributed on the pipeline, with the size and configuration of the tankage matched to the product and pipeline batch sizes. If new regular and premium grades of low-RVP CBOB need to be shipped on the pipeline, then it may require the addition of new tankage at these breakout tank facilities. The planning, permitting, and construction of such additional tankage would require two or more years and is likely to be an issue at many breakout tankage facilities both inside and outside the petitioning States. Until this additional breakout tankage can be brought into service, an impacted pipeline serving the petitioning States may be restricted to solely distributing either 9.0 psi or low-RVP CBOB, limiting gasoline supply to either the petitioning States or the surrounding States, and in turn restricting what the refineries shipping on the pipeline are able to produce if the pipeline restrictions do not allow for the distribution of a particular type of gasoline. Some pipelines may opt to carry one fuel type and some the other, limiting the product offerings at the various downstream product terminals. As with the refineries, it may be that due to tankage and logistical limitations, pipelines currently serving both petitioning and non-petitioning States will have to initially shift all the gasoline they carry to low-RVP CBOB, which is fungible in both markets. This will result in low-RVP CBOB being supplied in the surrounding States and additional reduction in supply of gasoline due to the necessary removal of butane and other light hydrocarbons. Pipelines would have the option to blend in butane during gasoline transport to the States with the 1-psi waiver that are located at the end of the pipeline systems (*e.g.,* North Dakota and Michigan). This would provide a market for some of the excess butane from refineries producing low-RVP CBOB and could reduce consumer costs in the border States by blending up to 9.0 psi RVP CBOB. It could also allow more low-RVP CBOB to be produced if there are constraints in the markets for butane. However, like refineries, many pipeline and terminal facilities do not currently have the existing infrastructure to utilize butane blending. Additional tankage and equipment may be needed to maximize the potential of this opportunity.

3. Product Terminals

The potential impact of the removal of the 1-psi waiver on product terminals varies depending on whether the terminals provide gasoline only to the petitioning States, or to non-petitioning States as well. Those terminals that only provide gasoline to the petitioning States will be little impacted, as they will simply take delivery of replacement grades of low-RVP CBOB beginning in the spring leading into the summer season. They will not have to contend with adding additional fuel grades and types and the tankage and logistics associated with them. This will most likely not be the case for terminals that serve areas both within and outside the petitioning States. If such terminals do not have sufficient onsite tankage capacity to handle the additional regular and premium grades of low-RVP CBOB, then they will need to either add the tankage or choose to serve one market or the other. The decision to serve a particular market or fuel type may also be dictated by a fuel marketer on the retail side. Both options could have gasoline supply, cost, and price impacts both within the petitioning States and in the surrounding areas the terminals serve. Approximately 75 such terminals are located close to the borders (*i.e.,* 30 miles) between petitioning States and

non-petitioning States.[44] These terminals are more likely to provide gasoline to both petitioning and non-petitioning States and will need to change their gasoline distribution patterns if they lack extra tankage to handle the additional low-RVP CBOB grades. Since terminals can serve gasoline markets up to 200 miles away, the number of terminals impacted could be significantly greater. If limitations in the fuel distribution system cause low-RVP CBOB to be sold in a significant portion of the surrounding States to improve fungibility of gasoline near the petitioning States, the potential impact on terminals will be reduced.

Regardless of whether a terminal serves only the petitioning States, or also non-petitioning States, all terminals will be impacted to some degree by a somewhat more challenging transition in the spring from winter to summer fuel due to the removal of the 1-psi waiver, particularly in the first year. While this transition occurs every year as the terminals blend down the volatility of the CBOB they have in storage from the higher RVP of winter CBOB to the lower RVP of summer CBOB, the change of having to blend down an additional 1.0 psi to accommodate low-RVP CBOB instead of 9.0 psi RVP CBOB will require some additional time and incur additional cost. In order to achieve the volatility of low-RVP CBOB, pipelines and terminals will likely need to blend down their winter CBOB with a summer CBOB that has an RVP as low as 6.0 psi during this transition period. Additionally, terminals will likely take steps to ensure their tanks are drained as low as possible prior to receiving a low-RVP CBOB to ensure the finished gasoline will comply with the 9.0 psi RVP standard, which could result in additional delays before the low-RVP CBOB begins moving to markets. This will likely occur more frequently at terminals located within and near the border of the petitioning States.

4. Tank Trucks

Moving gasoline to market also involves tank trucks that deliver the gasoline to retail outlets. For terminals located within the petitioning States, their operations should be little impacted by the removal of the 1-psi waiver; they will simply pick up a different type of gasoline from the product terminal than they did before and can transport it to market, even outside the petitioning States if the terminal normally covers the area. However, depending on the changes in product offering at the terminals, there may still be considerable stress on their operations. If some refineries, pipelines, or terminals limit their product offering to either 9.0 psi or low-RVP CBOB, especially in the near term, then the tank trucks would need to shift their operations accordingly. In some cases where there is a loss of fuel fungibility, this is expected to increase the distances traveled, which may in turn require the purchase of additional tank trucks and hiring of additional drivers. As with the rest of the fuel distribution system, this can all be accomplished, but will take some time for the market to respond and optimize around the new norms.

C. Retail Operations

The removal of the 1-psi waiver and resulting transition from 10.0 psi RVP gasoline to 9.0 psi RVP gasoline received from the terminal should be minor for retail outlets—they will simply take delivery of the lower-volatility gasoline from the terminal. The most noticeable effects will be seen at retail outlets near the borders of States maintaining the 1-psi waiver, as the cost of 9.0 psi RVP gasoline within the petitioning States is likely to be higher than that of 10.0 psi RVP gasoline across the border in non-petitioning States. Retailers within the petitioning States may have to charge higher prices to recoup this cost, which could result in consumers preferentially choosing to refill at stations across the border when possible.[45] Retail operations located near State lines on the border of petitioning and non-petitioning States may have issues scheduling gasoline shipments to their retail outlets if tank trucks are shipping their gasoline from terminals located further away and if there is an initial shortage of tank truck operators, particularly at the beginning of the transition to the new 9.0 psi RVP gasoline. As with the rest of the distribution system, this can all be accomplished, but will take some time for the market to respond and optimize around the new norms.

VI. Implementation and Effective Date

A. Statutory Provisions

Under CAA section 211(h)(5)(C), the regulations removing the 1-psi waiver shall take effect on the later of: (1) The first day of the first high ozone season for the area that begins after the date of receipt of the notification; or (2) 1 year after the date of receipt of the notification. The high ozone season is defined in EPA's regulations as ''June 1 through September 15 for retailers and [wholesale purchaser consumers (WPCs)], and May 1 through September 15 for all other persons,'' which includes gasoline distribution terminals.[46]

In applying this provision for the petition dated April 28, 2022, the later date is April 28, 2023. Therefore, the earliest date on which the removal of the 1-psi waiver for Illinois, Iowa, Nebraska, Minnesota, South Dakota, and Wisconsin could have been effective was April 28, 2023. This date would have been in advance of the high ozone season beginning May 1, 2023. For the petition from Ohio, dated June 10, 2022, the later date is June 10, 2023. This would have placed the effective date within the 2023 high ozone season (*i.e.,* 10 days after the beginning of the high ozone season for retailers and WPCs, and 41 days after the beginning of the high ozone season for all other parties). Finally, for the petition from Missouri, dated December 21, 2022, the later date is December 21, 2023.[47] This would have placed the effective date after the 2023 high ozone season.

Further, under CAA section 211(h)(5)(C), the effective date can be extended if EPA, on its own motion or on petition from any person, after consultation with the Secretary of Energy, determines there would be an insufficient supply of gasoline in a State that has requested the removal of the 1-psi waiver for E10.[48] Section 211(h)(5)(C) further provides that the effective date can be extended for not more than one year, and that EPA may renew the extension for two additional periods, each of which shall not exceed one year.

As described above, EPA is allowed to extend the effective date of the removal of the 1-psi waiver upon a finding of ''insufficient supply of gasoline in the [petitioning] state'' that would result from ''the promulgation of the regulations [to remove the 1-psi waiver].'' [49] ''Insufficient supply of gasoline'' is not defined in the statute, and thus EPA is interpreting and applying the phrase in a manner that is consistent with the structure of the statute, historical application of similar

[44] EIA, U.S. Energy Atlas—Oil and Natural Gas Maps, *https://www.eia.gov/maps.*

[45] This phenomenon is observed today in SIP and RFG areas.

[46] 40 CFR 1090.80. We note that given the current definition of ''high ozone season,'' the later date will always be one year after receipt of the request from a Governor.

[47] We recognize that the Missouri petition requested that the removal take effect for the 2023 high ozone season. However, such an effective date was not permissible under CAA section 211(h)(5)(C).

[48] CAA section 211(h)(5)(C)(ii).

[49] CAA section 211(h)(5)(C).

or related provisions, and congressional intent. We interpret ''insufficient supply of gasoline'' to require a demonstration that gasoline supply disruptions would result from removal of the 1-psi waiver, such that the necessary quantities of gasoline may not be available in the States at the time they are required. It is particularly appropriate in this case to consider the possibility of supply disruptions because this action calls for a different type of gasoline to be physically produced and transported to and within the petitioning States. CAA section 211(h)(5) also indicates that our analysis of ''insufficient supply'' should be ''in the State'' petitioning for the removal of the 1-psi waiver. That is, if there was insufficient supply only in a single State, we could extend the effective date for that State only. This contrasts with CAA section 211(c)(4)(C)(iii)(I), which calls for consideration of supply constraints in ''the smallest geographic area.'' Therefore, our analysis properly considers any state-specific factors, and examines the supply in the State.

In considering the likelihood of supply disruptions, we look to the entire production and distribution chain, from the refineries where gasoline is produced, through distribution systems such as pipelines and trucking, and ultimately to the retail outlets. This reading is also similar to EPA's interpretation of other provisions in CAA section 211 that call for consideration of constraints on fuel supply when EPA is acting on petitions within the fuels program. For instance, CAA section 211(k)(6)(A)(ii) allows EPA, after consultation with the Department of Energy, to extend the effective date for a State that has petitioned to opt into the RFG program for a period that is up to one year from the date of receipt of the petition upon a finding of insufficient domestic capacity to produce RFG. A related provision in CAA section 211(k)(6)(B)(iii) allows EPA to extend the effective date for areas within the ozone transport region established under CAA section 184 that opt into RFG, upon a finding of insufficient capacity to supply RFG. Like the phrase ''insufficient supply of gasoline'' in CAA section 211(h)(5)(C), the statute does not define either ''insufficient domestic capacity'' or ''insufficient capacity to supply RFG.'' But in acting on petitions to opt into the RFG program, EPA has explained that setting the effective date allows EPA to consider any sudden and unexpected increases in the demand for RFG on the local supply and distribution system that is caused by an opt-in.[50]

EPA's reading of ''adequate supply'' in CAA section 211(c)(4)(C)(ii) comports with our interpretation of CAA section 211(h)(5)(C) given that Congress intended for EPA to act in certain unique emergency circumstances to relieve supply disruptions within the ''motor fuel distribution system.'' [51] And while ''motor fuel distribution system'' is not defined in the statute, EPA's historical practice in granting waivers under CAA section 211(c)(4)(C)(ii) has been to consider all stages of the gasoline production and distribution system within States that are experiencing emergency circumstances.

In contrast, the phrase ''insufficient supply of gasoline'' differs from other sub-provisions of CAA section 211 allowing for waivers of applicable requirements as well as implementation delays that use language such as ''inadequate domestic supply.'' [52] The D.C. Circuit has provided guidance on the meaning of ''inadequate domestic supply'' in CAA section 211(o)(7)(A)(ii), finding that EPA may properly consider ''supply side factors—such as production and import capacity,'' but not downstream effects.[53] The court, in viewing the statutory scheme of the RFS program, further specified that the supply of renewable fuel to refiners, blenders, and importers properly considers the factors necessary to get renewable fuel to refiners, blenders, and importers, but not to market actors ''downstream from refiners, importers, and blenders.'' We find that the analysis under CAA section 211(h)(5) extends to include market actors downstream from refiners, importers, and blenders, as the gasoline distribution system is a key component to the availability of gasoline in the State.[54] The analysis properly considers production factors, as well as the distribution of fuel from the refinery, through the distribution chain (including pipelines and terminals) to the ultimate endpoint of the gasoline distribution chain—the retail outlet. Further, CAA section 211(h)(5) explicitly contemplates the ''supply of gasoline in the State.''

Finally, we note that consideration of the effective date for this action properly considers supply to the ultimate consumer given the statutory language ''in the State.'' Therefore, our analysis of ''insufficient supply of gasoline'' properly considers all stages of the gasoline production and distribution system, from the refinery to the retail outlet.

B. Finding of Insufficient Supply for 2024 and Renewal of Extension of Effective Date

CAA section 211(h)(5)(C)(ii)(I) requires a determination of insufficient supply of gasoline in order to extend the effective date of the removal of the 1-psi waiver. We determined that a 2023 implementation date would result in insufficient supply of gasoline and proposed an effective date of April 28, 2024, for removal of the 1-psi waiver in all petitioning States.[55] We also sought comment on renewing the extension of the effective date for removal of the 1-psi waiver for an additional year (*i.e.,* until the summer of 2025).[56] We received comments for and against the proposed effective date. Commenters against the proposed dates argued that we could still implement the rule for the 2023 summer season, despite the mere two weeks between the end of the comment period and the beginning of the 2023 summer season for terminals and refiners. Commenters in support of the proposed delay argued that a 2023 effective date would be either ''impractical'' or ''impossible.''

Further, in response to and after the proposal, we received petitions from numerous stakeholders requesting a delay of the proposed effective date until either 2025 or 2026. These stakeholders posited that the extension of the effective date would be supported by the Administrator's finding of insufficient supply of gasoline pursuant to CAA section 211(h)(5)(C)(ii)(I).[57]

[50] 62 FR 30261, 30263 (June 3, 1997) (''Section 211(k)(6)(A) of the Act gives the Administrator discretion to 'establish an effective date * * * as he deems appropriate* * *.' EPA interprets this provision to mean that it has broad discretion to consider any factors reasonably relevant to the timing of the effective date. This would include factors that affect industry and the potential opt-in area. The factors that affect industry could include productive capacity and capability, other markets for RFG, oxygenate supply, cost, lead time, supply logistics for the area, potential price spikes, and potential disruption to business.'')

[51] CAA section 211(c)(4)(C)(iii)(V).

[52] CAA sections 211(m)(3)(C) and (o)(7)(A)(ii).

[53] *Americans for Clean Energy* v. *EPA,* 864 F.3d 691, 710 (2017).

[54] CAA section 211(h)(5)(C) explicitly contemplates the ''supply of gasoline in the State.''

[55] At proposal, we further explained that the effective date for Ohio, would have been within the 2023 high ozone season (*i.e.,* 10 days after the beginning of the high ozone season for retailers and WPCs, and 41 days after the beginning of the high ozone season for all other parties), while the effective date for Missouri would have been December 21, 2023, or after the 2023 high ozone season. 88 FR 13762 (March 6, 2023).

[56] 88 FR 13767 (March 6, 2023).

[57] Petition from Magellan (September 16, 2022); Petition from API (September 23, 2022); Petition from Flint Hills Resources (September 29, 2022); Petition from Phillips 66 (September 29, 2022); Petition from AFPM and other parties (October 14, 2022); Petition from HF Sinclair (October 17, 2022);

Continued

After consideration of comments and extension petitions, EPA is acting on its own motion to renew the extension of the proposed effective date for an additional year from April 28, 2024, to April 28, 2025. In sum, the circumstances that justified a finding of insufficient supply of gasoline and extension of the effective date for 2023 have not attenuated. Additionally, we have consulted with the Department of Energy, consistent with the CAA section 211(h)(5)(C)(ii)(I). We are not acting on petitions that requested a 2026 effective date, and these petitions remain pending. In this section we discuss our finding that there would be an insufficient supply of gasoline in 2024.

At proposal, we provided the rationale for our determination of insufficient supply for 2023; we assessed the following three supply constraints: (1) Low gasoline inventories; (2) The limited time available for coordination between various parties to make the necessary physical changes to the gasoline production and distribution infrastructure; and (3) The physical loss of supply necessary to produce low-RVP CBOB. We determined that these constraints would likely have led to supply disruptions in the petitioning States in 2023.[58]

We have now assessed gasoline supply impacts associated with an effective date in 2024 and updated our analyses of these supply constraints.[59] As discussed further in detail below and in the TSD, our updated analyses found: (1) Continued low gasoline inventories in PADD 2; (2) The limited time available after the promulgation of this action for coordination between various parties to make the necessary physical changes to the gasoline production and distribution infrastructure; and (3) Greater reduction in supply as a result of the removal of the 1-psi waiver than estimated at the time of the proposal. We also considered the following: (1) The lack of sufficient time to make the capital investments and physical changes to refineries and the fuel distribution system; and (2) Less flexibility within the fuel distribution system than had been anticipated to adequately mitigate the supply reduction until such time as the capital and physical changes can be made. We are therefore renewing the extension of the delay of the effective date for an additional year to April 28, 2025.

Since proposal, we have conducted an updated analysis to quantify the reduction in gasoline supply that would result from the removal of the 1-psi waiver. At proposal, we estimated the reduction in supply as 20 thousand barrels per day (kbpd) based on the removal of light hydrocarbons—mostly butane—to reduce the volatility of CBOB.[60] In response to our proposal, AFPM commissioned a study of supply reductions that quantified the reduction in gasoline supply at 88–120 kbpd.[61] We also conducted a series of meetings with refiners regarding the supply impacts associated with the removal of the 1-psi waiver in the petitioning States.[62] As further described in the TSD, based on our discussions with refiners and our review of the comments, we now estimate that gasoline production by refineries supplying gasoline to the petitioning States would likely decrease by 30–80 kbpd as a result of the transition to low-RVP CBOB. Our estimate increased from the proposal primarily because a significant number of refineries that choose to produce low-RVP CBOB will need to reduce other less-volatile hydrocarbons (*e.g.,* NGLs), which will have a larger impact on gasoline supply. On average, refineries producing low-RVP CBOB are estimated to produce 3–4 percent less gasoline compared to producing 9.0 psi RVP CBOB, particularly when removal of the 1-psi waiver is first implemented. We acknowledge that the possibility of drawing down gasoline inventories, increasing gasoline supply from other regions (*e.g.,* Gulf Coast), and reblending some higher-volatility gasoline blendstocks at terminals in non-petitioning States could mitigate the supply reduction to some extent. However, we believe that these mitigating actions would fall far short of offsetting the projected supply reductions for the 2024 summer season.

Further, at proposal we noted that while the gasoline inventories in PADD 2 (the affected region) was low, we believed that it would likely return closer to historic levels due to the previously shut-down Midwest refineries returning to operation. However, even though these refineries have since come back online—increasing gasoline production in the region—the gasoline inventories in PADD 2[63] have continued to be at levels of concern.[64] Furthermore, we have been made aware of the fact that refiners have had a heavy maintenance season at their refineries in the fall of 2023 and are planning a heavy maintenance season for the first quarter of 2024. This means that gasoline production capacity will be taken offline for several months at a key time during the winter season when gasoline inventories are typically replenished prior to the next summer season.[65] Additionally, gasoline demand is still expected to increase. EIA estimates that national gasoline demand will increase by 60 kbpd in 2024 compared to 2023, further straining gasoline inventories and supply.[66] Thus, we anticipate that gasoline inventories in PADD 2 will not recover sufficiently by the 2024 summer season to alleviate the estimated loss of gasoline supply that would occur when low-RVP CBOB is produced. Further, due to a separate and unrelated regulatory action, the prohibition on sale of conventional gasoline in the Denver metropolitan area began on November 7, 2023. This means that

Petition from Magellan (August 19, 2023); Petition from Kevin Stitt, Governor of Oklahoma (August 25, 2023); Petition from API (September 29, 2023); Petition from AFPM (September 29, 2023); Petition from Sarah Huckabee Sanders, Governor of Arkansas (October 9, 2023); Petition from Superior Refining (October 13, 2023); Petition from Phillips 66 (October 18, 2023); Petition from CountryMark (October 25, 2023); Petition from Yesway (November 1, 2023); Petition from HF Sinclair (November 15, 2023).

[58] Our detailed finding of insufficient supply for 2023 can be found at 88 FR 13767 (March 6, 2023).

[59] EPA also received several petitions for further delay beyond 2024. See Petition from Magellan (August 25, 2023); Petition from Kevin Stitt, Governor of Oklahoma (August 25, 2023); Petition from API (September 29, 2023); Petition from AFPM (September 29, 2023); Petition from Sarah Huckabee Sanders, Governor of Arkansas (October 9, 2023); Petition from Superior Refining (October 13, 2023); Petition from Phillips 66 (October 18, 2023); Petition from CountryMark (October 25, 2023); Petition from Yesway (November 1, 2023); Petition from HF Sinclair (November 15, 2023).

[60] ''Technical Support Document for the Proposed Removal of the 1-psi Waiver,'' available in the docket for this action.

[61] Baker and O'Brien, ''Midwest States Gasoline RVP—1 psi Waiver Study, Report for American Fuel and Petrochemical Manufacturers,'' February 24, 2023. Submitted as part of comments from AFPM, Docket Item No. EPA–HQ–OAR–2022–0513–0077.

[62] Memorandum to the Docket: Meeting Log for Requests from States to Remove the Gasoline Volatility Waiver.

[63] Low gasoline inventories in PADD 2 were an additional bases for the emergency fuel waivers issued under CAA section 211(c)(4)(C)(ii)(I) during the summer of 2023. See Letter from EPA Administrator to Governors, ''May 1, 2023, E15 Reid Vapor Pressure Fuel Waiver,'' April 28, 2023 (''The Midwest region—the region that has the most ability to increase supply with blending an increased percentage of ethanol—has gasoline stocks below the five-year seasonal average for this time of year.'').

[64] Based on our discussions with EIA, gasoline supply begins to be a concern when gasoline inventories drop below the 5-year minimum for any particular PADD.

[65] Bloomberg News, ''Nearly 2.5 Million Barrels a Day of US Refining Capacity to Shut for Fall Maintenance,'' October 2, 2023, *https://www.bnnbloomberg.ca/nearly-2-5-million-barrels-a-day-of-us-refining-capacity-to-shut-for-fall-maintenance-1.1979186.*

[66] EIA, Annual Energy Outlook (AEO) 2023, Table 11, *https://www.eia.gov/outlooks/aeo.* AEO 2023 also estimates that gasoline demand will decrease by 140 kbpd in 2025 relative to 2024.

gasoline sold in that area must comply with a 7.4 psi RVP requirement beginning with the 2024 summer season.[67] This is expected to cause an additional 5–10 kbpd reduction in gasoline supply in the same 2024 summer season. Although Denver is not in a petitioning State, some gasoline is currently supplied to this region from refineries that also produce gasoline for the petitioning States, resulting in additional strain on gasoline supply in the region.

As also described in Section V and the TSD, capital investments will be necessary for some refiners and fuel distributors to accommodate a transition to low-RVP CBOB in the petitioning States. This includes investments for the storage of additional gasoline types and grades, storage of excess butane and LSR, and associated measures for piping, pumping, and spill containment. We also anticipate that refineries would need to debottleneck debutanizers and octane-producing units to enable the production of low-RVP CBOB.[68] These capital investments typically require time to come online. For example, projects to debottleneck existing refinery units typically require 2–2.5 years to engineer, design, purchase, permit and install. Under an assumption that refiners and fuel distributors could have begun the planning process for debottlenecking a refinery unit or installing a gasoline storage tank after the first State filed its petition in April 2022, or after EPA proposed to remove the 1-psi waiver in the petitioning States in early 2023, there would be insufficient time prior to the summer of 2024 to complete the desired capital additions. However, based on discussions with refiners, pipeline operators, and terminal operators, as well as public comments, many of the needed capital investments were not initiated in 2022 due in part to: (1) The uncertainty created by several States rescinding their petitions during 2022; (2) The emergency fuel waivers under CAA section 211(c)(4)(C)(ii)(I) extending the 1-psi RVP waiver to E15 during the 2023 summer season; [69] and (3) Potential congressional action that would extend the 1-psi waiver to E15 nationwide.[70] Without initiation in 2022, many of the necessary capital investments are unlikely to be completed by the summer of 2024.

In addition, supplying the new low-RVP CBOB will require coordinated investments, planning, and actions between refineries, pipelines and other fuel distribution companies, terminals, and retail outlets. Typically, this coordination occurs before winter to provide the fuel production and distribution system a chance to make the proper preparations; we are now past the point in the calendar when such coordination typically occurs. We are also entering into the timeframe when most refineries have already started producing summer gasoline. As such, refineries will not have sufficient and appropriate notice to begin modifying their fuel supply for the summer of 2024.

Finally, we assumed at proposal that flexibility within the fuel production and distribution system could allow refiners and fuel distributors to mitigate the projected 2024 summer season supply reduction until such time as capital and physical changes could be completed. However, based on subsequent comment and analysis, we now believe that the existing flexibility would not be sufficient, particularly in light of the larger anticipated supply reduction and lingering low gasoline inventories in PADD 2.

For the above-mentioned reasons, supported by additional detail and analysis in the TSD, we are making a determination that there will be an insufficient supply of gasoline in the petitioning States in the 2024 summer season and, therefore, are renewing the extension of the effective date of the removal of the 1-psi waiver by an additional year to April 28, 2025.[71]

VII. Cost and Price Impacts

There are associated costs with the changes to the refining and gasoline distribution systems described in Sections V and VI. Part of the costs will be incurred by the refining sector, while another portion will be incurred by the gasoline distribution system. Gasoline refining costs will increase due to several factors, the largest portion of which is the lost opportunity cost for refiners having to sell the removed light hydrocarbon material at lower market prices instead of blending this material into high value summer gasoline. To the extent that refiners and distributers install capital equipment, there are also additional capital and associated operating costs that will need to be recouped over time. These costs will be passed along to consumers in the petitioning and surrounding States in the form of higher gasoline prices.

With respect to consumer fuel prices, while fuel prices generally reflect fuel costs in the competitive gasoline market, this may not be the case when removal of the 1-psi waiver is first implemented, as gasoline supply will be reduced and not yet recovered. Due to the reduced supply, there will likely be a reduction in PADD 2 gasoline inventories, which could further increase gasoline prices. Due to the challenges that some refiners may have in producing low-RVP CBOB and the associated impacts on gasoline inventories, fuel prices will likely exceed fuel costs because the marginal cost producer will set the fuel price. This will likely affect gasoline prices in both petitioning and non-petitioning States and result in higher gasoline prices at the pump for consumers. The potential cost and price impacts due to the removal of the 1-psi waiver are discussed in more detail in the TSD.

As discussed above, under the relevant CAA provisions, upon receiving a petition from a State Governor that is accompanied by a successful demonstration of emissions increases as a result of the 1-psi waiver, EPA is required to remove the 1-psi waiver in the areas requested by the Governor. In deciding whether to grant the petition, the statute does not provide EPA with the authority to consider fuel cost or price impacts and we assume that any fuel cost or price impacts to consumers were taken into consideration by the Governors of the petitioning States in submitting their petitions. Therefore, regardless of the magnitude of the impact of this action on fuel costs or prices, EPA has not considered them in this action.

VIII. Associated Regulatory Provisions

In the NPRM, we proposed changes to the fuel quality regulations at 40 CFR part 1090 to implement the removal of the 1-psi waiver in the petitioning States. Specifically, we proposed to include new designation and associated product transfer document (PTD) language requirements and a regulatory

[67] 87 FR 60926, 60932–33 (October 7, 2022).

[68] Capital grassroots projects typically require 3–4 years to engineer, design, purchase, permit and install. Smaller projects that can ''debottleneck'' individual refinery units (*e.g.,* replacing a furnace, heat exchanger, or reactor) typically require 2–2.5 years to complete, while much smaller projects (*e.g.,* replacing a valve or pump or adding or increasing the size of piping) may be designed and completed in a year or less. These types of capital investments can help a refinery produce additional low-RVP CBOB. Shell, ''Thriving in the new reality: Refinery revamp projects FAQ; Shell Catalysts and Technologies,'' *https://www.shell.com/business-customers/catalysts-technologies/resources-library/refinery-revamp-faq.html.*

[69] From April 28, 2023, to August 28, 2023, EPA issued a waiver under CAA section 211(c)(4)(C)(ii)(I) that facilitated E15 sales during the summer of 2023.

[70] See, *e.g.,* comments from Magellan (Docket Item No. EPA–HQ–OAR–2022–0513–0042), API (Docket Item No. EPA–HQ–OAR–2022–0513–0056), and HF Sinclair (Docket Item No. EPA–HQ–OAR–2022–0513–0076).

[71] Discussion of the supply circumstances in the summer of 2025 is available in TSD Section 7.

mechanism for States to request the reinstatement of the 1-psi waiver under CAA section 211(h)(5). We are finalizing these changes as proposed, and we respond to comments received on the proposed regulatory changes in the RTC document.

A. New Designation and Associated PTD Language

We are finalizing as proposed a new designation and associated PTD language for summer CBOB in States where the 1-psi waiver for E10 has been removed under CAA section 211(h)(5).[72] Designations and PTD language requirements help ensure that batches of fuel are distributed and used in a manner consistent with EPA's fuel quality requirements. Without proper designation, summer gasolines with different volatilities intended for use in different areas may get commingled in a fungible system, causing the introduction and use of non-compliant gasoline in areas that require lower-volatility fuels in the summer. Similarly, PTD language serves to ensure that parties in the fuel distribution chain are aware of the designation of the fuel and accompanying Federal requirements for the distribution and use of the fuel. Because we are finalizing requirements for a new type of summer CBOB in this action, we need to create a new designation and accompanying PTD language to ensure that the new CBOB is distributed and used consistent with the RVP requirements.

In this action, we are requiring gasoline manufacturers to designate summer CBOB for use in States where we have removed the 1-psi waiver as ''Low-RVP Summer CBOB.'' We are also finalizing as proposed related changes to the PTD language requirements so that gasoline manufacturers that produce Low-RVP Summer CBOB can accurately and consistently describe the fuel designation. All other designation and PTD provisions will still apply (*e.g.,* those designations related to the blending of ethanol). We believe this approach is the most straight-forward method for updating the designation and PTD requirements for Low-RVP Summer CBOB.

B. Regulatory Reinstatement Mechanism

We are finalizing as proposed a regulatory mechanism for States to request the reinstatement of the 1-psi waiver under CAA section 211(h)(5). This regulatory mechanism will be available for the petitioning States, as well as any other State for which EPA removes the 1-psi waiver under CAA section 211(h)(5) in the future. The regulations provide all States with criteria under which such a request could be made and granted. We modeled the regulatory mechanism for reinstatement of the 1-psi waiver on the regulations in 40 CFR 1090.295 that allow for the removal of 7.8 psi RVP standard.[73] Under the reinstatement mechanism, we are requiring that the State only has to request the reinstatement of the 1-psi waiver in order for EPA to reinstate it; however, if the State has relied on the 1-psi waiver removal in a SIP, either pending or approved, EPA, in consultation with the State, must determine if such a SIP must be revised. If a revision is necessary, the State must revise the SIP and EPA must approve the revision prior to the effective date of the reinstatement of the 1-psi waiver. Such requests must include a requested effective date, and any such effective date must be at least 90 days after EPA's written notification to the State that their request has been approved.

IX. Removal of the 1-psi Waiver for E15

This action also amends 40 CFR part 1090 to reflect the 2021 court decision in *American Fuel and Petrochemical Manufacturers (AFPM)* v. *EPA,* 3 F.4th 373 (D.C. Cir. 2021), vacating the 1-psi volatility waiver for E15 in 40 CFR 1090.215(b)(2). The Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for amending these provisions without prior proposal and opportunity for public comment because the correction of 40 CFR part 1090 is a ministerial act to effectuate the court order and public notice and comment is unnecessary and would serve no useful purpose. Modification of the regulations to eliminate the 1-psi waiver for E15 at 40 CFR 1090.215(b)(2) has no legal effect beyond fulfilling the court's vacatur in *AFPM* v. *EPA* and is ministerial in nature. The court issued its mandate on September 17, 2021, at which point the vacatur became effective.

A. Background

In June 2019, EPA finalized a rule modifying volatility regulations for gasoline-ethanol blends containing more than 10 and up to 15 percent ethanol to provide a 1-psi RVP volatility ''waiver.'' The rule was challenged in the D.C. Circuit by AFPM and other groups in June 2019. The court issued its decision on July 2, 2021, vacating the volatility rule, and subsequently issued the mandate for its decision on September 17, 2021.

This action updates our regulations to reflect the court's vacatur of the volatility rule. Subsequent to the promulgation of the volatility rule and the corresponding regulations at 40 CFR 80.27, in December 2020, EPA finalized its fuels regulatory streamlining effort and transposed the regulations, with minor changes, to 40 CFR 1090.215.[74] We are now making the necessary amendments to the regulations at 40 CFR 1090.215 to be consistent with the court's vacatur.

We are also clarifying the status of the ''substantially similar'' determination for gasoline made in the same action. Because the 2019 interpretative rule[75] was promulgated solely for the purpose of providing the 1-psi waiver to E15, and because the court vacated the entire volatility rule, the 2019 interpretative rule is rescinded.[76] Thus, the only ''substantially similar'' determinations for gasoline are: (1) The 1991 interpretative rule,[77] and (2) The 2008 interpretative rule.[78]

Finally, in the same rulemaking action, EPA promulgated regulations related to the RFS credit or ''RIN'' market.[79] These regulations were not challenged, were severable from the action to extend the 1-psi waiver to E15, and remain in place. EPA is noting this for informational purposes only; we are not reopening these RFS regulations here.

B. Affected Provisions

This final rule amends the fuel quality regulations at 40 CFR part 1090, subparts C and R, to remove the 1-psi waiver for E15 contained in 40 CFR 1090.215(b)(2) and 1090.1720(e) by replacing the phrases ''15 volume percent'' and ''15 percent'' with ''10 volume percent'' and ''10 percent,''

[72] The designation and PTD language requirements for gasoline are located at 40 CFR 1090.1010 and 1090.1110, respectively.

[73] We are not reopening the regulations associated with removal of a federal 7.8 psi low-RVP program in a given area (40 CFR 1090.295) or the regulations that allow states to opt-out of the federal RFG program (40 CFR 1090.290).

[74] 85 FR 78412 (December 4, 2020).

[75] 84 FR 26980 (June 10, 2019).

[76] See 84 FR 26980, 26983 (June 10, 2019) (''In sum, all actions we are taking today constitute a single, cohesive effort, and as such we do not intend for any of these individual actions to be severable'').

[77] 56 FR 5352 (February 11, 1991).

[78] 73 FR 22277 (April 25, 2008).

[79] 84 FR 26980 (June 10, 2019).

respectively. As explained above, removal of the 1-psi waiver for E15 corrects the CFR to conform to the court's order in *AFPM* v. *EPA,* has no legal effect beyond fulfilling the court's vacatur, and is ministerial in nature. The court issued the mandate for its decision on September 17, 2021, at which point the vacatur became effective.

X. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is a ''significant regulatory action,'' as defined under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket. EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is presented in the TSD, available in the docket for this action.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0731. This action removes the 1-psi waiver in eight States. It does not alter practices used by the existing recordkeeping and reporting requirements, nor does it change the number or type of respondents and the manner in which they satisfy the fuel designation and PTD requirements.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are small refiners (which are defined at 13 CFR 121.201) that produce or distribute gasoline in Illinois, Iowa, Minnesota, Missouri, Nebraska, Ohio, South Dakota, or Wisconsin. This action removes the 1-psi waiver for E10 in these States. EPA is not aware of any small refiner that operates in these States. However, EPA is aware of at least one small refiner that distributes a portion of the gasoline it produces to some of the petitioning States, and thus will be affected this action. Therefore, to evaluate the impacts of this action on small entities, we have conducted a screening analysis to assess whether we should make a finding that this action will not have a significant economic impact on a substantial number of small entities.[80] Currently available information shows that the impact on small entities from implementation of this rule will not be significant. As discussed in Section VII and the TSD, we expect that refiners, including small refiners, will be able to recover the cost associated with the removal of the 1-psi waiver through higher gasoline prices in the petitioning and surrounding States. Even if we were to assume that the cost of producing low-RVP CBOB was not recovered by refiners, a cost-to-sales ratio test shows that the costs to small refiners of the removal of the 1-psi waiver are far less than 1 percent of the value of their sales. Furthermore, the removal of the 1-psi waiver in these States does not substantively alter the regulatory requirements on parties that make and distribute gasoline. We have therefore concluded that this action will not have any significant adverse economic impact on directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action implements mandates specifically and explicitly set forth in CAA section 211(h)(5) and we believe that this action represents the least costly, most cost-effective approach to achieve the statutory requirements.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. This action will be implemented at the State level and would affect gasoline refiners, blenders, marketers, distributors, and importers. Tribal governments would be affected only to the extent they produce, purchase, and use gasoline. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it implements specific standards established by Congress in statutes.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action removes the 1-psi waiver for eight States. As discussed in Section V, it will require changes to the production and distribution of gasoline, which is expected to have some short- and long-term impacts on gasoline supply and cost in the affected areas, but we believe the market will be able to accommodate the change without any significant disruption.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that the human health and environmental conditions that exist prior to this action do not result in disproportionate and adverse effects on communities with environmental justice concerns. Numerous studies have found that environmental hazards such as air pollution are more prevalent in areas where people of color and low-income populations represent a higher fraction of the population compared to the general population. In addition, there is ample evidence that people who reside in close proximity to major roadways are disproportionately represented by

[80] See TSD Section 8.

people of color and people with low income.

EPA believes that this action is not likely to result in new disproportionate and adverse effects on communities with environmental justice concerns. This is because any emissions impacts of this action are small. As described in Section IV.B, MOVES modeling performed by the States in support of their petitions demonstrated a reduction in VOCs, CO, and NO_X, as well as potential increases in emissions of pollutants such as PM. This action is being implemented at the request of the Governors of the petitioning States and EPA lacks discretion to deny such requests as described in Section III.

EPA additionally identified and addressed EJ concerns by providing the relevant emissions information in this rulemaking action and providing an opportunity for public comment on this rule. We received no comments related to EJ concerns.

The information supporting this Executive Order review is contained in this preamble and the ''Evaluation of MOVES Modeling and Results,'' available in the docket for this action.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action meets the criteria set forth in 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 1090

Environmental protection, Administrative practice and procedure, Air pollution control, Fuel additives, Gasoline, Petroleum, Renewable fuel.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 1090 as follows:

PART 1090—REGULATION OF FUELS, FUEL ADDITIVES, AND REGULATED BLENDSTOCKS

■ 1. The authority citation for part 1090 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7522–7525, 7541, 7542, 7543, 7545, 7547, 7550, and 7601.

Subpart C—Gasoline Standards

■ 2. Amend § 1090.215 by:

■ a. In paragraph (b)(2), removing the text ''than 15'' and adding in its place the text ''than 10''; and

■ b. Revising paragraph (b)(3).

The revision reads as follows:

§ 1090.215 Gasoline RVP Standards.

* * * * *

(b) * * *

(3)(i) RFG and SIP-controlled gasoline that does not allow for the ethanol 1.0 psi waiver does not qualify for the special regulatory treatment specified in paragraph (b)(1) of this section.

(ii) Gasoline subject to the 9.0 psi maximum RVP per-gallon standard in paragraph (a)(1) of this section in the following areas is excluded from the special regulatory treatment specified in paragraph (b)(1) of this section:

TABLE 2 TO PARAGRAPH (b)(3)(ii)—AREAS EXCLUDED FROM THE ETHANOL 1.0 psi WAIVER

State	Counties	Effective date
Illinois	All	April 28, 2025.
Iowa	All	April 28, 2025.
Minnesota	All	April 28, 2025.
Missouri	All	April 28, 2025.
Nebraska	All	April 28, 2025.
Ohio	All	April 28, 2025.
South Dakota	All	April 28, 2025.
Wisconsin	All	April 28, 2025.

* * * * *

■ 3. Add § 1090.297 to read as follows:

§ 1090.297 Procedures for reinstating the 1.0 psi RVP allowance for E10.

(a) EPA may approve a request from a State asking to reinstate the ethanol 1.0 psi waiver specified in § 1090.215(b)(1) for any area (or portion of an area) specified in § 1090.215(b)(3)(ii) if it meets the requirements of paragraph (b) of this section. If EPA approves such a request, an effective date will be set as specified in paragraph (c) of this section. EPA will notify the State in writing of EPA's action on the request and the effective date of the reinstatement upon approval of the request.

(b) The request must be signed by the Governor of the State, or the Governor's authorized representative, and must include all the following:

(1) A geographic description of each area (or portion of such area) that is covered by the request.

(2) A description of all the means in which emissions reduction from the removal of the ethanol 1.0 psi waiver are relied upon in any approved SIP or in any submitted SIP that has not yet been approved by EPA, if applicable.

(3) For any area covered by the request where emissions reductions from the removal of the ethanol 1.0 psi waiver are relied upon as specified in paragraph (b)(2) of this section, the request must include the following information:

(i) Identify whether the State is withdrawing any submitted SIP that has not yet been approved.

(ii)(A) Identify whether the State intends to submit a SIP revision to any approved SIP or any submitted SIP that has not yet been approved, which relies on emissions reductions from the removal of the ethanol 1.0 psi waiver, and describe any control measures that the State plans to submit to EPA for approval to replace the emissions reductions from the removal of the ethanol 1.0 psi waiver.

(B) A description of the State's plans and schedule for adopting and submitting any revision to any approved SIP or any submitted SIP that has not yet been approved.

(iii) If the State is not withdrawing any submitted SIP that has not yet been approved and does not intend to submit a revision to any approved SIP or any submitted SIP that has not yet been approved, describe why no revision is necessary.

(4) A requested effective date of the reinstatement of the ethanol 1.0 psi waiver.

(5) The Governor of a State, or the Governor's authorized representative, must submit additional information needed to administer the reinstatement of the ethanol 1.0 psi waiver upon request by EPA.

(c)(1) Except as specified in paragraph (c)(2) of this section, EPA will set an effective date of the reinstatement of the ethanol 1.0 psi waiver as requested by the Governor, or the Governor's authorized representative, but no less than 90 days from EPA's written notification to the State approving the reinstatement request.

(2) Where emissions reductions from the removal of the ethanol 1.0 psi waiver are included in an approved SIP or any submitted SIP that has not yet been approved, EPA will set an effective date of the reinstatement of the ethanol 1.0 psi waiver as requested by the Governor, or the Governor's authorized representative, but no less than 90 days from the effective date of EPA approval of the SIP revision that removes the emissions reductions from the ethanol 1.0 psi waiver, and, if necessary, provides emissions reductions to make up for those from the ethanol 1.0 psi waiver reinstatement.

(d) EPA will publish a document in the **Federal Register** announcing the approval of any ethanol 1.0 psi waiver reinstatement request and its effective date.

(e) Upon the effective date for the reinstatement of the ethanol 1.0 psi waiver in a subject area (or portion of a subject area) included in an approved

request, the ethanol 1.0 psi waiver will apply in such subject area.

Subpart K—Batch Certification and Designation

■ 4. Amend § 1090.1010 by redesignating paragraph (a)(2)(iii) as (a)(2)(iv) and adding a new paragraph (a)(2)(iii) to read as follows:

§ 1090.1010 Designation requirements for gasoline and regulated blendstocks.

(a) * * *

(2) * * *

(iii) If the CBOB is excluded from the special regulatory treatment for ethanol under § 1090.215(b)(3)(ii), Low-RVP Summer CBOB.

* * * * *

Subpart L—Product Transfer Documents

■ 5. Amend § 1090.1110 by redesignating paragraph (b)(2)(i)(C) as (b)(2)(i)(D) and adding a new paragraph (b)(2)(i)(C) to read as follows:

§ 1090.1110 PTD requirements for gasoline, gasoline additives, and gasoline regulated blendstocks.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) ''Low-RVP CBOB. This product does not meet the requirements for summer reformulated gasoline.''

* * * * *

Subpart R—Compliance and Enforcement Provisions

§ 1090.1720 [Amended]

■ 6. Amend § 1090.1720, in paragraphs (e) introductory text and (e)(2), by removing the text ''15 percent'' and adding in its place the text ''10 percent''.

[FR Doc. 2024–04023 Filed 2–28–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22–227; FCC 23–72; FR ID 203619]

Establishing Rules for Full Power Television and Class A Television Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved the information collection requirements under OMB Control Numbers 3060–1121, 3060–1320, 3060–0009, 3060–0386, 3060–0175, 3060–0178, 3060–0182, 3060–0190, 3060–0320, 3060–0113, and 3060–1321 associated with the rules adopted in the *Report and Order,* FCC 23–72, adopting several rule updates for full power and Class A television stations that no longer have any practical effect given the completion of the transition from analog to digital-only operations and the post incentive auction transition to a smaller television band with fewer channels. This document is consistent with the *Report and Order,* which states that the Media Bureau will publish a document in the **Federal Register** announcing the effective date for these revised rule sections and revising the rules accordingly.

DATES: The amendments to 47 CFR 73.619; 73.625; 73.1250; 73.1350; 73.1560; 73.1615; 73.1620; 73.1635; 73.1675; 73.1690; 73.1740; 73.1750; 73.2080; 73.3540; 73.3544; 73.3549; 73.3550; 73.3598; 73.5006; 73.6024; 73.6025, published at 89 FR 7224 on February 1, 2024, are effective March 4, 2024.

FOR FURTHER INFORMATION CONTACT: Cathy Williams, Office of the Managing Director, Federal Communications Commission, at (202) 418–2918 or *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that OMB approved the information collection requirements in 47 CFR 73.619; 73.625; 73.1250; 73.1350; 73.1560; 73.1615; 73.1620; 73.1635; 73.1675; 73.1690; 73.1740; 73.1750; 73.2080; 73.3540; 73.3544; 73.3549; 73.3550; 73.3598; 73.5006; 73.6024; 73.6025 on February 2, 2024, and February 14, 2024, respectively. These rule sections were adopted in the *Report and Order,* FCC 23–72, published at 89 FR 7224 on February 1, 2024. The Commission publishes this document as an announcement of the immediate effective date for these revised rules.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received final OMB approvals on February 2, 2024 and February 14, 2024, respectively, for the information collection requirements contained in 47 CFR 73.619; 73.625; 73.1250; 73.1350; 73.1560; 73.1615; 73.1620; 73.1635; 73.1675; 73.1690; 73.1740; 73.1750; 73.2080; 73.3540; 73.3544; 73.3549; 73.3550; 73.3598; 73.5006; 73.6024; 73.6025. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Numbers for the information collection requirements in 47 CFR 73.619; 73.625; 73.1250; 73.1350; 73.1560; 73.1615; 73.1620; 73.1635; 73.1675; 73.1690; 73.1740; 73.1750; 73.2080; 73.3540; 73.3544; 73.3549; 73.3550; 73.3598; 73.5006; 73.6024; 73.6025 are 3060–1121, 3060–1320, 3060–0009, 3060–0386, 3060–0175, 3060–0178, 3060–0182, 3060–0190, 3060–0320, 3060–0113, and 3060–1321.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1320.

OMB Approval Date: February 2, 2024.

OMB Expiration Date: February 28, 2027.

Title: Section 73.1750, Discontinuance of operation; Section 73.3549, Request for extension of time to operate without required monitors, indicating instruments, and EAS encoders and decoders; § 73.3550, Requests for new or modified call sign assignments.

Form Number: N/A.

Respondents: Business or other for-profit entities; not for-profit institutions.

Estimated Number of Respondents and Responses: 300 respondents and 300 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i) and 325(a) of the Communications Act of 1934, as amended.

Estimated Total Annual Burden: 150 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order* (*R&O*), Amendment of Part 73 of the Commission's Rules to

Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72, published at 89 FR 7224 on February 1, 2024. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television.

47 CFR 73.1750 requires that the licensee of each station provide a notification to the FCC in a Cancellation Application via the Commission's Licensing and Management System (LMS) of the permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee must forward the station license and other instruments of authorization to the FCC, Attention: Audio Division (radio) or Video Division (television), Media Bureau, for cancellation.

47 CFR 73.3549 requires that requests for extension of authority to operate without required monitors, transmission system indicating instruments, or encoders and decoders for monitoring and generating the EAS codes and Attention Signal should be made to the FCC by electronically filing via LMS. Such requests must contain information as to when and what steps were taken to repair or replace the defective equipment and a brief description of the alternative procedures being used while the equipment is out of service.

47 CFR 73.3550(a) requires that all requests for new or modified call sign assignments for radio and television broadcast stations be made via LMS with the FCC. Paragraph 47 CFR 73.3550(j) provides that a change in call sign assignment will be made effective on the date specified in the Call Sign Request Authorization generated by LMS acknowledging the assignment of the requested new call sign and authorizing the change.

OMB Control Number: 3060–1321.

OMB Approval Date: February 2, 2024.

OMB Expiration Date: February 28, 2027.

Title: Section 73.619, Contours and service areas; Section 73.625, TV antenna system; Section 73.5006, Filing of petitions to deny against long-form applications; Section 73.6024, Transmission standards and system requirements; Section 73.6025, Antenna system and station location.

Form Number: N/A.

Respondents: Business or other for-profit entities; not for-profit institutions.

Estimated Number of Respondents and Responses: 100 respondents and 100 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i) and 325(a) of the Communications Act of 1934, as amended.

Estimated Total Annual Burden: 50 hours.

Total Annual Cost: None.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order* (*R&O*), Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72, published at 89 FR 7224 on February 1, 2024. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television.

47 CFR 73.619(b)(5) requires that in determining coverage, the elevation or contour intervals must be taken from a high quality bald earth map or dataset such as the United States Geological Survey Topographic Quadrangle Maps or the National Elevation Dataset. We include these updates for informational purposes, but these changes do not impact an existing information collection or create a new collection.

47 CFR 73.625(c)(3)(v) requires that all azimuth plane patterns be plotted in a PDF attachment to an application in a size sufficient to be easily viewed; paragraph (vii) requires that if an elevation pattern is submitted in the application form, similar tabulations and PDF attachments must be provided for the elevation pattern; and paragraph (viii) requires that if a matrix pattern is submitted in the application form, similar tabulations must be provided as necessary in the form of a spreadsheet to accurately represent the pattern.

Similarly, 47 CFR 73.6025 requires that applications for modified Class A TV facilities proposing the use of directional antennas include the documentation in § 73.625(c)(3).

47 CFR 73.5006 requires that within ten days following the issuance of a public notice announcing that a long-form application for an AM, FM, or television construction permit has been accepted for filing, petitions to deny that application may be filed in the Commission's Licensing and Management (LMS) database. We include these updates for informational purposes, but these changes do not impact an existing information collection or create a new collection.

47 CFR 73.6024 requires that a Class A station within 275 kilometers of the U.S.-Mexico border must specify the full service emission mask in an application on FCC Form 2100. We include these updates for informational purposes, but these changes do not impact an existing information collection or create a new collection.

OMB Control Number: 3060–1121.

OMB Approval Date: February 2, 2024.

OMB Expiration Date: February 28, 2027.

Title: Sections 1.30002, 1.30003, 1.30004, 73.875, 73.1657 and 73.1690, Disturbance of AM Broadcast Station Antenna Patterns.

Form Number: N/A.

Respondents: Business or other for-profit entities; not for-profit institutions.

Estimated Number of Respondents and Responses: 1,195 respondents and 1,195 responses.

Estimated Time per Response: 1–2 hours.

Frequency of Response: On occasion reporting requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Estimated Total Annual Burden: 1,960 hours.

Total Annual Cost: $1,078,200.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order* (*R&O*), Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72, published at 89 FR 7224 on February 1, 2024. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television, including revisions to 47 CFR 73.1675 and 73.1690. The revisions to this information collection are only with respect to 47 CFR 73.1675 and 47 CFR 73.1690, and are made for informational purposes only, and do not create new or modify existing burdens.

47 CFR 73.1675(c)(1) continues to state that where an FM, TV, or Class A

TV licensee or permittee proposes to mount an auxiliary facility on an AM tower, it must also demonstrate compliance with § 1.30003 in the license application. The *R&O* revises paragraph (b) to note that the application for a construction permit is now made electronically via the Commission's Licensing and Management System using Form 2100, but this change does not modify any existing paperwork burdens or establish any new ones.

47 CFR 73.1690(c) continues to require FM, TV, or Class A TV station applicants to submit an exhibit demonstrating compliance with § 1.30003 or § 1.30002, as applicable, with a modification of license application, except for applications solely filed pursuant to paragraphs (c)(6) or (c)(9) of this section, where the installation is located on or near an AM tower, as defined in § 1.30002. The *R&O* revises paragraph (b) to indicate that certain changes can be made on FCC Form 2100, but this change does not modify any existing paperwork burdens or establish new ones, and similarly, paragraph (c)(3) is revised to note that the modification of license application is now made on Form 2100, but this change does not modify any existing paperwork burdens or establish any new ones.

Other information collection requirements that are covered under this collection that have not changed since last approved by the Office of Management and Budget (OMB) are as follows:

On August 14, 2013, the Commission adopted the *Third Report and Order and Second Order on Reconsideration* in the matter of An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification, MM Docket No. 93–177, FCC 13–115, published at 78 FR 66288 on November 5, 2013. In the *Third Report and Order* in this proceeding, the Commission harmonized and streamlined the Commission's rules regarding tower construction near AM stations. In AM radio, the tower itself functions as the antenna. Consequently, a nearby tower may become an unintended part of the AM antenna system, reradiating the AM signal and distorting the authorized AM radiation pattern. Our old rules contained several sections concerning tower construction near AM antennas that were intended to protect AM stations from the effects of such tower construction, specifically, §§ 73.1692, 22.371, and 27.63. These old rule sections imposed differing requirements on the broadcast and wireless entities, although the issue is the same regardless of the types of antennas mounted on a tower. Other rule parts, such as part 90 and part 24, entirely lacked provisions for protecting AM stations from possible effects of nearby tower construction. In the *Third Report and Order* the Commission adopted a uniform set of rules applicable to all services, thus establishing a single protection scheme regarding tower construction near AM tower arrays. The *Third Report and Order* also designates ''moment method'' computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. This serves to replace time-consuming direct measurement procedures with a more efficient computer modeling methodology that is reflective of current industry practice.

47 CFR 1.30002(a) requires a proponent of construction or modification of a tower within a specified distance of a nondirectional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the commencement of construction. If the tower construction or modification would distort the AM pattern, the proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(b) requires a proponent of construction or modification of a tower within a specified distance of a directional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the commencement of construction. If the tower construction or modification would distort the AM pattern, the proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(c) states that proponents of tower construction or alteration near an AM station shall use moment method modeling, described in § 73.151(c), to determine the effect of the construction or alteration on an AM radiation pattern.

47 CFR 1.30002(f) states that, with respect to an AM station that was authorized pursuant to a directional proof of performance based on field strength measurements, the proponent of the tower construction or modification may, in lieu of the study described in § 1.30002 (c), demonstrate through measurements taken before and after construction that field strength values at the monitoring points do not exceed the licensed values. In the event that the pre-construction monitoring point values exceed the licensed values, the proponent may demonstrate that post-construction monitoring point values do not exceed the pre-construction values. Alternatively, the AM station may file for authority to increase the relevant monitoring point value after performing a partial proof of performance in accordance with § 73.154 to establish that the licensed radiation limit on the applicable radial is not exceeded.

47 CFR 1.30002(g) states that tower construction or modification that falls outside the criteria described in paragraphs § 1.30002(a) and (b) is presumed to have no significant effect on an AM station. In some instances, however, an AM station may be affected by tower construction notwithstanding the criteria set forth in paragraphs § 1.30002(a) and (b). In such cases, an AM station may submit a showing that its operation has been affected by tower construction or alteration. Such showing shall consist of either a moment method analysis or field strength measurements. The showing shall be provided to (i) the tower proponent if the showing relates to a tower that has not yet been constructed or modified and otherwise to the current tower owner, and (ii) to the Commission, within two years after the date of completion of the tower construction or modification. If necessary, the Commission shall direct the tower proponent to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

47 CFR 1.30002(h) states that an AM station may submit a showing that its operation has been affected by tower construction or modification commenced or completed prior to or on the effective date of the rules adopted in this Part pursuant to MM Docket No. 93–177. Such a showing shall consist of either a moment method analysis or of field strength measurements. The showing shall be provided to the current owner and the Commission within one year of the effective date of the rules adopted in this Part. If necessary, the Commission shall direct the tower owner, if the tower owner holds a Commission authorization, to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

47 CFR 1.30002(i) states that a Commission applicant may not propose, and a Commission licensee or permittee may not locate, an antenna on any tower or support structure, whether constructed before or after the effective date of these rules, that is causing a disturbance to the radiation pattern of the AM station, as defined in paragraphs § 1.30002(a) and (b), unless the

applicant, licensee, or tower owner completes the new study and notification process and takes appropriate ameliorative action to correct any disturbance, such as detuning the tower, either prior to construction or at any other time prior to the proposal or antenna location.

47 CFR 1.30003(a) states that when antennas are installed on a nondirectional AM tower the AM station shall determine operating power by the indirect method (see § 73.51). Upon the completion of the installation, antenna impedance measurements on the AM antenna shall be made. If the resistance of the AM antenna changes, an application on FCC Form 302–AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement. The Form 302–AM shall be filed before or simultaneously with any license application associated with the installation.

47 CFR 1.30003(b) requires that, before antennas are installed on a tower in a directional AM array, the proponent shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (see § 73.51) and request special temporary authority pursuant to § 73.1635 to operate with parameters at variance. For AM stations licensed via field strength measurements (see § 73.151(a)), a partial proof of performance (as defined by § 73.154) shall be conducted both before and after construction to establish that the AM array will not be and has not been adversely affected. For AM stations licensed via a moment method proof (see § 73.151(c)), the proof procedures set forth in § 73.151(c) shall be repeated. The results of either the partial proof of performance or the moment method proof shall be filed with the Commission on Form 302–AM before or simultaneously with any license application associated with the installation.

47 CFR 1.30004(a) requires proponents of proposed tower construction or modification to an existing tower near an AM station that are subject to the notification requirement in §§ 1.30002–1.30003 to provide notice of the proposed tower construction or modification to the AM station at least 30 days prior to commencement of the planned tower construction or modification. Notification to an AM station and any responses may be oral or written. If such notification and/or response is oral, the party providing such notification or response must supply written documentation of the communication and written documentation of the date of communication upon request of the other party to the communication or the Commission. Notification must include the relevant technical details of the proposed tower construction or modification, and, at a minimum, also include the following: proponent's name and address; coordinates of the tower to be constructed or modified; physical description of the planned structure; and results of the analysis showing the predicted effect on the AM pattern, if performed.

47 CFR 1.30004(b) requires that a response to a notification indicating a potential disturbance of the AM radiation pattern must specify the technical details and must be provided to the proponent within 30 days.

47 CFR 1.30004(d) states that if an expedited notification period (less than 30 days) is requested by the proponent, the notification shall be identified as ''expedited,'' and the requested response date shall be clearly indicated.

47 CFR 1.30004(e) states that in the event of an emergency situation, if the proponent erects a temporary new tower or makes a temporary significant modification to an existing tower without prior notice, the proponent must provide written notice to potentially affected AM stations within five days of the construction or modification of the tower and cooperate with such AM stations to remedy any pattern distortions that arise as a consequence of such construction.

47 CFR 73.875(c) requires an LPFM applicant to submit an exhibit demonstrating compliance with § 1.30003 or § 1.30002, as applicable, with any modification of license application filed solely pursuant to paragraphs (c)(1) and (c)(2) of this section, where the installation is on or near an AM tower, as defined in § 1.30002.

OMB Control Number: 3060–0386.

OMB Approval Date: February 2, 2024.

OMB Expiration Date: February 28, 2027.

Title: Special Temporary Authorization (STA) Requests; Notifications; and Informal Filings; Sections 1.5, 73.1615, 73.1635, 73.1740 and 73.3598; CDBS Informal Forms; § 74.788; Low Power Television, TV Translator and Class A Television Digital Transition Notifications; Section 73.3700(b)(5), Post Auction Licensing; § 73.3700(f).

Form Number: N/A.

Respondents: Business or other for-profit entities; Not for profit institutions; State, local or Tribal government.

Estimated Number of Respondents and Responses: 5,537 respondents and 5,537 responses.

Estimated Time per Response: 0.50–4.0 hours.

Frequency of Response: One-time reporting requirement and on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 157 and 309(j) as amended; Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act); and Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 of the Communications Act of 1934, as amended.

Estimated Total Annual Burden: 4,353 hours.

Total Annual Cost: $1,834,210.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order* (*R&O*), Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television. The Commission revised 47 CFR 73.1635 such that Broadcast stations (AM, FM, TV, Class A TV or LPTV licensees or permittees) may file a request for STA electronically in the Commission's Licensing and Management System (LMS) for approval to permit a station to operate a broadcast facility for a limited period at a specified variance from the terms of the station's authorization or requirements of the FCC rules. Stations may file a request for STA approval for a variety of reasons. The request must describe the operating modes and facilities to be used. Types of STA requests include Engineering and Legal STAs.

The Commission also revised 47 CFR 73.1740 such that Broadcast stations (AM, FM, TV or Class A TV licensees) may file this form in the Commission's LMS to notify the Commission of the station's suspension of broadcast operations. Broadcast stations may also use this form to request a silent STA or extension thereof. Types of Silent Notifications include Notification of Suspension and Resumption of Operations. Pursuant to Section 73.1740, broadcast station licensees must notify the Commission when

events beyond their control make it impossible to continue operation or to adhere to the required operating schedules set forth in this rule. In addition, they must notify the Commission when they resume normal operations. (No further authority is needed for limited operation or discontinued operation for a period not exceeding 30 days.) Should events beyond the licensees control make it impossible for compliance within the required 30-day time period, broadcast station licensees must file an informal letter request for silent operations (''Silent STA,'' discussed below in informal filings section).

The Commission also revised 47 CFR 73.1615 such that broadcast stations (AM, FM, TV or Class A TV licensees) must file a notification under 47 CFR 73.1615(c) when such a station is in the process of modifying existing facilities as authorized by a construction permit and determines it is necessary to either discontinue operation or to operate with temporary facilities to continue program service for a period not more than 30 days (in which case it must file a Silent STA application or an Engineering STA application via LMS). Licensees or permittees of directional or nondirectional FM, TV or Class A TV or nondirectional AM must file a notification and comply with 47 CFR 73.1615(a). Licensees or permittees of a directional AM station whose modification does not involve a change in operating frequency must file a notification and comply with 47 CFR 73.1615(b). Licensees or permittees of a directional AM station whose modification does involve a change in frequency and determines it is necessary to discontinue operation for a period not more than 30 days must file a notification and comply with 47 CFR 73.1615(d)(2). The Commission does not have any program changes or adjustments to this collection as a result of the information collection requirements adopted in FCC 23–72 and there are no other adjustments to the other information collection requirements covered by this collection since last approved by OMB.

OMB Control Number: 3060–0320.

OMB Approval Date: February 2, 2024.

OMB Expiration Date: February 28, 2027.

Title: Section 73.1350, Transmission System Operation.

Form Number: N/A.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Estimated Number of Respondents and Responses: 505 respondents and 505 responses.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 154(i) of the Communications Act of 1934, as amended.

Estimated Total Annual Burden: 253 hours.

Total Annual Cost: None.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order* (*R&O*), Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72 published at 89 FR 7224 on February 1, 2024. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television, including a revision to 47 CFR 73.1350(h).

47 CFR 73.1350(h) requires licensees to submit a ''letter of notification'' to the FCC via a Change of Control Point Notice in the Commission's Licensing and Management System (LMS) database, whenever a transmission system control point is established at a location other than at the main studio or transmitter within three days of the initial use of that point. The letter should include a list of all control points in use, for clarity. This notification is not required if responsible station personnel can be contacted at the transmitter or studio site during hours of operation.

OMB Control Number: 3060–0190.

OMB Approval Date: February 2, 2024.

OMB Expiration Date: February 28, 2027.

Title: Section 73.3544, Application to Obtain a Modified Station License.

Form Number: N/A.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Estimated Number of Respondents and Responses: 325 respondents and 325 responses.

Estimated Time per Response: 0.25–1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Section 154(i) of the Communications Act of 1934, as amended.

Estimated Total Annual Burden: 306 hours.

Total Annual Cost: $75,000.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order* (*R&O*), Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72, published at 89 FR 7224 on February 1, 2024. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television, including a revision to 47 CFR 73.3544(b) and (c).

47 CFR 73.3544(b) permits that an informal electronic filing of an Administrative Update via the Commission's Licensing and Management System (LMS) may be filed to cover the following changes: (1) A correction of the routing instructions and description of an AM station directional antenna system field monitoring point, when the point itself is not changed; (2) A change in the type of AM station directional antenna monitor. See § 73.69; (3) The location of a remote control point of an AM or FM station when prior authority to operate by remote control is not required.

47 CFR 73.3544(c) requires a change in the name of the licensee where no change in ownership or control is involved may be accomplished by electronically filing an Administrative Update via LMS by the licensee to the Commission.

OMB Control Number: 3060–0182.

OMB Approval Date: February 2, 2024.

OMB Expiration Date: February 28, 2027.

Title: Section 73.1620, Program Tests.

Form Number: N/A.

Respondents: Businesses or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents and Responses: 1,469 respondents and 1,469 responses.

Estimated Time per Response: 1–5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Estimated Total Annual Burden: 1,517 hours.

Total Annual Cost: None.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order* (*R&O*), Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television, including a revision to 47 CFR 73.1620(a)(1)–(3) and deletion of 47 CFR 73.1620(f) through(g). No other changes to the existing collection, restated below, are proposed.

47 CFR 73.1620(a)(1) requires permittees of a nondirectional AM or FM station, or a nondirectional or directional TV station to notify the FCC upon beginning of program tests via a Program Test Authority filing in the Commission's Licensing and Management System (LMS) database. An application for license must be filed with the FCC within 10 days of this notification.

47 CFR 73.1620(a)(2) requires a permittee of an FM station with a directional antenna to file a request with the FCC for program test authority 10 days prior to date on which it desires to begin program tests on FCC Form 2100 Schedule 302–FM in LMS. This is filed in conjunction with an application for license.

47 CFR 73.1620(a)(3) requires a licensee of an FM station replacing a directional antenna without changes that would not require the submission of a construction permit application to file with the FCC a modification of license application on FCC Form 2100 Schedule 302–FM within 10 days after commencing operations with the replacement antenna. This is filed in conjunction with an application for license.

47 CFR 73.1620(a)(4) requires a permittee of an AM station with a directional antenna to file a request with the FCC for program test authority 10 days prior to date on which it desires to begin program tests. This is filed in conjunction with an application for license.

47 CFR 73.1620(a)(5) except for permits subject to successive license terms, the permittee of an Low Power TV (LPFM) station may begin program tests upon notification to the FCC in Washington, DC, provided that within 10 days thereafter, an application for license is filed. Program tests may be conducted by a licensee subject to mandatory license terms only during the term specified on such licensee's authorization.

47 CFR 73.1620(b) the Commission reserves the right to revoke, suspend, or modify program tests by any station without right of hearing for failure to comply adequately with all terms of the construction permit or the provisions of § 73.1690(c) for a modification of license application, or in order to resolve instances of interference. The Commission may, at its discretion, also require the filing of a construction permit application to bring the station into compliance the Commission's rules and policies.

OMB Control Number: 3060–0178.

OMB Approval Date: February 2, 2024.

OMB Expiration Date: February 28, 2027.

Title: Section 73.1560 Operating Power and Mode Tolerances.

Form Number: N/A.

Respondents: Business or other for-profit entities or Not-for-profit institutions.

Estimated Number of Respondents and Responses: 80 respondents and 80 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Estimated Total Annual Burden: 80 hours.

Total Annual Cost: $20,000.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order* (*R&O*), Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television, including a revision to 47 CFR 73.1560(d).

47 CFR 73.1560(d) requires that licensees of AM, FM or TV stations file a notification with the FCC via the Commission's Licensing and Management System (LMS) when operation at reduced power will exceed ten consecutive days in a Reduced Power Notification and upon restoration of normal operations. If causes beyond the control of the licensee prevent restoration of authorized power within a 30-day period, an informal request for Special Temporary Authority must be made via LMS for any additional time as may be necessary to restore normal operations.

OMB Control Number: 3060–0175.

OMB Approval Date: February 2, 2024.

OMB Expiration Date: February 28, 2027.

Title: Section 73.1250, Broadcasting Emergency Information.

Form Number: N/A.

Respondents: Business or other for-profit entities or Not-for-profit institutions.

Estimated Number of Respondents and Responses: 50 respondents and 50 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Estimated Total Annual Burden: 50 hours.

Total Annual Cost: None.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order* (*R&O*), Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72, published at 89 FR 7224 on February 1, 2024. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television, including a revision to 47 CFR 73.1250(e) to update the address in which a report in letter form shall be forwarded to.

Emergency situations in which the broadcasting of information is considered as furthering the safety of life and property include, but are not limited to, tornadoes, hurricanes, floods, tidal waves, earthquakes, and school closings.

47 CFR 73.1250(e) requires that immediately upon cessation of an emergency during which broadcast facilities were used for the transmission of point-to-point messages or when daytime facilities were used during nighttime hours by an AM station, a report in letter form shall be forwarded to the FCC's main office in Washington, DC, as indicated in 47 CFR 0.401(a), setting forth the nature of the emergency, the dates and hours of the

broadcasting of emergency information and a brief description of the material carried during the emergency. A certification of compliance with the non-commercialization provision must accompany the report where daytime facilities are used during nighttime hours by an AM station.

OMB Control Number: 3060–0009.

OMB Approval Date: February 2, 2024.

OMB Expiration Date: February 28, 2027.

Title: FCC Form 2100, Schedule 316—Application for Consent to Assign Broadcast Station Construction Permit or License or Transfer Control of Entity Holding Broadcast Station Construction Permit or License.

Form Number: FCC Form 2100, Schedule 316.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Estimated Number of Respondents and Responses: 750 respondents and 750 responses.

Estimated Time per Response: 1.5–4.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain benefits. Statutory authority for this collection of information is contained in Sections 154(i) and 310(d) of the Communications Act of 1934, as amended.

Estimated Total Annual Burden: 1,231 hours.

Total Annual Cost: $711,150.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order* (*R&O*), Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72, published at 89 FR 7224 on February 1, 2024. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television, including revisions to 47 CFR 73.3540 to update the reference to FCC Form 2100, Schedule 316. For informational purposes, the Commission also will update reference in 47 CFR 73.3540 to FCC Form 2100, Schedules 314 and 315 covered under OMB 3060–0031 and FCC Form 2100, Schedule 345 covered under 3060–0075. The Commission will not revise these collections because only the reference to the forms will be updated. We are noting this in this collection. The revision to this information collection is made for informational purposes only, and does not create new or modify existing burdens. Other information collection requirements that are covered under this collection have not changed since last approved by the Office of Management and Budget (OMB).

OMB Control Number: 3060–0113.

OMB Approval Date: February 14, 2024.

OMB Expiration Date: February 28, 2027.

Title: Form 2100, Schedule 396—Broadcast Equal Employment Opportunity Program Report.

Form Number: FCC 2100, Schedule 396.

Respondents: Business or other for-profit entities, Not-for-profit institutions.

Estimated Number of Respondents and Responses: 2,960 respondents and 2,960 responses.

Estimated Time per Response: 0.5–2 hours.

Frequency of Response: On renewal reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority which covers this information collection is contained in section 154(i) and 303 of the Communications Act of 1934, as amended.

Estimated Total Annual Burden: 4,436 hours.

Total Annual Cost: $666,000.

Needs and Uses: The Commission adopted on September 18, 2023, the *Report and Order* (*R&O*), Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations, MB Docket No. 22–227, FCC 23–72, published at 89 FR 7224 on February 1, 2024. The *R&O* adopted a number of revisions to the Commission's rules to reorganize and clarify the Commission's technical licensing, operating, and interference rules for full power and Class A television, including a revision to 47 CFR 73.2080. No other changes to OMB Control Number 3060–0113, approved August 2021, been made, with the exception of an added description regarding the revision to § 73.2080. That description is for illustrative purposes only, and also does not create any new or modified paperwork obligations.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–03956 Filed 2–28–24; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 89, No. 41
Thursday, February 29, 2024

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 52, 71, and 72

[NRC–2024–0036]

Draft Regulatory Guide: Preparing Probabilistic Fracture Mechanics Submittals

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft Regulatory Guide (DG), DG–1422, ''Preparing Probabilistic Fracture Mechanics Submittals.'' This DG is proposed Revision 1 to Regulatory Guide (RG) 1.245, ''Preparing Probabilistic Fracture Mechanics Submittals.'' DG–1422 describes an approach that is acceptable to the staff of the NRC for performing probabilistic fracture mechanics (PFM) analyses in support of regulatory applications.

DATES: Submit comments by April 1, 2024. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0036. 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 individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michael A. Eudy, telephone: 301–415–3104; email: *Michael.Eudy@nrc.gov* and Patrick Raynaud, telephone: 301–415–1987; email: *Patrick.Raynaud@nrc.gov.* Both are staff of the Office of Nuclear Regulatory Research at the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2024–0036 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–2024–0036.
- *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 ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *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.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2024–0036 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The DG, entitled ''Preparing Probabilistic Fracture Mechanics Submittals,'' is temporarily identified by its task number, DG–1422 (ADAMS Accession No. ML23291A298).

This DG presents proposed guidance on justifying the acceptability of the methods used to generate and report PFM results. This DG does not describe how the results of PFM may be used to support a regulatory application. Regulatory applications typically contain information other than fracture mechanics analyses; this DG does not address the review of this other information. The proposed revisions made to RG 1.245, Revision 0 clarify guidance for applications that leverage risk insights, such as PFM. These changes are reflected in Regulatory Positions 2.1, ''Regulatory Context,'' and

2.2, ''Information Made Available to the NRC Staff with a Probabilistic Fracture Mechanics Submittal.''

The staff is also issuing for public comment a draft regulatory analysis (ADAMS Accession No. ML23291A299). The staff developed the regulatory analysis to assess the value of revising RG 1.245, Revision 0, as well as alternative courses of action.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Proposed Rules'' section of the **Federal Register** to comply with publication requirements under chapter I of title 1 of the *Code of Federal Regulations* (CFR).

III. Backfitting, Forward Fitting, and Issue Finality

Issuance of DG–1422, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; affect issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Power Plants''; or constitute forward fitting as defined in MD 8.4, because, as explained in this DG, licensees would not be required to comply with the positions set forth in this DG.

IV. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: February 23, 2024.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2024–04222 Filed 2–28–24; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0230; Project Identifier AD–2023–01064–Q]

RIN 2120–AA64

Airworthiness Directives; Various Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all airplanes with certain Pacific Scientific Company rotary buckle assemblies (buckles) installed. This AD was prompted by a report of a manufacturing defect in the screws used inside the buckle. This proposed AD would require inspecting the buckle screws, and depending on the results, reidentifying the buckle, replacing the screws and reidentifying the buckle, or replacing the buckle. This proposed AD would also prohibit installing certain buckles. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 15, 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.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0230; 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 NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Parker Meggitt Services, 1785 Voyager Avenue, Simi Valley, CA 93063; phone 877–666–0712; email *TechSupport@meggitt.com;* website *meggitt.com/services_and_support/customer_experience/update-on-buckle-assembly-service-bulletins.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2024–0230.

FOR FURTHER INFORMATION CONTACT: David Kim, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone 562–627–5274; email *david.kim@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0230; Project Identifier AD–2023–01064–Q'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, 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 proposal because of those comments.

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

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 David Kim, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone 562–627–5274; email *david.kim@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 has received a report of a manufacturing defect in the screws used inside Pacific Scientific Company buckle part number (P/N) 1111475 (all dash numbers) and P/N 1111548–01. The screws used to fasten the load plate to the body of the buckle were found to be susceptible to hydrogen embrittlement due to improper baking during the electroplating process. This condition leads the screwhead to separate from the body of the screw when under load, which could result in the buckle failing to restrain the occupant to the seat. This issue was originally identified from a suspected lot of screws, Lot 348994–A. Since then, a buckle failed in an accident, calling into question Lot 348601–A. Lots 348601–A and 348994–A were the first two lots of screws received by Pacific Scientific Company from a new supplier and are the only suspected lots. The suspected buckles were manufactured between January 2012 and September 2012. The FAA is proposing this AD to address the unsafe condition on these products.

The rotary buckle may be included as a component of a different part-numbered restraint system assembly. Table 1 of Parker Meggitt Service Bulletin (SB) 1111475–25–001–2023, Revision 001, dated December 1, 2023, and Parker Meggitt SB 1111548–25–001–2023, Revision 001, dated December 1, 2023 (SB 1111475–25–001–2023 Rev 001 and SB 1111548–25–001–2023 Rev 001), includes a list of these restraint system assembly P/Ns.

This proposed AD would apply to all airplanes with a Pacific Scientific Company buckle P/N 1111475 (all dash numbers) or P/N 1111548–01 installed, if the buckle was manufactured between January 2012 and September 2012, or if the date of manufacture of the buckle is unknown. These same part-numbered buckles may also be installed in helicopters; however, the FAA determined that a shorter compliance time to accomplish the required actions is necessary for buckles installed in helicopters. Accordingly, the FAA issued AD 2024–01–11, Amendment 39–22662 (89 FR 6008, January 31, 2024), to address this unsafe condition on all helicopters with a Pacific Scientific Company buckle P/N 1111475 (all dash numbers) or P/N 1111548–01 installed.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other airplanes with a restraint system with a buckle as part of their type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed SB 1111475–25–001–2023 Rev 001 for buckle P/N 1111475 and SB 1111548–25–001–2023 Rev 001 for buckle P/N 1111548–01. This service information specifies procedures for inspecting the buckle for any missing or loose screw heads and, depending on the results, replacing the buckle and sending the removed buckle to Parker Meggitt for repair or replacement. If after that first inspection, all of the screw heads are intact, this service information specifies procedures for inspecting the buckle for any Torx head screws (alloy steel) and, depending on the results, allowing the buckle assembly to remain in-service temporarily, replacing any Torx head screws (alloy steel) with new hex head screws (stainless steel), and checking the functionality of the buckle. This service information also specifies procedures for removing a buckle from a restraint system, installing a buckle on a restraint system, and returning buckles to Parker Meggitt. If the buckle passes the specified inspections or is modified by replacing Torx head screws (alloy steel) with new hex head screws (stainless steel) screws, this service information specifies procedures for reidentifying the back of the buckle. This service information also identifies known affected restraint systems.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except as discussed under ''Differences Between this Proposed AD and the Service Information.''

Differences Between This Proposed AD and the Service Information

The service information does not specify any compliance times, whereas this proposed AD would require accomplishing the required actions within twelve months. This proposed AD would also prohibit installing an affected buckle on any airplane.

The service information specifies sending any damaged buckles to Parker Meggitt for repair or replacement, and this proposed AD would not. Instead, this proposed AD would require replacing the buckle with an airworthy buckle.

The service information allows buckles with a Torx head (alloy steel) screw to remain in service temporarily and replaced at a time convenient to the operator, and this proposed AD would not. If a buckle has any number of Torx head (alloy steel) screws installed, this proposed AD would require replacing all four screws with hex head screws before further flight.

If a screw head breaks off during disassembly of a buckle or if reassembly of a buckle is not possible, the service information specifies returning the buckle to Parker Meggitt, whereas this proposed AD would not. If a screw head breaks off during disassembly, this proposed AD would require replacing the buckle with an airworthy buckle. If reassembly of a buckle is not possible, then the buckle is not airworthy.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 11,714 buckles installed on restraint systems in aircraft worldwide. The FAA has no way of knowing the number of airplanes of U.S. Registry that may have a restraint system with an affected buckle installed. The estimated costs on U.S. operators reflects the maximum possible costs based on affected buckles installed on restraint systems in aircraft worldwide. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per buckle	Cost on U.S. operators
Inspecting a buckle	.1 work-hour x $85 per hour = $9 ..	$0	$9	Up to $105,426.

The FAA estimates the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. The agency has no way of determining the number of buckles that might need this repair:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per buckle
Replacing a set of screws (four)	.5 work-hour × $85 per hour = $43.	nominal	$43.
Replacing a buckle	.5 work-hour × $85 per hour = $43.	$740	$783.
Reidentifying a buckle	minimal	nominal	nominal.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Various Airplanes: Docket No. FAA–2024–0230; Project Identifier AD–2023–01064–Q.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by April 15, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all airplanes, certified in any category, with a restraint system with a Pacific Scientific Company rotary buckle assembly (buckle) part number (P/N) 1111475 (all dash numbers) or P/N 1111548–01 installed having a date of manufacture between January 2012 and September 2012 inclusive or an unknown date of manufacture. These buckles may be installed on, but not limited to, The Boeing Company model airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code: 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by reports of a manufacturing defect in the screws used inside the buckle. The FAA is issuing this AD to prevent cracking and missing screw heads when under load. The unsafe condition, if not addressed, could result in a failure of the buckle to restrain the occupant.

(f) Compliance

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

(g) Required Actions

(1) For airplanes with buckle P/N 1111475 (all dash numbers), within 12 months after the effective date of this AD, inspect each buckle screw for cracked, loose, and missing screw heads by following the Accomplishment Instructions, paragraphs B.(1) and (2), of Parker Meggitt Service Bulletin (SB) 1111475–25–001–2023, Revision 001, dated December 1, 2023 (SB 1111475–25–001–2023 Rev 001).

(i) If any screw has a cracked, loose, or missing screw head, before further flight, replace the buckle with an airworthy buckle.

(ii) If none of the four screw heads are cracked, loose, or missing, before further flight, inspect each screw to determine if any screw has a Torx head by using one of the following methods in the Accomplishment Instructions of SB 1111475–25–001–2023 Rev 001: paragraph B.(4)(a) (Magnet Test); paragraph B.(4)(b) (Inspection); or paragraphs C.(2) through (4) (removing the buckle from the restraint system) and paragraphs D.(1)(a) through (d) (disassembling the buckle).

(A) If none of the four screws have a Torx head, before further flight, reassemble the buckle (if necessary) by following the Accomplishment Instructions, paragraphs D.(1)(f) through (l), of SB 1111475–25–001–

2023 Rev 001, and reidentify the buckle with ''INS. A'' by following the Accomplishment Instructions, paragraph B.(6), of SB 1111475–25–001–2023 Rev 001.

(B) If at least one of the four screws has a Torx head, before further flight, with the buckle removed, replace each Torx head screw with a hex head screw, reassemble the buckle, and reidentify the buckle with ''MOD. A'' by following the Accomplishment Instructions, paragraphs D.(1)(e) through (m), of SB 1111475–25–001–2023 Rev 001, except you are not required to return any parts to Parker Meggitt. If a screw head breaks off during disassembly, before further flight, replace the buckle with an airworthy buckle.

(2) For airplanes with buckle P/N 1111548–01, within 12 months after the effective date of this AD, inspect each buckle screw for cracked, loose, and missing screw heads by following the Accomplishment Instructions, paragraph B.(1), of Parker Meggitt SB 1111548–25–001–2023, Revision 001, dated December 1, 2023 (SB 1111548–25–001–2023 Rev 001).

(i) If any screw has a cracked, loose, or missing screw head, before further flight, replace the buckle with an airworthy buckle.

(ii) If none of the four screw heads are cracked, loose, or missing, before further flight, inspect each screw to determine which screws have a Torx head by using one of the following methods in the Accomplishment Instructions of SB 1111548–25–001–2023 Rev 001: paragraph B.(3)(a) (except use Figure 6 for placement of the shim tool and use Figure 5 to distinguish the screw head types) (Inspection); or paragraph C. (removing the buckle from the restraint system) and paragraphs D.(1)(a) through (c) (disassembling the buckle). Before further flight, with the buckle removed, replace each Torx head screw with a hex head screw, reassemble the buckle, and reidentify the buckle with ''MOD. A'' by following the Accomplishment Instructions, paragraphs D.(1)(d) through (m), of SB 1111548–25–001–2023 Rev 001, except you are not required to return any parts to Parker Meggitt. If a screw head breaks off during disassembly, before further flight, replace the buckle with an airworthy buckle.

Note 1 to paragraph (g): SB 1111475–25–001–2023 Rev 001 and SB 1111548–25–001–2023 Rev 001 refer to a magnifying glass as an ''eye loupe.''

(h) Parts Installation Prohibition

As of the effective date of this AD, do not install a buckle identified in paragraph (c) of this AD on any airplane unless the buckle is marked with ''MOD. A'' or ''INS. A''.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, West 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 West Certification Branch, 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) Additional Information

For more information about this AD, contact David Kim, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone 562–627–5274; email *david.kim@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Parker Meggitt Service Bulletin 1111475–25–001–2023, Revision 001, dated December 1, 2023.

(ii) Parker Meggitt Service Bulletin 1111548–25–001–2023, Revision 001, dated December 1, 2023.

(3) For service information identified in this AD, contact Parker Meggitt Services, 1785 Voyager Avenue, Simi Valley, CA 93063; phone 877–666–0712; email *Tech Support@meggitt.com;* website *meggitt.com/services_and_support/customer_experience/update-on-buckle-assembly-service-bulletins.*

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

(5) You may view this material at the National Archives and Records Administration (NARA). 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.*

Issued on February 12, 2024.

Victor Wicklund,

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

[FR Doc. 2024–03252 Filed 2–28–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–0144; Airspace Docket No. 23–ASO–34]

RIN 2120–AA66

Establishment of Multiple United States Area Navigation (RNAV) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish United States Area Navigation (RNAV) routes Q–147, Q–149, and T–484 in the eastern United States. This action supports FAA Next Generation Air Transportation System (NextGen) efforts to provide a modern RNAV route structure to improve the safety and efficiency of the National Airspace System (NAS).

DATES: Comments must be received on or before April 15, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–0144 and Airspace Docket No. 23–ASO–34 using any of the following methods:

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

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

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

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

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to 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.

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

FOR FURTHER INFORMATION CONTACT: Brian Vidis, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the

authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the NAS as necessary to preserve the safe and efficient flow of air traffic.

Comments Invited

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

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

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

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

United States Area Navigation routes are published in paragraph 2006 and 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA is proposing to amend 14 CFR part 71 by establishing RNAV routes Q–147, Q–149, and T–484 in the eastern United States. This action supports the FAA's NextGen efforts to provide a modern RNAV route structure to improve the safety and efficiency of the NAS. The proposed RNAV route actions are described below.

Q–147: Q–147 is a new RNAV route proposed to extend between the BURGG, SC, waypoint (WP), and the Dryer, OH (DJB), Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME). The proposed route would overlay Jet Route J–85 between the BURGG WP and the Dryer VOR/DME. The new proposed RNAV route would provide RNAV routing between the Spartanburg, SC, area, and the Cleveland, OH, area.

Q–149: Q–149 is a new RNAV route proposed to extend between the BURGG, SC, WP and the Dryer, OH (DJB), VOR/DME. The proposed route would overlay Jet Route J–83 between the BURGG WP and the Dryer VOR/DME. The new proposed RNAV route would provide alternate connectivity between the Spartanburg, SC, area, and the Cleveland, OH, area.

T–484: T–484 is a new RNAV route proposed to extend between the NELLO, GA, Fix, and the BURGG, SC, WP. The proposed route would overlay VOR Federal Airway V–415 between the NELLO Fix and the BURGG WP. The new proposed RNAV route would provide RNAV connectivity between the Atlanta, GA, area and the Spartanburg, SC, area.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–147 BURGG, SC to Dryer, OH (DJB) [New]

BURGG, SC	WP	(Lat. 35°02′00.55″ N, long. 081°55′36.86″ W)
Charleston, WV (HVQ)	VOR/DME	(Lat. 38°20′58.83″ N, long. 081°46′11.69″ W)
JAMOX, OH	FIX	(Lat. 39°42′38.70″ N, long. 081°51′44.12″ W)
Dryer, OH (DJB)	VOR/DME	(Lat. 41°21′29.03″ N, long. 082°09′43.09″ W)

* * * * *

Q–149 BURGG, SC to Dryer, OH (DJB) [New]

BURGG, SC	WP	(Lat. 35°02′00.55″ N, long. 081°55′36.86″ W)
Appleton, OH (APE)	VORTAC	(Lat. 40°09′03.83″ N, long. 082°35′17.88″ W)
Dryer, OH (DJB)	VOR/DME	(Lat. 41°21′29.03″ N, long. 082°09′43.09″ W)

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–484 NELLO, GA to BURGG, SC [New]

NELLO, GA	FIX	(Lat. 34°29′58.43″ N, long. 084°25′00.24″ W)
TALLE, GA	FIX	(Lat. 34°37′48.05″ N, long. 083°40′48.64″ W)
MILBY, SC	WP	(Lat. 34°41′02.23″ N, long. 083°18′42.53″ W)
BURGG, SC	WP	(Lat. 35°02′00.55″ N, long. 081°55′36.86″ W)

* * * * *

Issued in Washington, DC, on February 21, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–04045 Filed 2–28–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0786; Airspace Docket No. 22–AWP–77]

RIN 2120–AA66

Modification of Class D and E Airspace; McClellan-Palomar Airport, Carlsbad, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class D and Class E airspace designated as a surface area at McClellan-Palomar Airport, Carlsbad, CA. Additionally, this action proposes administrative amendments to update the airport's existing Class D and Class E airspace legal descriptions. These actions would support the safety and management of instrument flight rules (IFR) and visual flight rules (VFR) operations at the airport.

DATES: Comments must be received on or before April 15, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0786 and Airspace Docket No. 22–AWP–77 using any of the following methods:

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

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

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

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

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to 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.

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

FOR FURTHER INFORMATION CONTACT: Jeffery Drasin, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2248.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify Class D and Class E airspace to support both IFR and VFR operations at McClellan-Palomar Airport, Carlsbad, CA.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include

supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

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

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

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Incorporation by Reference

Class D and Class E4 airspace designations are published in paragraphs 5000 and 6004, respectively, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 that would modify the Class D and Class E airspace designated as a surface area at McClellan-Palomar Airport, Carlsbad, CA.

The existing Class D surface area is comprised of a 3–mile radius around the airport. This area should be modified to include a small extension centered on the airport's 259° bearing extending .3 miles beyond the existing radius to better contain arriving IFR operations below 1,000 feet above the surface on the Area Navigation (RNAV) (Global Positioning System [GPS]) Y Runway (RWY) 6 and RNAV (Required Navigation Performance [RNP]) Z RWY 6 approach procedures.

The existing Class E surface area extension east of the airport should be realigned from the Palomar RWY 24 localizer east course to the 079° bearing from the airport and lengthened .2 miles to better contain arriving IFR operations below 1,000 feet above the surface on the RNAV (GPS) Y RWY 24 approach. The existing Class E surface area extension to the northwest is excessive and should be realigned from the Oceanside (OCN) 134° radial to the 313° bearing from the airport and reduced in size from a width of 3.6 miles to 2.6 miles and from a length of 5.8 miles to 4.5 miles, as it only needs to contain the VOR–A procedure while between the surface and 1,000 feet above the surface.

Finally, the FAA proposes administrative modifications to the airport's legal descriptions. The airport name on line 2 of the text headers in both legal descriptions should be updated from ''Carlsbad, McClellan-Palomar Airport, CA'' to ''McClellan-Palomar Airport, CA'' to comply with FAA Order 7400.2. The geographic coordinates located on line 3 of the text headers should be updated to match the FAA's database, and both legal descriptions should be updated to replace the outdated use of the phrases ''Notice to Airmen'' and ''Airport/Facility Directory.'' These phrases should read ''Notice to Air Missions'' and ''Chart Supplement,'' respectively, to align with the FAA's current nomenclature.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP CA D Carlsbad, CA [Amended]

McClellan-Palomar Airport, CA
(Lat. 33°07′42″ N, long. 117°16′48″ W)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 3-mile radius of McClellan-Palomar Airport and 1 mile each side of a 259° bearing from the airport extending from the 3-mile radius of the airport to 3.3 miles west of the airport. This Class D airspace area is

effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AWP CA E4 Carlsbad, CA [Amended]

McClellan-Palomar Airport, CA
(Lat. 33°07′42″ N, long. 117°16′48″ W)

That airspace extending upward from the surface within 1.8 miles each side of the airport's 079° bearing extending from the 3-mile radius of the airport to 6.7 miles east of the airport and within 1.3 miles each side of the airport's 313° bearing extending from the 3-mile radius of the airport to 4.5 miles northwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Issued in Des Moines, Washington, on February 23, 2023.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center

[FR Doc. 2024–04194 Filed 2–28–24; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 43 and 45

RIN 3038–AF26

Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements; Reopening of Comment Period

AGENCY: Commodity Futures Trading Commission.

ACTION: Reopening of comment period.

SUMMARY: On December 28, 2023, the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') published in the **Federal Register** a notice of proposed rulemaking (''Proposed Rule'' or ''NPRM'') titled Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements. The comment period for the Proposed Rule closed on February 26, 2024. The Commission is reopening the comment period for this NPRM for an additional forty-five days from the date the original comment period closed.

DATES: The comment period for the proposed rule published December 28, 2023, at 88 FR 90046, is reopened. Comments must be received on or before April 11, 2024.

ADDRESSES: You may submit comments, identified by ''Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements, RIN 3038–AF26,'' 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 Centre, 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. To avoid possible delays with mail or in-person deliveries, 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: Owen J. Kopon, Associate Chief Counsel, at (202) 418–5360 or *okopon@cftc.gov;* Alicia Viguri, Assistant Chief Counsel, at (202) 418–5219 or *aviguri@cftc.gov*; or Isabella Bergstein, Assistant Chief Counsel, at (202) 418–5182 or *ibergstein@cftc.gov*; Division of Market Oversight, in each case at the Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On December 28, 2023, the Commission published proposed amendments [2] to parts 43 and 45 that would: allow for continued geographic masking after the designation of the unique product identifier and product classification system (''UPI'') for swaps in the other commodity asset class; implement conforming changes in connection with the geographic masking requirement; add reportable data fields to appendix A to part 43 and appendix 1 to part 45 that promote international harmonization and further the Commission's surveillance and analysis activities; and implement non-substantive revisions to the descriptions of the existing reportable data elements in such appendices. The comment period for the NPRM closed on February 26, 2024.

In a February 12, 2024, Request Letter,[3] commenters express concerns that the originally allotted 60-day comment period is insufficient. The Commission is reopening the comment period for an additional forty-five days from the date the original comment period closed in order to allow interested persons additional time to analyze the proposal and prepare their comments.

Issued in Washington, DC, on February 26, 2024, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements—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.

[FR Doc. 2024–04255 Filed 2–28–24; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

[2] Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements, 88 FR 90046 (Dec. 28, 2023).

[3] *See* Letter from the International Swaps and Derivatives Association (''ISDA''), Ice Trade Vault, LLC (''ICE''), DTCC Data Repository (US) LLC (''DDR''), and KOR Reporting Inc. (''KOR''), dated February 12, 2024. *Available at https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=73263&SearchText=*(''Request Letter''). The requested extension comment period was through April 15, 2024.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 1000

[245A2100DD/AAKC001030/A0A501010.999900]

Self-Governance PROGRESS Act Negotiated Rulemaking Committee; Notice of Meeting

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Self-Governance PROGRESS Act Negotiated Rulemaking Committee (Committee), will hold public meetings to negotiate and advise the Secretary of the Interior (Secretary) on a proposed rule to implement the Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019 (PROGRESS Act).

DATES: The meeting is open to the public and will be held on Thursday, March 14, 2024, from 1 to 5 p.m. ET. Interested persons are invited to submit comments on or before April 13, 2024.

ADDRESSES: The meeting will be held at the Department of the Interior Building, 1849 C Street NW, Washington, DC 20240 in the North Penthouse Conference Room. Members of the public may attend the meeting in person or participate virtually. Send your comments, within 30 days following the meeting, to the Designated Federal Officer, Vickie Hanvey, using the following methods:

- *Preferred method:* Email to *comments@bia.gov* with ''PROGRESS Act'' in subject line.
- *Alternate methods:* Mail, hand-carry or use an overnight courier service to the Designated Federal Officer, Ms. Vickie Hanvey, Office of Self-Governance, Office of the Assistant Secretary—Indian Affairs, 1849 C Street NW, Mail Stop 3624, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Vickie Hanvey, Designated Federal Officer, *comments@bia.gov,* (918) 931–0745. 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.

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

SUPPLEMENTARY INFORMATION: These meetings will be held under the authority of the PROGRESS Act (Pub. L. 116–180), the Negotiated Rulemaking Act (5 U.S.C. 561 *et seq.*), and the Federal Advisory Committee Act (5 U.S.C. Ch. 10). The Committee is to negotiate and reach consensus on recommendations for a proposed rule that will replace the existing regulations at 25 CFR part 1000. The Committee will be charged with developing proposed regulations for the Secretary's implementation of the PROGRESS Act's provisions regarding the Department of the Interior's (DOI) Self-Governance Program.

The PROGRESS Act amends subchapter I of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 5301 *et seq.,* which addresses Indian Self-Determination, and subchapter IV of the ISDEAA, which addresses DOI's Tribal Self-Governance Program. The PROGRESS Act also authorizes the Secretary to adapt negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes. The **Federal Register** (87 FR 30256) notice published on May 18, 2022, discussed the issues to be negotiated and the members of the Committee.

Meeting Agenda

These meetings are open to the public. Detailed information about the Committee, including meeting agendas can be accessed at *https://www.bia.gov/service/progress-act.* Topics for this meeting will include Committee priority setting, possible subcommittees and assignments, subcommittee reports, negotiated rulemaking process, schedule and agenda setting for future meetings, Committee caucus, and public comment.

For in-person meetings, members of the public are required to present a valid government-issued photo ID to enter the building; and are subject to security screening, including bag and parcel checks.

Plenary Meeting (Number 15)

- *Meeting date:* March 14, 2024.
- *Meeting time:* 1 to 5 p.m. ET.
- *Meeting location:* Hybrid (in-person and virtual link).
- *In-person meeting room:* North Penthouse.
- *Address:* Department of the Interior, 1849 C Street NW, Washington, DC 20240.
- *Virtual link: https://teams.microsoft.com/l/meetup-join/19%3ameeting_MzhlMGE0MDUtYTU4NS00Mjg4LWFjOWYtMjU0ZDMwNDhiMTY1%40thread.v2/0?context=%7B%22Tid%22%3A%220693b5ba-4b18-4d7b-9341-f32f400a5494%22%2C%22Oid%22%3A%2213321130-a12b-4290-8bcf-30387057bd7b%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a.*
- *Comments:* Submit by April 13, 2024.

Public Comments

Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Requests to address the Committee during the meeting will be accommodated in the order the requests are received. Individuals who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written comments to the Designated Federal Officer up to 30 days following the meeting. Written comments may be sent to Vickie Hanvey listed in the **ADDRESSES** section above.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 5 U.S.C. Ch. 10)

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024–04196 Filed 2–28–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 53

[REG–142338–07]

RIN 1545–BI33

Taxes on Taxable Distributions From Donor Advised Funds Under Section 4966; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of hearing.

SUMMARY: This document provides a notice of public hearing on proposed regulations regarding excise taxes on taxable distributions made by a sponsoring organization from a donor advised fund (DAF), and on the agreement of certain fund managers to the making of such distributions.

DATES: The public hearing on these proposed regulations has been scheduled for May 6, 2024, at 10 a.m. ET. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by April 5, 2024. If no outlines are received by April 5, 2024, the public hearing will be cancelled.

ADDRESSES: The public hearing is being held in the Auditorium, at the Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC. Due to security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

Send Submissions to CC:PA:01:PR (REG–142338–07), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday to CC:PA:01:PR (REG–142338–07), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–142338–07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Christopher A. Hyde, (202) 317–5800 (not a toll-free number); concerning submissions of requests to testify, the hearing and/or to be placed on the building access list to attend the public hearing, call Vivian Hayes (202) 317–6901 (not a toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–142338–07) that was published in the **Federal Register** on Tuesday, November 14, 2023 (88 FR 77922).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by April 5, 2024.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing and via the Federal eRulemaking Portal (*www.Regulations.gov*) under the title of Supporting & Related Material. If no outline of the topics to be discussed at the hearing is received by April 5, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–142338–07 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–142338–07.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–142338–07 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–142338–07.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–142338–07 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG–142338–07. Requests to attend the public hearing must be received by 5:00 p.m. ET by May 1, 2024.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–142338–07 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–142338–07. Requests to attend the public hearing must be received by 5 p.m. ET by May 1, 2024.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by April 30, 2024.

Any questions regarding speaking at or attending a public hearing may also be emailed to *publichearings@irs.gov.*

Oluwafunmilayo A. Taylor,

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

[FR Doc. 2024–04262 Filed 2–28–24; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2023–0377; FRL–11783–01–R1]

Air Plan Approval; Connecticut; Source Monitoring, Record Keeping and Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut addressing source monitoring in Connecticut. The principal proposed revision is replacement of Regulations of Connecticut State Agencies (RCSA) section 22a–174–4 (source monitoring, record keeping and reporting), which is currently in the Connecticut SIP, with a new regulation section 22a–174–4a, also

called ''source monitoring, record keeping and reporting.'' The source monitoring SIP revision provides monitoring, recordkeeping and reporting requirements to ensure that certain sources comply with applicable emissions limitations. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before April 1, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2023–0377 at *https://www.regulations.gov,* or via email to Alison Simcox at: *simcox.alison@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. 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). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Branch (AQB), Air and Radiation Division (ARD) (Mail Code 5–MD), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912, (617) 918–1684; *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose
II. Summary and Evaluation of Connecticut's SIP Revision
III. Proposed Action
IV. Incorporation by Reference
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I. Background and Purpose

RCSA section 22a–174–4, ''Source monitoring, record keeping, and reporting'' was adopted by the state of Connecticut in 1989. This regulation defined how certain sources of air pollution are required to conduct air emissions and opacity monitoring. In 2003, the Connecticut Department of Environmental Protection (CT DEEP) proposed revisions to section 22a–174–4, and, on July 16, 2014, EPA approved 22a–174–4 into the Connecticut SIP (previously codified as Section 19–508–4). *See* 79 FR 41427.

In October 2022, to address changes in federal regulatory requirements and source-monitoring technologies, CT DEEP replaced section 22a–174–4 with 22a–174–4a (also called source monitoring, record keeping, and reporting). This new regulation became effective in Connecticut on October 28, 2022.

On November 17, 2022, CT DEEP submitted section 22a–174–4a as a SIP revision for EPA approval. This submission included several citation updates to other SIP-approved regulations (sections 22a–174–3d(f)(1)(B), 22a–174–20(a)(12), 22a–174–22e(m)(1), 22a–174–22e(m)(4), 22a–174–38(j)(1), and 22a–2a–1(b)(3)).

On December 19, 2022, CT DEEP submitted a supplement to this SIP revision that withdrew portions of the submitted regulatory text from the November 17, 2022 submittal that are currently not part of the Connecticut SIP (sections 22a–174–3d(f)(1)(B), 22a–174–38(j)(1), and 22a–2a–1(b)(3)).

On February 27, 2023, the state submitted a letter withdrawing one additional provision (section 22a–174–4a (g)(6)) of the submitted regulatory text in section 22a–174–4a. This letter also provided additional information about CT DEEP's implementation of ''out-of-control'' periods.

As described below, CT DEEP's SIP submittal, as modified by the December 19, 2022 supplement and the February 27, 2023 letter, strengthens its source monitoring requirements and, thus, the state's ability to detect violations of emission limits. Therefore, we are proposing to approve section 22a–174–4a, except for section 22a–174–4a(g)(6) which CT DEEP excluded from inclusion in the SIP submission, and the citation updates to related EPA-approved regulations into the Connecticut SIP.

II. Summary and Evaluation of Connecticut's SIP Revision

EPA-approved RCSA section 22a–174–4 requires certain stationary sources to install, operate, and maintain opacity and gaseous continuous emissions monitoring (CEM) equipment. Opacity CEMs are also known as continuous opacity monitoring systems (COMS). These stationary sources, with some exemptions, include equipment that combusts coal, liquid or solid fuel-burning equipment with a maximum rated heat input equal to or greater than 250,000,000 British thermal units per hour (Btu/hr), incinerators with a maximum rated input greater than 2,000 pounds per hour (lbs/hr), and process sources with particulate matter (PM) emissions greater than 25 lbs/hr after application of control equipment when operated at maximum rated capacity.

Connecticut's SIP submittal, as modified by the December 2022 supplement and the February 2023 letter (described in the background section above), proposes to repeal section 22a–174–4 from the Connecticut SIP and replace it with section 22a–174–4a. The new regulation (section 22a–174–4a) applies to the same group of stationary sources as section 22a–174–4 but is restructured to include provisions that were either missing from or not clearly set out in section 22a–174–4, such as the applicability of the regulation and a distinct separation of opacity monitoring from other pollutant monitoring. The new regulation also provides more detailed and clearer provisions regarding performance specifications and quality-assurance requirements that are consistent with current federal and state requirements.

Specifically, section 22a–174–4a adds a separate section on applicability and clarifies that the regulation is intended to ensure compliance with Connecticut General Statute Chapter 446c ''Air Pollution Control,'' and regulations thereunder, which include all of Section 22a–174 (formerly Sec. 19–508). The new regulation also clarifies that it applies to sources that are required to install, operate, and maintain CEMS or COMS.

EPA-approved section 22a–174–4 requires sources with CEMS or COMS to submit a monitoring plan to the state for

approval at least 60 days before initiation of required performance specification testing. This plan must contain a description of the source, including type of unit or process, type of fuel combusted, type(s) of emission control devices, and operation parameters, as well as monitoring equipment design, proposed monitor location and sampling site location. In addition, the plan must provide performance specification testing (conducted by the source) for each pollutant, and a quality assurance (QA) plan that includes, among other things, corrective action for monitoring system breakdowns.

The new regulation section 22a–174–4a requires a similar monitoring plan, called an ''initial monitoring plan,'' to be submitted electronically to the state not less than 90 days before initiation of required performance specification testing. This initial monitoring plan must be approved by the state. Section 22a–174–4a adds a new provision (*i.e.,* not included in 22a–174–4) that if an existing CEMS or COMS undergoes a significant change that makes a previously submitted monitoring plan inaccurate, a revised monitoring plan must be submitted electronically for state approval not more than 14 days after completion of the CEMS or COMS modification. Also, sources are required to maintain hardcopy or electronic records of all monitoring plans (initial and revised).

EPA-approved RCSA section 22a–174–4 requires any source with CEM equipment to conduct QA audits during each calendar quarter in which the source operates. The new regulation (section 22a–174–4a) strengthens this requirement by requiring these sources to perform annual, quarterly, and daily QA audits. In addition, each new CEMS must undergo an initial certification for each monitored pollutant, including a Relative Accuracy Test Audit certification, and each modified CEMS must be recertified for each pollutant or diluent for which the monitor was modified. Section 22a–174–4a also requires audit reports and COMS or CEMS reports to be submitted to CT DEEP each calendar quarter. These quarterly reports must include a summary of excess emissions and the CEMS or COMS performance, including a list of all periods of malfunctions of the CEMS or COMS.

As described in the background section above, CT DEEP's source-monitoring SIP submittal includes the original November 17, 2022 submittal plus the December 19, 2022 supplement and the February 27, 2023 letter. The source-monitoring submittal includes all of section 22a–174–4a, except 22a–174–4a(g)(6)), which would have allowed CT DEEP to waive certain minimum data availability requirements. The submittal also includes several citation updates to other SIP-approved regulations. These citation updates are in RCSA sections 22a–174–20(a)(12), 22a–174–22e(m)(1), and 22a–174–22e(m)(4). In addition, the submittal provides additional information about CT DEEP's implementation of ''out-of-control'' periods. Specifically, the provisions of 40 CFR 75, Appendix B and 40 CFR 60, Appendix F describe when an out-of-control period begins and ends. Therefore, determination of these periods would not be a matter of discretionary judgment by CT DEEP.

EPA has determined that CT DEEP's source-monitoring SIP submittal strengthens its source monitoring requirements and, thus, the state's ability to detect violations of emission limits.

III. Proposed Action

EPA is proposing to approve RCSA Section 22a–174–4a ''Source monitoring, record keeping and reporting,'' except for section 22a–174–4a(g)(6). We are also proposing to approve modifications to sections 22a–174–20(a)(12), 22a–174–22e(m)(1), and 22a–174–22e(m)(4) into the Connecticut SIP. In addition, we are proposing to replace RCSA section 22a–174–4, which is currently in the Connecticut SIP, with RCSA section 22a–174–4a.

As described above, CT DEEP has adequately demonstrated that its source-monitoring SIP revisions would strengthen Connecticut's monitoring requirements and, thus, the state's ability to detect violations of emission limits. Moreover, these revisions will not interfere with attainment or maintenance of air quality standards or other applicable CAA requirements as required by section 110(l) of the CAA.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Connecticut's regulation section 22a–174–4a (source monitoring, record keeping and reporting), and modifications to sections 22a–174–20(a)(12), 22a–174–22e(m)(1), and 22a–174–22e(m)(4) as discussed in section II. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

EPA is also proposing to remove Connecticut's regulation section 22a–174–4 (source monitoring, record keeping and reporting), which was approved July 16, 2014 (79 FR 41427), from the Connecticut SIP.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The Connecticut DEEP did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 23, 2024.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2024–04133 Filed 2–28–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2024–0059; FRL–11682–01–OCSPP]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (January 2024)

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 April 1, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2024–0059, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Madison H. Le, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566–1400, email address: *BPPDFR Notices@epa.gov;* or Dan Rosenblatt, Registration Division (RD) (7505T), main telephone number: (202) 566–2875, 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 or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their

location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at *https://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

A. Amended Tolerances for Non-Inerts

PP 2E9044. (EPA–HQ–OPP–2023–0079). Interregional Research Project #4 (IR–4), North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by withdrawing the existing tolerances for residues of the indoxacarb in or on the raw agricultural commodities: Bean, dry seed; bean, succulent; corn, field, grain; corn, pop, grain; corn, sweet, kernel plus cob with husk removed; cotton, undelinted seed; fruit, pome, except pear, group 11; fruit, stone, group 12; okra; pea, southern, seed; pear, oriental; turnip, greens; vegetable, brassica, leafy, group 5; vegetable, fruiting, group 8; and vegetable, leafy, except brassica, group 4. *Contact:* RD.

B. New Tolerance Exemptions for Non-Inerts (Except PIPS)

PP 3F9074. (EPA–HQ–OPP–2023–0650). Indigo Ag, Inc., 500 Rutherford Ave., Charlestown, MA 02129, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide Trichoderma hamatum strain SYM37537 in or on all food commodities. The petitioner believes no analytical method is needed because this petition requests an exemption from the requirement of a tolerance without numerical limitations. *Contact:* BPPD.

C. Tolerance Exemptions for PIPS

PP 3F9098. (EPA–HQ–OPP–2024–0052). J.R. Simplot Company, 5369 W Irving St., Boise, ID 83706, requests to extend a temporary exemption from the requirement of a tolerance in 40 CFR part 174 for residues of the plant-incorporated protectants (PIP) BLB2 and AMR3 proteins in or on potatoes. The petitioner believes no analytical method is needed because the protein concentrations of BLB2 and AMR3 proteins are below the limit of detection. *Contact:* BPPD.

D. New Tolerances for Non-Inerts

PP 2E9044. (EPA–HQ–OPP–2023–0079). Interregional Research Project #4 (IR–4), North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of indoxacarb in or on the raw agricultural commodities: Brassica, leafy greens, subgroup 4–16B at 12 parts per million (ppm); celtuce at 14 ppm; chickpea, dry seed at 0.2 ppm; coffee, green bean at 0.03 ppm; cottonseed subgroup 20C at 2 ppm; fennel, florence, fresh leaves and stalk at 14 ppm; field corn subgroup 15–22C at 0.02 ppm; fruit, pome, group 11–10, except pear at 1 ppm; fruit, stone, group 12–12 at 1 ppm; kohlrabi at 12 ppm; leaf petiole vegetable subgroup 22B at 14 ppm; leafy greens subgroup 4–16A at 14 ppm; pear, asian at 0.2 ppm; strawberry at 4 ppm; sunflower subgroup 20B at 1.5 ppm; sweet corn subgroup 15–22D at 0.02 ppm; vegetable, brassica, head and stem, group 5–16 at 12 ppm; vegetable, legume, bean, edible podded, subgroup 6–22A at 0.9 ppm; vegetable, legume, bean, succulent shelled, subgroup 6–22C at 0.9 ppm; vegetable, legume, bean, dried shelled, except soybean, subgroup 6–22E at 0.2 ppm; and vegetable, fruiting, group 8–10 at 0.5 ppm. Adequate analytical methods for determining indoxacarb in/on appropriate raw agricultural commodities and processed commodities have been developed and validated. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: February 18, 2024.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2024–04256 Filed 2–28–24; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Parts 1621 and 1624

Client Grievance Procedures and Prohibition Against Discrimination on the Basis of Disability: Request for Information

AGENCY: Legal Services Corporation.

ACTION: Request for Information.

SUMMARY: The Legal Services Corporation (LSC) is requesting public input on proposed revisions to regulations related to client grievance procedures and prohibition of discrimination based on disability, respectively. LSC is considering expanding the regulations' scope to require grantees to establish grievance procedures for board members and ensure they are afforded disability protections. The main purpose of these proposals would be to give board members the same protections under the regulations as applicants for legal assistance, clients, and grantee employees.

DATES: Comments due May 29, 2024.

Listening sessions, all conducted via Zoom, all times Eastern:

1. Wednesday, March 13, 2024, 10:30 a.m.–12:30 p.m.

2. Friday, March 22, 2024, 2:00 p.m.–4:00 p.m.

3. Tuesday, April 3, 2024, 3:00 p.m.–5:00 p.m.

4. Monday, April 15,2024, 1:00 p.m.–3:00 p.m.

ADDRESSES: You may send comments by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: lscrulemaking@lsc.gov.* Include ''Parts 1621 & 1624'' in the subject line of the message.

• *Mail:* Brittany Sims Nwankwoala, Assistant General Counsel, Legal Services Corporation, 3333 K St. NW, Washington, DC 20007; ATTN: Parts 1621 & 1624 Rulemaking.

• *Hand Delivery/Courier:* Brittany Sims Nwankwoala, Assistant General Counsel, Legal Services Corporation, 3333 K St. NW, Washington, DC 20007; ATTN: Parts 1621 & 1624 Rulemaking.

FOR FURTHER INFORMATION CONTACT: Brittany Sims Nwankwoala, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 295–1599 (phone); or *nwankwoalab@lsc.gov.*

SUPPLEMENTARY INFORMATION: *Listening Session Access Information:* To participate in the listening sessions via Zoom, please follow the link or use the dial-in instructions below:

Link: https://lsc-gov.zoom.us/j/4396412186.

Meeting ID: 439 641 2186.

Find your local number: *https://lsc-gov.zoom.us/u/kAZIVdfiA.*

Background: Consistent with Executive Orders 14058 and 13985, LSC reached out to the client-eligible community to seek their views on LSC's rulemaking priorities. LSC was particularly interested in their views on those rules that directly affect individuals who qualify for LSC- funded legal assistance. Community members asked LSC to expand upon parts 1621 and 1624. Part 1621 requires legal services programs that receive financial assistance from LSC to establish grievance procedures to process complaints by applicants regarding the denial of legal assistance and complaints by clients about the manner or quality of legal assistance provided. These procedures should, to the extent possible, result in the provision of an effective remedy in the resolution of complaints. The grievance procedures required by part 1621 cover complaints by individuals denied legal assistance and by clients dissatisfied by the manner or quality of legal assistance received. No part of LSC's current regulations provides a mechanism for governing body members to make complaints about board malfeasance and obtain resolution of those complaints.

Part 1624 requires LSC funded legal services programs to remove any impediments that may exist to the provision of legal assistance to persons with disabilities eligible for such assistance in accordance with section 504 of the Rehabilitation Act of 1973. Currently, part 1624 explicitly applies only to applicants for legal assistance, clients, applicants for employment, and grantee employees. Because many client-eligible members are persons with disabilities, the commenters felt expanding part 1624 to include governing body members was necessary to ensure that client-eligible individuals are afforded the same opportunities to be selected for and participate in grantee governing body activities as persons who do not have disabilities.

Through this Notice, LSC is asking grantees, clients, other stakeholders, and interested members of the public to provide LSC with their views on the following questions:

• What policies and procedures do your organizations currently have in place to address board member grievances? Describe the process.

• Has your organization had positive or negative experiences with utilizing these procedures in the past?

• What effect or impact would revising parts 1621 and 1624 to apply to grantee governing body members have on your organization? Unexpected outcomes?

• Based on previous experience, how often would your organization use regulations like part 1621 and part 1624?

• Is there anything else LSC can do to help resolve conflicts on your organization's board?

Interested parties may submit their comments in writing to LSC via email, fax, or postal mail. Additionally, LSC will hold four listening sessions during which interested parties may join a Zoom call with LSC staff to provide their comments orally. The dates and access information for those listening sessions are contained in the **DATES** section of this notice.

(Authority: 42 U.S.C. 2996g(e).)

Dated: February 21, 2024.

Stefanie Davis,

Deputy General Counsel, Legal Services Corporation.

[FR Doc. 2024–03867 Filed 2–28–24; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 17–84; Report No. 3210; FR ID 204483]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

SUMMARY: Petition for Reconsideration of Action in a Rulemaking Proceeding in WC Docket No. 17–84, adopted by the Commission on December 13, 2023, by Thomas B. Magee on behalf of Coalition of Concerned Utilities.

DATES: Oppositions to the Petition must be filed on or before March 15, 2024. Replies to oppositions to the Petition must be filed on or before March 25, 2024.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Michael Ray of the Wireline Competition Bureau, Competition Policy Division, at (202) 418–0357 or *Michael.Ray@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3210, released February 16, 2024. The full text of the Petition can be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

Subject: Administrative practice and procedure.

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–04237 Filed 2–28–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22–405; DA 24–154; FR ID 205024]

Media Bureau Seeks Additional Comment on FM Digital Power

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, based on a Petition for Rulemaking Addendum—Request for Clarification filed by the National Association of Broadcasters and Xperi, Inc., the Commission seeks additional public comment in the pending rulemaking proposing to change the methodology to determine whether an FM digital broadcast station can increase its digital power, and to allow asymmetric sideband operation.

DATES: *Comment date:* April 1, 2024. *Reply comment date:* April 15, 2024.

ADDRESSES: All filings must be submitted in MB Docket No. 22–405. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://apps.fcc.gov/ecfs/*.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy*.

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

FOR FURTHER INFORMATION CONTACT: Albert Shuldiner, Chief, Media Bureau, Audio Division, (202) 418–2700; Thomas Nessinger, Senior Counsel, Media Bureau, Audio Division, (202) 418–2700. Press inquiries should be directed to Nancy Murphy, (202) 418–1043.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's Public Notice in MB Docket No. 22–405; DA 24–154, released on February 21, 2024. The full text of this document is available electronically for public inspection via the Commission's Electronic Comment Filing System (ECFS) at *https://apps.fcc.gov/ecfs* and the FCC's website at *https://docs.fcc.gov/public/attachments/FCC-24-154A1.pdf.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530.

Synopsis

1. The Commission initiated this proceeding on August 1, 2023, with the release of an Order and Notice of Proposed Rulemaking seeking comment on a proposal to change the methodology used by digital FM stations to determine whether they can increase FM digital power, and to allow asymmetric sideband operation. Modifying Rules for FM Terrestrial Digital Audio Broadcasting Systems, MB Docket No. 22–405, Order and Notice of Proposed Rulemaking, FCC 23–61 (rel. Aug. 1, 2023) (NPRM). A **Federal Register** summary published on August 22, 2023, 88 FR 57033. The time period for filing comments and reply comments on the NPRM closed on October 6, 2023. Comment and Reply Comment Dates Set For FM Digital Power NPRM, Public Notice, DA 23–741 (MB rel. Aug. 22, 2023). Comments and reply comments were filed in ECFS under Media Bureau Docket No. 22–405.

2. On February 2, 2024, the National Association of Broadcasters (NAB) and Xperi Inc. (Xperi), two of the parties that filed Petitions for Rulemaking that led to release of the NPRM, filed with the Media Bureau (Bureau) a Petition for Rulemaking Addendum—Request for Clarification (Petition for Clarification), which is available in the Commission's Electronic Comment Filing System at *https://www.fcc.gov/ecfs/document/10202290960928/1.* In the Petition for Clarification, NAB and Xperi state that they have ''identified an important ambiguity that requires clarification regarding the maximum allowable operating power of a digital FM signal.'' Petition for Clarification at 2. The NPRM and the Commission's past discussions of digital power levels have considered only the power level for the digital FM carriers of the primary HD Radio MP1 hybrid service mode of operation. Id. In particular, the Commission has considered the total integrated power level for all digital carriers used to transmit MP1 standard hybrid service. NAB and Xperi note, however, that the HD Radio system is not limited to the MP1 mode, and the Commission has authorized extended hybrid modes of operation, which increase the number of digital subcarriers. Petitioners assert that the optimal operation of the extended hybrid modes requires an increase in the total integrated power above that of the MP1 mode so that all the digital carriers individually operate at the intended power. Id. at 2–5. (The MP1 mode consists of 10 digital partitions, each with 19 subcarriers. Extended hybrid modes add partitions between the MP1 partitions and the analog signal: for example, the MP2 mode adds one partition to the MP1 partitions; the MP3 mode adds two partitions; and various other modes, such as MP11, MP5, MP6, MP1X, DSB1, MP1XOV, MP6OV, and DSB1OV, add four partitions. These additional partitions increase the total digital power by 10, 20 and 40%, respectively. Id. at 4–5.) Otherwise, individual carriers would have to operate with less than the intended power level to keep the total integrated power at the intended level. Petitioners therefore seek to clarify the maximum digital FM power levels permitted for hybrid and extended hybrid service modes, including adding clarifying text to the NPRM, and textual changes to the proposed new § 73.404(e) of the rules. Id. at 6–7.

3. In light of this requested clarification, and to provide a complete record on this issue, the Bureau encourages public comment on NAB and Xperi's proposed clarifying language and changes to proposed § 73.404(e) of the rules. The Bureau notes that NAB and Xperi ask the Commission to incorporate a reference in the rules to the NRSC–5 standard, which is subject to modification, as an appropriate means to implement the proposed change. Because it is unusual for the Commission to incorporate outside standards into its rules, the Bureau states that commenters should offer alternative means to incorporate the proposed clarification directly into the Commission's rules. The Bureau further seeks comment on whether the additional digital power necessitated by use of extended digital modes would increase potential interference to first adjacent channel analog FM stations, to the host analog station, or to other users of the FM broadcast spectrum or adjacent to that spectrum. The Bureau notes that the Petition for Clarification does not reference any technical studies

of the impact of extended hybrid modes with a total integrated digital power level more than −10 dBc. Are such studies needed to determine whether or not to adopt this proposal? Commenters also should consider that if the Commission adopts this proposed change for stations operating with less than −10 dBc, should the Commission limit the total overall digital power for any station operating in extended hybrid mode to a maximum of −10 dBc? The Bureau notes that doing so would require stations that convert from MP1 to an extended hybrid mode to reduce the power of the individual subcarriers in the primary digital sidebands, in order to accommodate the power added by the extended digital sideband partitions. The Bureau further invites commenters to suggest modifications to petitioners' clarifying suggestions, as appropriate. It also seeks comment regarding the number of stations operating in the various extended hybrid modes, including whether those stations operate at a power level with more than −14 dBc, in order to determine the scope of this issue. Finally, the Bureau also offers an opportunity to commenters who wish to supplement or amend their previous comments in light of more recent additions to the record.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

[FR Doc. 2024–04243 Filed 2–28–24; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 89, No. 41
Thursday, February 29, 2024

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

Rural Utilities Service

[DOCKET#: RUS–23–TELECOM–0021]

Notice of Solicitation of Applications for the Distance Learning and Telemedicine Grants for Fiscal Year 2024

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: President Joe Biden has pledged that every American will have access to affordable, reliable, high-speed internet. Digital equity devices, skills and affordability that brings the internet to life are a critical part of that mission. As part of that work, the Rural Utilities Service (RUS, Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), announces the acceptance of applications under the Distance Learning and Telemedicine (DLT) grant program for fiscal year (FY) 2024, subject to the availability of funding. This notice is being issued prior to passage of a FY 2024 Appropriations Act in order to allow applicants sufficient time to leverage financing, prepare and submit their applications, and give the Agency time to process applications within FY 2024. Based on FY 2023 appropriated funding, the Agency estimates that approximately $60 million will be available for FY 2024. Successful applications will be selected by the Agency for funding and subsequently awarded to the extent that funding may ultimately be made available through appropriations. All applicants are responsible for any expenses incurred in developing their applications.

DATES: Applications must be submitted through *www.grants.gov/* and received no later than April 29, 2024 to be eligible for funding under this grant opportunity. Late or incomplete applications will not be eligible for funding under this grant opportunity.

ADDRESSES: All applications must be submitted electronically at *www.grants.gov.* Instructions and additional resources, to include an Application Guide, are available at *www.rd.usda.gov/programs-services/telecommunications-programs/distance-learning-telemedicine-grants,* under the ''To Apply'' tab.

FOR FURTHER INFORMATION CONTACT: For inquiries regarding eligibility concerns, please contact program staff at *www.usda.gov/reconnect/contact-us.* Other inquiries, please contact Randall Millhiser, Deputy Assistant Administrator, Office of Loan Origination and Approval, RUS, USDA, 1400 Independence Avenue SW, Mail Stop 1590, Room 4121–S, Washington, DC 20250–1590, telephone: (202) 720–0800, email: *randall.millhiser@usda.gov.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Utilities Service (RUS).

Funding Opportunity Title: Distance Learning and Telemedicine (DLT) Grants.

Announcement Type: Notice of Solicitation of Applications (NOSA).

Funding Opportunity Number: RUS–24–01–DLT.

Assistance Listing Number: 10.855.

Dates: Applications must be submitted through *www.grants.gov/* and received no later than April 29, 2024 to be eligible for funding under this grant opportunity. Late or incomplete applications will not be eligible for funding under this grant opportunity.

Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at *www.rd.usda.gov/priority-points*):

- Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure.
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

A. Program Description

1. *Purpose of the Program.* Seeking to make progress toward President Biden's goal of digital equity throughout the country, the DLT program provides financial assistance to enable and improve distance learning and telemedicine services in rural areas. DLT grant funds support the use of telecommunications-enabled information, audio and video equipment, and related advanced technologies by students, teachers, medical professionals, and rural residents. These grants are intended to increase rural access to education, training, and health care resources that are otherwise unavailable or limited in scope.

2. *Statutory and Regulatory Authority.* The DLT program is authorized under 7 U.S.C. 950aaa and implemented by 7 CFR part 1734.

3. *Definitions.* The definitions applicable to this notice are published at 7 CFR 1734.3. Additional definitions applicable to this notice are listed below.

Federally Recognized Tribe is classified as any Indian or Alaska Native tribe, band, nation, pueblo, village or community as defined by the Federally Recognized Indian Tribe List Act (List Act) of 1994 (Pub. L. 103–454). A list of Federally Recognized Tribes is available at: *www.federalregister.gov/documents/2023/01/12/2023–00504/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of.*

Opioid or other substance use disorder treatment is defined as the interactive communication between medical or educational professionals and opioid users or their families, other treatment professionals or those who interact with opioid or other substance users.

Rural Area refers to any area, as confirmed by the most recent decennial Census of the United States, which is not located within a city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or an urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants; and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I). For purposes of the definition of Rural Area, the Agency has determined to recognize any census-designated

''urban area'' in place of an ''urbanized area,'' given that the Census Bureau no longer tracks or uses the term urbanized area.

4. *Application of Awards.* The Agency will review, evaluate, and score applications received in response to this notice based on 7 CFR 1734.26. Awards under the DLT program will be made on a competitive basis using specific selection criteria provided in 7 CFR 1734.27. The Agency advises all interested parties that the applicant bears the full burden in preparing and submitting an application in response to this notice regardless of whether or not funding is appropriated for the DLT program in FY 2024.

B. Federal Award Information

Type of Award: Grants.

Fiscal Year Funds: FY 2024.

Available Funds: Based on FY 2023 appropriated funding, the Agency estimates that approximately $60 million will be available for FY 2024.

To combat a key threat to economic prosperity, rural workforce and quality of life, the Agency is directed to set aside 20% of the total available funds for FY 2024 for projects that seek to reduce the morbidity and mortality associated with substance use disorder (including opioid misuse) in rural communities by strengthening the capacity to address prevention, treatment and/or recovery at the community level.

The total appropriated amount minus the determined set aside amount will be available for all eligible projects. RUS may at its discretion, increase the total level of funding available in this funding round from any available source provided the awards meet the requirements of the statute which made the funding available to the Agency.

Award Amounts: Pursuant to 7 CFR 1734.24, the Administrator has established that the minimum grant amount of $50,000 and the maximum grant amount of $1,000,000 will be applied to this grant opportunity, if funds are appropriated.

Anticipated Award Date: September 30, 2024.

Performance Period: Three-year period, beginning the date funds are released.

Renewal or Supplemental Awards: Although prior DLT grants cannot be renewed, existing DLT awardees can submit applications for new projects that are distinct from previously funded projects, either because they are for a completely separate purpose and technology or because they propose to serve a new service area, unassociated with prior funded service areas. Grant applications must be submitted during the application window.

Type of Assistance Instrument: Grant Agreement.

C. Eligibility Information

1. *Eligible Applicants.* Eligible applicants must meet the eligibility requirements of 7 CFR 1734.4.

(a) Applicants must have a Unique Entity Identifier (UEI) and an active registration that includes the Financial Assistance Representations and Certifications and has current information in the System for Award Management (SAM) at: *www.sam.gov.* Further information regarding UEI acquisition and SAM registration can be found in Section D.3 of this document.

(b) Corporations that have been convicted of a federal felony within the past 24 months are not eligible. Any corporation that has been assessed to have any unpaid federal tax liability, for which all judicial and administrative remedies have been exhausted or have lapsed and is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance.

(c) Applicants are required to provide evidence of their ability to contract with RUS to obtain the grant and comply with all applicable requirements, in accordance with 7 CFR 1734.4(a). It is incumbent on applicants to determine the appropriate entity to apply for the grant. Entities created by educational or medical institutions for the purpose of applying for and managing grants, such as university or hospital foundations, should not be applicants unless they can own and manage grant-funded equipment as required by the Grant Agreement and applicable regulations, including 2 CFR part 200. Accordingly, RUS will not transfer awards to another entity because the applicant has later determined that it cannot close the award, execute the standard Grant Agreement, which is publicly available, nor hold the grant assets in its name.

2. *Cost Sharing or Matching.* The DLT program requires matching contributions for grants as outlined in 7 CFR 1734.22. The Application Guide located on the DLT website at *www.rd.usda.gov/programs-services/telecommunications-programs/distance-learning-telemedicine-grants* provides additional guidance for matching contributions.

(a) *Match Documentation.* Grant applicants must demonstrate matching contributions, in cash or in kind (new or non-depreciated items), of at least 15 percent of the grant amount requested. Matching contributions must be used for approved purposes for grants (see 7 CFR 1734.21 and Section D.6 of this notice). Applications that do not provide sufficient documentation of the required 15 percent match will be deemed ineligible.

(b) *Discounts and Donations.* A review of applications submitted in the past determined that vendor-donated matches did not have value without a required subsequent purchase of vendor equipment or licenses with grant funds. For example, in many grant applications, software licenses were donated in satisfaction of the matching requirement. However, such licenses only worked with, and thus only had value with, the same vendor's equipment. Additionally, by side agreement, grant applicants were required to purchase the vendor's equipment once the grant was made with grant funds. The Agency determined that such a practice violated federal procurement standards found at 2 CFR 200.317–326, because the grant applicant did not put the purchase out for bid, either because no other equipment would work with the ''donated'' licenses, or because they were contractually obligated to buy the equipment before the grant was made. As such, the Agency has determined that vendor matches requiring subsequent purchases, either by necessity or contract, are not permitted.

3. *Other Eligibility Requirements.*

(a) The Application Guide provides additional information regarding eligible and ineligible items for equipment and facilities.

(b) Grant applications that are written by vendors who are mentioned in the application as vendors to be used on the project to be funded by the DLT award are ineligible as a violation of the competition rules in 2 CFR 200.319. Such vendors are also prohibited from bidding on the project because of conflict of interest. Additionally, applicants must fully understand the procurement requirements of 2 CFR part 200, subpart D and 7 CFR part 1734 when compiling an application for submission and must avoid the use of predetermined equipment as a violation of the bidding requirements unless they have adequately demonstrated in the application that no other equipment is available for the intended purpose.

(c) Projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*) are not eligible for financial assistance from the DLT program. See 7 CFR 1734.23(a)(11).

(d) If a DLT project proposes service on or over Tribal Lands and the applicant is non-Tribal, then a letter of consent is required from each Tribal

Council with jurisdiction over the Tribal Lands in question. However, if a DLT project proposes infrastructure construction or deployment on or over Tribal Lands, then a Tribal Resolution is required from each Tribal Government with jurisdiction over the Tribal Lands in question.

D. Application and Submission Information

1. *Address to Request Application Package.* The Application Guide, copies of necessary forms, and resources are available at *www.rd.usda.gov/programs-services/telecommunications-programs/distance-learning-telemedicine-grants.* Application information is also available at *www.grants.gov/.* If you require alternative means of communication of program information (*e.g.,* Braille, large print, audiotape, etc.) please contact the 711 Relay Service.

2. *Content and Form of Application Submission.*

(a) *Application Completion.* Carefully review 7 CFR part 1734, subparts A and B. A list of items for a complete application can be found at 7 CFR 1734.25. The Application Guide provides specific, detailed instructions for each item of a complete application. The Agency emphasizes the importance of including every item and strongly encourages applicants to follow the instructions carefully, using the examples and illustrations in the Application Guide.

(b) *Description of Project Sites.* Most DLT grant projects contain several project sites. The Agency provides a sample worksheet that is located within the Application Guide to help applicants clearly identify hub, hub/end-user, and end-user sites. As in prior DLT funding windows, site information must be consistent throughout the application. Applications without consistent site information will be returned as ineligible.

(c) *Submission of Application Items.* Given the high volume of program interest, applicants should submit the application items in the order as indicated in the table below. Applications that are not assembled in the specified order prevent timely determination of eligibility.

Application item	Regulation	Comments
SF–424 (Application for Federal Assistance Form)	7 CFR 1734.25(a)	Form provided through *www.grants.gov.*
Executive Summary of the Project	7 CFR 1734.25(b)	Narrative, including a publicly releasable section that describes the population served.
Non-Duplication of Services	7 CFR 1734.25(b)(8)	Guidance provided in the Application Guide.
Scoring Criteria Documentation	7 CFR 1734.25(c)	Provide documentation on how applicant meets each of the scoring criteria (see 7 CFR 1734.26).
Scope of Work	7 CFR 1734.25(d)	Narrative and documentation, including the budget.
Financial Information and Sustainability	7 CFR 1734.25(e)	Narrative.
Statement of Experience	7 CFR 1734.25(f)	Narrative.
Funding Commitments from All Sources	7 CFR 1734.25(g)	Worksheet and match documentation letters with authorized signatures.
Telecommunications System Plan	7 CFR 1734.25(h)	Documentation.
Compliance with other Federal Statutes	7 CFR 1734.25(i)	Addressed by providing Financial Assistance Representations and Certifications in *www.SAM.gov.*
Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.	7 CFR 1734.25(i)	Addressed by providing Financial Assistance Representations and Certifications in *sam.gov/content/home.*
Environmental Review Requirements	7 CFR 1734.25(j)	Guidance provided in the Application Guide.
Evidence of Legal Authority and Existence	7 CFR 1734.25(k)	Guidance provided in the Application Guide.
Federal Debt Certification	7 CFR 1734.25(l)	SF–424, Application for Federal Assistance.
Consultation with USDA State Director	7 CFR 1734.25(m)	Documentation.
Supplemental Information	7 CFR 1734.25(n)	Documentation.

3. *System for Award Management and Unique Entity Identifier.*

(a) At the time of application, each applicant must have an active registration in the SAM before submitting its application in accordance with 2 CFR part 25. To register in the SAM, entities will be required to obtain a UEI. Instructions for obtaining the UEI are available at *sam.gov/content/entity-registration.*

(b) Applicants must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active federal award or an application under consideration by a federal awarding agency.

(c) Applicants must ensure they complete the Financial Assistance General Certifications and Representations in the SAM.

(d) Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

(e) The Agency will not make an award until the applicant has complied with all the SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a federal award and use that determination as a basis for making a federal award to another applicant.

4. *Submission Dates and Times.*

(a) *Application Technical Assistance.* Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to April 15, 2024. Agency contact information can be found in **FOR FURTHER INFORMATION CONTACT** section of this notice.

(b) *Application Deadline Date.* Applications must be submitted through *www.grants.gov/* and received no later than April 29, 2024 to be eligible for funding under this grant opportunity.

(c) *Applications Received After Deadline Date.* Late or incomplete applications will not be eligible for funding under this grant opportunity.

The Agency will not solicit or consider new scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification on materials contained in the submitted application.

5. *Intergovernmental Review.* Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, applies to this program. This E.O. requires that federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Applicants should use the USDA Office of the Chief Financial Officer (OCFO), Intergovernmental Review website

(*www.usda.gov/ocfo/federal-financial-assistance-policy/intergovernmental-review*) instructions to contact the State Points of Contact (SPOC). Any comments obtained through the SPOC must be provided as part of the application process. Applications from federally recognized Indian Tribes are not subject to this requirement.

6. *Funding Restrictions.*

(a) Ineligible grant purposes are outlined in 7 CFR 1734.23. Applicants should exclude ineligible items and ineligible matching contributions from the budget. If an ineligible item or matching contribution is included in the budget, the item will be removed and may result in an application being deemed ineligible. See the Application Guide for more details on funding restrictions, matching contributions, a recommended budget format, and detailed budget compilation instructions.

(1) If an application includes both eligible and ineligible grant purposes on a single line of the application budget, and the cost of the ineligible item can be determined, the ineligible item will be removed from the approved budget. However, the entire line item will be deemed ineligible if the cost of the ineligible item cannot be determined.

(b) Hub sites located in non-rural areas are not eligible for grant assistance unless they are necessary to provide DLT services to rural residents at end user sites. See 7 CFR 1734.2(h).

(c) For the purposes for this NOSA, the cost of video conferencing platform licenses is considered an eligible cost if:

(1) The video conferencing platform is an integral component in a project delivering distance learning or telemedicine services to an end user through the use of eligible equipment;

(2) The cost does not exceed ten percent of the requested grant amount;

(3) The application demonstrates that the predominant use (50 percent or more) of the video conferencing platform will be for the distance learning or telemedicine project;

(4) The license is new and not a renewal of an existing license; and

(5) The number of licenses requested does not exceed the number of end-user devices requested in the application.

The duration of funding for video conferencing platform licenses is limited to three years from the date funds are made available.

(d) If an application includes multiple costs on a single line of the application budget, one of which is subject to a cost limitation, as outlined in 7 CFR 1734.21, the items that are not subject to the cost limitation will be deducted when calculating the cost limitation percentage. However, the entire line item will be applied against the cost limitation if each cost cannot be determined.

7. *Other Submission Requirements.*

(a) Applications will not be accepted via paper, fax or electronic mail.

(b) Submit the electronic application through *www.grants.gov/.* Do not send a paper copy to RUS. To increase the range of applicants that will be successful in FY 2024, only ONE application per applicant is eligible for approval.

(c) For duplicate applications submitted through *www.grants.gov,* the Agency will base its evaluation on the last copy of the application submitted. If an applicant submits multiple applications for different projects, then the Agency will only consider the application with the highest score.

(d) *Grants.gov* requires some credentialing and online authentication procedures. These procedures may take several business days to complete. Therefore, the applicant should complete the registration, credentialing, and authorization procedures at *www.grants.gov/ before* submitting an application. Instructions on all required passwords, credentialing, and software are available on *www.grants.gov/.* If system errors or technical difficulties occur, use the customer support resources available at the *Grants.gov* website.

E. Application Review Information

1. *Criteria.* Grant applications are scored competitively and are subject to the criteria provided in 7 CFR 1734.26 and this notice, and further guidance on these criteria is provided in the Application Guide.

(a) *Rurality Category (up to 40 points).* The rurality score is based on two factors:

(1) the population size of each community where an end-user site is located and

(2) whether an end-user site lies within an urbanized area contiguous and adjacent to a city or town having a population in excess of 50,000 inhabitants.

For non-fixed site projects and projects which contain non-fixed components, the rurality score will be based on the hub site.

Applicants should use 2020 census data from the census website (*data.census.gov/cedsci/*) as their source for population data. To determine if a site lies in any incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants or an urbanized area contiguous and adjacent to a city or town having a population in excess of 50,000 inhabitants, applicants should check the site address, using the DLT mapping tool available at *www.rd.usda.gov/programs-services/telecommunications-programs/distance-learning-telemedicine-grants.* The Application Guide provides additional guidance for this category, including a worksheet to assist applicants in the calculation of their rurality scores.

(b) *Economic Need Category (up to 30 points).* Economic need is based on the county poverty percentage of the end-user sites proposed in the application. The percentages must be determined by utilizing the United States Census Small Area Income and Poverty Estimates (SAIPE) program. Applicants can use the spreadsheet posted to the DLT program website to look up current SAIPE county-level data. End-user sites located in geographic areas, for which no SAIPE data exist, will be determined to have an average SAIPE poverty percentage of 30 percent. Such geographic areas may include territories of the United States or other locations eligible for funding through the DLT grant program.

(c) *Service Needs and Benefits Category (up to 30 points).* This category measures the extent to which the proposed project meets the need for distance learning or telemedicine services in Rural Areas, the benefits derived from the proposed services, and the local community involvement in the planning, implementation, and financial assistance of the project. RUS will also consider the extent to which the applicant's documentation identifies the local economic, education, or health care challenges. The applicant must explain how the project proposes to address these issues and why the applicant cannot complete the project without a grant.

(d) *Special Consideration (up to 10 points).* Special consideration points will be awarded for projects with at least one end-user site in the following areas. Applicants may only receive special consideration points in one area (up to 10 points):

(1) *Creating More and Better Markets (10 points).* Projects that enable and improve distance learning and telemedicine services in Rural Areas to the most distressed tier of the Distressed Communities index are eligible for 10 points. The most distressed tier of the index are those communities with a score over 80. A list of Distressed Communities can be found at: *www.rd.usda.gov/media/file/download/fy24distressedcommunityindexlist-.xlsx.*

(2) *Projects advancing Racial Justice, Place-Based Equity, and Opportunity.*

(10 points). Projects that meet one of the criteria below will receive 10 points.

(i) Projects proposing to serve rural communities with a Social Vulnerability Index (SVI) with a score of 0.75 or higher are eligible. For the purposes of this NOSA, Puerto Rico, Guam, America Samoa, the Northern Mariana Islands, Palau, the Marshall Islands, the Federated States of Micronesia, the U.S. Virgin Islands, and Hawaiian Census Tribal areas are considered Socially Vulnerable Communities. A GIS layer identifying the Socially Vulnerable Communities can be found using the DLT mapping tool available at: *www.rd.usda.gov/programs-services/telecommunications-programs/distance-learning-telemedicine-grants.*

(ii) Projects that enable and improve distance learning and telemedicine services on Tribal Lands. Tribal Lands will be identified in GIS layers included in the DLT mapping tool available at: *www.rd.usda.gov/programs-services/telecommunications-programs/distance-learning-telemedicine-grants.*

(iii) Projects proposed by a federally recognized Tribe, including Tribal instrumentalities and entities that are wholly owned by Tribes.

2. *Review and Selection Process.* Grant applications are ranked by the final score. RUS selects applications based on those rankings, subject to the availability of funds. As noted in Section D.7. of this announcement, RUS will approve no more than one application per applicant. If an applicant submits more than one application for different projects, then the Agency will only consider the application with the highest score. If an applicant submits more than one application for the same project, then the Agency will only consider the latest submission. In addition, the Agency has the authority to limit the number of applications selected in any one state or for any one project during a fiscal year. See 7 CFR 1734.27 for a description of the grant application selection process. An application receiving fewer points can be selected over a higher scoring application in the event that there are insufficient funds available to cover the costs of the higher scoring application, as stated in 7 CFR 1734.27(b)(3).

The Agency evaluates grant applications in accordance with 7 CFR 1734.27(c). The Agency reserves the right to offer the applicant less than the grant funding requested.

F. Federal Award Administration Information

1. *Federal Award Notices.* RUS notifies applicants whose projects are selected for awards by mailing or emailing a copy of an award letter. The receipt of an award letter does not authorize the applicant to commence performance under the award. After sending the award letter, the Agency will send an agreement that contains all the terms and conditions for the grant. An applicant must execute and return the grant agreement, accompanied by any additional items required by the agreement, within the number of days specified in the selection notice letter. The standard agreement is available on the *https://www.rd.usda.gov/programs-services/telecommunications-programs/distance-learning-telemedicine-grants.*

2. *Administrative and National Policy Requirements.*

The items listed in 7 CFR part 1734, this announcement, the Application Guide, and program resources implement the appropriate administrative and national policy requirements, which include but are not limited to:

(a) Executing a DLT Grant Agreement.

(b) Using Form SF 270, Request for Advance or Reimbursement, to request reimbursements (along with the submission of receipts for expenditures and any other documentation to support the request for reimbursement).

(c) Submitting an annual Project Performance Activity Report, no later than January 31st of the year following the year in which all or any portion of the grant is first advanced and continuing in subsequent years until completion of the project.

(d) Ensuring that records are maintained to document all activities and expenditures utilizing DLT grant funds and matching funds (receipts for expenditures are to be included in this documentation).

(e) Providing a final project performance report, no later than one hundred twenty (120) days after the expiration date, termination of the grant, the project completion, or the final disbursement of the grant by the grantee, whichever event occurs last.

(f) Complying with policies, guidance, and requirements as described in the following applicable Code of Federal Regulations, and any successor regulations:

(1) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

(2) 2 CFR parts 417 and 180 (Government-wide Nonprocurement Debarment and Suspension).

(g) Complying with Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency. For information on limited English proficiency and agency-specific guidance, go to *www.LEP.gov.*

(h) *Accountability and Compliance with Civil Rights Laws.* The regulation found at 7 CFR part 1901, subpart E contains policies and procedures for implementing the regulations of the Department of Agriculture issued pursuant to Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Title IX, Section 504 of the Rehabilitation Act of 1973, Executive Order 13166, Executive Order 11246, and the Equal Credit Opportunity Act of 1974, as they relate to the RD. Nothing herein shall be interpreted to prohibit preference to American Indians on Indian Reservations.

The policies contained in this subpart apply to recipients. As recipients of federal financial assistance, awardees are required to comply with the applicable federal, tribal, state and local laws. Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act prohibits discrimination by recipients of federal financial assistance. Recipients are required to adhere to specific outreach activities. These outreach activities include contacting community organizations and leaders that include minority leaders; advertising in local newspapers and other media throughout the entire service area; and including the nondiscrimination slogan, ''This is an Equal Opportunity Program. Discrimination is prohibited by Federal Law,'' in methods that may include, but not be limited to, advertisements, electronic media, public broadcasts, and printed materials, such as brochures and pamphlets.

By completing the Financial Assistance Representations and Certifications in SAM, recipients affirm that they will operate the program free from discrimination. The recipient will maintain the race and ethnic data on the board members and beneficiaries of the program. The recipient will provide alternative forms of communication to persons with limited English proficiency. The Agency will conduct Civil Rights Compliance Reviews on recipients to identify the collection of racial and ethnic data on program beneficiaries. In addition, the compliance review will ensure that equal access to the program benefits and activities are provided for persons with disabilities and language barriers.

3. Reporting.

(a) *Performance Reporting.* All recipients of DLT financial assistance must provide annual performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also

required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project in meeting the DLT program objectives. See 7 CFR 1734.7 for additional information on these reporting requirements.

(b) *Annual Audit.* All recipients of DLT financial assistance must provide an annual audit as follows:

(1) Non-Federal Entities, which include recipients that are states, local governments, Indian tribes, institutions of higher education, or nonprofit organizations, shall provide RUS with an audit pursuant to 2 CFR part 200, subpart F (Audit Requirements). The recipient must follow subsection 2 CFR 200.502 in determining federal awards expended. All RUS loans impose an ongoing compliance requirement for the purpose of determining federal awards expended during a fiscal year. In addition, the recipient must include the value of new federal loans made along with any grant expenditures from all federal sources during the recipient's fiscal year. Therefore, the audit submission requirement for this program begins in the recipient's fiscal year that the loan is made and thereafter, based on the balance of federal loan(s) at the beginning of the audit period. All required audits must be submitted within the earlier of: (i) 30 calendar days after receipt of the auditor's report; or (ii) nine months after the end of the recipient's audit period.

(2) For all other entities, recipients shall provide RUS with an audit within 120 days after the as of audit date in accordance with 7 CFR part 1773. With respect to grant funds, the audit is required until all grant funds have been expended or rescinded. While an audit is required, recipients must also submit the reports on internal control; compliance with provisions of laws, regulations, contracts and grant agreements; and instances of fraud.

(c) *Recipient and Sub-recipient Reporting.* The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

(1) First Tier Sub-Awards of $25,000 or more (unless they are exempt under 2 CFR part 170) must be reported by the recipient to *www.fsrs.gov* no later than the end of the month following the month the obligation was made. Please note that currently underway is a consolidation of eight federal procurement systems, including the Federal Sub-award Reporting System (FSRS), into one system, SAM. As a result, the FSRS will soon be consolidated into and accessed through *www.sam.gov.*

(2) The total compensation of the recipient's executives (the five most highly compensated executives) must be reported by the recipient (if the recipient meets the criteria under 2 CFR part 170) to *www.sam.gov* by the end of the month following the month in which the award was made.

(3) The total compensation of the sub-recipient's executives (the five most highly compensated executives) must be reported by the sub-recipient (if the sub-recipient meets the criteria under 2 CFR part 170) to the recipient by the end of the month following the month in which the sub-award was made.

(d) *Record Keeping and Accounting.* The agreement will contain provisions related to record keeping and accounting requirements.

G. Federal Awarding Agency Contacts

For general questions about this announcement, please contact the point of contact provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

H. Buy America

With respect to any construction under the DLT project, Awardees that are Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABAA) within the Infrastructure Investment and Jobs Act (Pub. L. 117–58), and its implementing regulations at 2 CFR part 184. Any requests for waiver of these requirements must be submitted pursuant to USDA's guidance available online at *www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuy AmericaWaiver.*

I. Other Information

(a) *Paperwork Reduction Act.* In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements associated with the programs, as covered in this notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0572–0096.

(b) *National Environmental Policy Act.* All recipients under this notice are subject to the requirements of 7 CFR part 1970.

(c) *Federal Funding Accountability and Transparency Act.* All applicants, in accordance with 2 CFR part 25, must be registered in the SAM and have a UEI number as stated in Section D.3 of this notice. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

(d) *Debarment and Suspension.* Applicants are not eligible if they have been debarred or suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs under 2 CFR parts 180 and 417. The Applicant will be required to comply with the requirements of 2 CFR 180.335.

(e) *Civil Rights Act.* All grants made under this notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA 7 CFR part 15, subpart A and Section 504 of the Rehabilitation Act of 1973, Title VIII of the Civil Rights Act of 1968, Title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

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

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint*

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

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or
(2) *Fax:* (833) 256–1665 or (202) 690–7442; or
(3) *Email: program.intake@usda.gov*

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

Andrew Berke,

Administrator, Rural Utilities Service, USDA Rural Development.

[FR Doc. 2024–04015 Filed 2–28–24; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Tennessee Advisory Committee to the Commission will convene by Zoom on Wednesday, March 13, 2024, at 3:30 p.m. (CT). The purpose of the meeting is to discuss their draft report on Voting Rights in the state.

DATES: The meeting will take place on Wednesday, March 13, 2024, at 3:30 p.m. (CST).

ADDRESSES:

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_Nei08UzCTW2aZWm4BkDkTw.

Telephone (Audio Only): Dial (833) 568–8864 USA Toll Free; Access Code: 160 512 5411.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the Zoom link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Wednesday, March 13, 2024, at 3:30 p.m. (CT)

1. Welcome & Roll Call
2. Chair's Comments
3. Discussion on Report
4. Next Steps
5. Public Comment
6. Adjourn

Dated: February 23, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–04191 Filed 2–28–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Concrete Masonry Products Research, Education, and Promotion Voter Registration and Ballot Forms

AGENCY: Under Secretary of Economic Affairs, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before April 29, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Kenneth White, Office of the Under Secretary of Economic Affairs, by email at *kwhite2@doc.gov* or *PRAcomments@doc.gov.* Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Kenneth White, Senior Policy Analyst, Under Secretary of Economic Affairs, U.S. Department of Commerce; by phone at (202) 482–2406 or via email at *kwhite2@doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for an extension of an already approved collection of information. In 2021 the Secretary held a referendum among eligible manufacturers to determine whether they favored the implementation of an Order to establish an orderly program for developing, financing, and carrying out an effective, continuous, and coordinated program of research, education and promotion, to support the concrete masonry products industry. The referendum passed and the Order went into effect in December 2021. The law requires the Secretary to conduct an additional referendum in the event: the Board requests such action or if after five years (2026) at least 25 percent of those eligible request such action. Continuation of this approved collection will cover both of these potential occurrences.

In 2022, the Secretary appointed members to the Concrete Masonry Products Board (Board) to develop and implement programs of research, education, and promotion. In 2023, the Board began collecting assessments

from manufacturers of concrete masonry units, of which the Board will use to implement programs and activities.

There are two forms in this Information Collection Request (ICR) relating to the referendum. The first is the registration form for the concrete referendum. The registration form may be submitted by eligible concrete masonry unit manufacturers and is necessary to ensure that the referendum is accurate and complete. Manufacturers only may participate in the referendum if they register. The second form for this ICR relates to the ballot form for the concrete referendum. Eligible concrete masonry unit manufacturers may complete and submit the ballot to reflect their desire for or against implementing the order. Authorizing Statute: 15 U.S.C. chapter 13 (sections 8701–8717).

II. Method of Collection

Registrants may download, complete, print, and submit via fax or mail from the DOC website.

III. Data

OMB Control Number: 0605–0029.

Form Number(s): None.

Type of Review: Regular submission. This is an extension of a current collection.

Affected Public: Business or other for-profit organizations.

Registration

Estimate of Burden: 0.5 hour per application.

Respondents: Manufacturers of concrete masonry units.

Estimated Number of Respondents: 160.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 345 hours.

Ballot

Estimate of Burden: 0.25 hour per ballot.

Respondents: Manufacturers of concrete masonry units.

Estimated Number of Respondents: 160.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 172.5 hours.

Respondent's Obligation: Voluntary.

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. 2024–04263 Filed 2–28–24; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD748]

Research Track Assessment for Golden Tilefish

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

ACTION: Notice of public meeting.

SUMMARY: NMFS will convene the Research Track Assessment Peer Review Meeting for the purpose of reviewing Golden Tilefish. The Research Track Assessment Peer Review is a formal scientific peer-review process for evaluating and presenting stock assessment results to managers for fish stocks in the offshore U.S. waters of the northwest Atlantic. Assessments are prepared by the research track working group and reviewed by an independent panel of stock assessment experts from the Center of Independent Experts (CIE). The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the stock assessment process.

DATES: The public portion of the Research Track Assessment Peer Review Meeting will be held from March 11, 2024–March 14, 2024. The meeting will conclude on March 14, 2024 at 12 p.m. eastern standard time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

ADDRESSES: The meeting will be held in person and virtually. The in person meeting will be held in the S.H. Clark Conference Room in the Aquarium Building of the National Marine Fisheries Service, Northeast Fisheries Science Center (NEFSC), 166 Water Street, Woods Hole, MA 02543 and virtually using this Google Meet link: *https://meet.google.com/rgd-unsq-quh.*

FOR FURTHER INFORMATION CONTACT: Michele Traver, 508–495–2195; *michele.traver@noaa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please visit the NEFSC website at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/fishery-stock-assessments-new-england-and-mid-atlantic.* For additional information about research track assessment peer review, please visit the NEFSC web page at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/research-track-stock-assessments.*

Daily Meeting Agenda—Research Track Peer Review Meeting

The agenda is subject to change; all times are approximate and may be changed at the discretion of the Peer Review Chair.

MONDAY, MARCH 11, 2024

Time	Topic	Presenter(s)	Notes
9:30 a.m.–9:45 a.m	Welcome/Logistics/Agenda	Michele Traver Assessment Process Lead, Kristan Blackhart, PopDy Branch Chief, Mike Wilberg, Panel Chair.	

MONDAY, MARCH 11, 2024—Continued

Time	Topic	Presenter(s)	Notes
9:45 a.m.–10:15 a.m	Introduction/Executive Summary.	José Monteñez, WG Chair.	
10:15 a.m.–11 a.m	Term of Reference (TOR) #1	Sarah Salois, Kimberly Hyde, Stephanie Owen, and Adelle Molina.	Ecosystem.
11 a.m.–11:15 a.m	Break.		
11:15 a.m.–12:15 p.m	TOR #2	Paul Nitschke	Removals (commercial).
12:15 p.m.–12:30 p.m	Discussion	Panel.	
12:30 p.m.–12:45 p.m	Public Comment	Public.	
12:45 p.m.–1:45 p.m	Lunch.		
1:45 p.m.–2:45 p.m	TOR #2 cont	José Monteñez	Removals (recreational).
2:45 p.m.–3:45 p.m	TOR #3	Paul Nitschke	Indices.
3:45 p.m.–4 p.m	Break.		
4 p.m.–4:45 p.m	TOR #3 cont	Paul Nitschke	Indices.
4:45 p.m.–5 p.m	Discussion	Panel.	
5 p.m.–5:15 p.m	Public Comment	Public.	
5:15 p.m	Adjourn.		

TUESDAY, MARCH 12, 2024

Time	Topic	Presenter(s)	Notes
9:30 a.m.–9:35 a.m	Welcome/Logistics/Agenda	Michele Traver, Assessment Process Lead, Kristan Blackhart, PopDy Branch Chief, Mike Wilberg, Panel Chair.	
9:35 a.m.–10 a.m	TOR #3 cont	Andy Jones	Indices.
10 a.m.–11 a.m	TOR #3 cont	Paul Nitschke and Jason Boucher	Indices.
11 a.m.–11:15 a.m	Break.		
11:15 a.m.–11:45 a.m	TOR #8	José Monteñez and Paul Nitschke	Alternative approach.
11:45 a.m.–12 p.m	Discussion	Panel.	
12 p.m.–12:15 p.m	Public Comment	Public.	
12:15 p.m.–1:15 p.m	Lunch.		
1:15 p.m.–3:15 p.m	TOR #4	Paul Nitschke	Models.
3:15 p.m.–3:30 p.m	Break.		
3:30 p.m.–4:30 p.m	TOR #4 cont	Dan Hennen	Models.
4:30 p.m.–4:45 p.m	Discussion	Panel.	
4:45 p.m.–5 p.m	Public Comment	Public.	
5 p.m	Adjourn.		

WEDNESDAY, MARCH 13, 2024

Time	Topic	Presenter(s)	Notes
9:30 a.m.–9:35 a.m	Welcome/Logistics/Agenda	Michele Traver, Assessment Process Lead, Kristan Blackhart, PopDy Branch Chief, Mike Wilberg, Panel Chair.	
9:35 a.m.–10 a.m	TOR #5	Paul Nitschke	BRPs.
10 a.m.–10:45 a.m	TOR #6	Paul Nitschke	Projections.
10:45 a.m.–11 a.m	Break.		
11 a.m.–11:30 a.m	TOR #7	José Monteñez and Paul Nitschke	Research Recommendations.
11:30 a.m.–11:45 a.m	Discussion	Panel.	
11:45 a.m.–12 p.m	Public Comment	Public.	
12 p.m.–1 p.m	Lunch.		
1 p.m.–3 p.m	Summary/Meeting Wrap Up	Panel.	
3 p.m.–5 p.m	Report Writing	Panel.	
5 p.m	Adjourn.		

THURSDAY, MARCH 14, 2024

Time	Topic	Presenter(s)	Notes
9:30 a.m.–12 p.m	Report Writing	Panel.	
12 p.m	Adjourn.		

The meeting is open to the public; however, during the 'Report Writing' sessions on Wednesday, March 13th and Thursday, March 14th, the public should not engage in discussion with the Peer Review Panel.

Special Accommodations

This meeting is physically accessible to people with disabilities. Special

requests should be directed to Michele Traver, via email.

Dated: February 26, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–04250 Filed 2–28–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD750]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of web conference.

SUMMARY: The North Pacific Fishery Management Council (Council) Pacific Northwest Crab Industry Advisory Committee (PNCIAC) will meet March 15, 2024.

DATES: The meeting will be held on Friday, March 15, 2024, from 12 p.m. to 2 p.m., Alaska Time.

ADDRESSES: The meeting will be a web conference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/3038.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Suite 400, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via video conference are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Sarah Marrinan, Council staff; phone; (907) 271–2809; email: *sarah.marrinan@noaa.gov.* For technical support, please contact our admin Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Friday, March 15, 2024

The Committee will discuss several topics including: (a) consider Board of Fisheries proposals (*e.g.,* smaller size limit for opilio and bairdi); (b) crab rationalization program review elements (T); and (c) other business. The agenda is subject to change, and the latest version will be posted *https://meetings.npfmc.org/Meeting/Details/3038* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone, or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/3038.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/3038.*

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

Dated: February 26, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–04282 Filed 2–28–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD735]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 95 Atlantic Migratory Cobia Data Scoping Webinar.

SUMMARY: The SEDAR 95 assessment of the Atlantic stock of cobia will consist of a series of data and assessment webinars. A SEDAR 95 Data Scoping Webinar is scheduled for March 18, 2024. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 95 Atlantic Migratory Cobia Data Scoping Webinar has been scheduled for March 18, 2024, from 1 p.m. to 3 p.m., Eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration for the webinar is available by contacting the SEDAR coordinator via email at *Meisha.Key@safmc.net.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Meisha Key, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *Meisha.Key@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 95 Atlantic Migratory Cobia Data Scoping Webinar are as follows: Discuss available data resources, points of contact, data delivery deadlines, and any known data issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically

identified in this notice and any issues arising after publication of this notice 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

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: February 26, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–04283 Filed 2–28–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Alaska Prohibited Species Donation Program

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite 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. Public comments were previously requested via the **Federal Register** on December 4, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Alaska Prohibited Species Donation Program.

OMB Control Number: 0648–0316.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: One.

Average Hours per Response: Application to be a NMFS Authorized Distributor: 50 hours.

Total Annual Burden Hours: 17 hours.

Needs and Uses: The Prohibited Species Donation (PSD) Program for salmon and halibut has effectively reduced regulatory discard of salmon and halibut by allowing fish that would otherwise be discarded to be donated to needy individuals through tax-exempt organizations. Vessels and processing plants participating in the PSD Program voluntarily retain and process salmon and halibut bycatch. An authorized, tax exempt distributor, chosen by the National Marine Fisheries Service (NMFS), is responsible for monitoring retention and processing of fish donated by vessels and processors. The authorized distributor also coordinates processing, storage, transportation, and distribution of salmon and halibut. The PSD Program requires an information collection so that NMFS can monitor the authorized distributors' ability to effectively supervise program participants and ensure that donated fish are properly processed, stored, and distributed.

Affected Public: Not-for-profit institutions.

Frequency: Every three years.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0648–0316.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–04216 Filed 2–28–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD745]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a two day in-person meeting of its Shrimp Advisory Panel (AP).

DATES: The meeting will convene Tuesday, March 19, 2024, from 8:30 a.m. to 5 p.m. and Wednesday, March 20, 2024, from 8:30 a.m. to 3 p.m., EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will take place at the Gulf Council office. Registration information will be available on the Council's website by visiting *www.gulfcouncil.org* and clicking on the Shrimp AP meeting on the calendar.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Matt Freeman, Economist, Gulf of Mexico Fishery Management Council; *matt.freeman@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

Tuesday, March 19, 2024; 8:30 a.m.–5 p.m. EDT (7:30 a.m.–4 p.m. CST)

Meeting will begin with Adoption of Agenda, Approval of Summary from the October 19, 2023 meeting, and Scope of Work. The AP will review and discuss Council Actions in Response to Motions from the October 2023 *Shrimp* AP Meeting, and then review Species-Specific *Shrimp* Effort Estimates and Status of Secure Digital (SD) Card Returns. The AP will receive an update on Wind Energy Areas in the Gulf of Mexico and hold a discussion on the Wind Energy Meeting in California.

The AP will receive updates on the following: Southeast Regional Office (SERO) Protected Resources, *Sea Turtle* Take and Turtle Excluder Devices (TED) Compliance; Smalltooth *Sawfish* Population Viability Analysis; NOAA Fisheries' National Seafood Strategy;

Shrimp Futures Project; and Reducing Juvenile *Sea Turtle* Bycatch through Development of Reduced Bar Spacing TEDs. The AP will receive public comment at the end of each day.

Wednesday, March 20, 2024; 8:30 a.m.–3 p.m. EDT (7:30 a.m.–2 p.m. CST)

The AP will review the 2022 Gulf *Shrimp* Fishery Landings, the Biological Review of the 2023 Texas Closure, and the 2022 *Royal Red* Landings. The AP will receive updates and discuss Early Adopter Program, Draft *Shrimp* Framework Action and Research Track on SEDAR 87; and, receive public comment at the end of each day.

Lastly, the AP will receive any public testimony and discuss other business items: Remainder of *Shrimp* AP applications.

Meeting Adjourns—

The in-person meeting will be broadcast via webinar. You may register by visiting *www.gulfcouncil.org* and clicking on the *Shrimp* Advisory Panel meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take-action to address the emergency at least 5 working days prior to the meeting.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid or accommodations should be directed to Kathy Pereira, *kathy.pereira@gulfcouncil.org,* at least 5 days prior to the meeting date.

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

Dated: February 26, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–04281 Filed 2–28–24; 8:45 am]

BILLING CODE 3510–22–P

NORTHERN BORDER REGIONAL COMMISSION

Adoption of Categorical Exclusions Under the National Environmental Policy Act

AGENCY: Northern Border Regional Commission.

ACTION: Notice of adoption of categorical exclusions.

SUMMARY: The Northern Border Regional Commission (NBRC) is adopting categorical exclusions (CEs) established by the Denali Commission, which the NBRC will apply to similar NBRC categories of actions to comply with the National Environmental Policy Act. This notice identifies the Denali Commission CEs and NBRC's categories of proposed actions for which it intends to use the Denali Commission's CEs, and describes the consultation between the agencies.

DATES: The CEs identified below are available for the NBRC to use for its proposed actions effective upon publication.

FOR FURTHER INFORMATION CONTACT: Rich Grogan, NBRC Executive Director, telephone number: 603–369–3001, email: *rgrogan@nbrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

National Environmental Policy Act and Categorical Exclusions

Congress enacted the National Environmental Policy Act, 42 U.S.C. 4321–4347, (NEPA) in order to encourage productive and enjoyable harmony between humans and the environment, recognizing the profound impact of human activity and the critical importance of restoring and maintaining environmental quality to the overall welfare of humankind. 42 U.S.C. 4321, 4331. NEPA seeks to ensure that agencies consider the environmental effects of their proposed major actions in their decision-making processes and inform and involve the public in that process. NEPA created the Council on Environmental Quality (CEQ), which promulgated NEPA implementing regulations, 40 CFR parts 1500 through 1508 (CEQ regulations).

To comply with NEPA, agencies determine the appropriate level of review of any major Federal action—an environmental impact statement (EIS), environmental assessment (EA), or CE. 40 CFR 1501.3. If a proposed action is likely to have significant environmental effects, the agency must prepare an EIS and document its decision in a record of decision. 40 CFR part 1502, 1505.2. If the proposed action is not likely to have significant environmental effects or the effects are unknown, the agency may instead prepare an environmental assessment (EA), which involves a more concise analysis and process than an EIS. 40 CFR 1501.5. Following the EA, the agency may conclude that the action will have no significant effects and document that conclusion in a finding of no significant impact. 40 CFR 1501.6. If the analysis concludes that the action is likely to have significant effects, however, then an EIS is required.

Under NEPA and the CEQ regulations, a Federal agency also can establish CEs—categories of actions that the agency has determined normally do not significantly affect the quality of the human environment—in their agency NEPA procedures. 42 U.S.C. 4336e(1); 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d). If an agency determines that a CE covers a proposed action, it then evaluates the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b). If no extraordinary circumstances are present or if further analysis determines that the extraordinary circumstances do not involve the potential for significant environmental effects, the agency may apply the CE to the proposed action without preparing an EA or EIS. 42 U.S.C. 4336(a)(2), 40 CFR 1501.4. If the extraordinary circumstances have the potential to result in significant effects, the agency is required to prepare an EA or EIS.

An agency may not segment an action to meet the definition of a CE. Agencies must evaluate, in a single review, proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action, and must consider as part of the review any connected actions. Connected actions are ones that automatically trigger other actions, cannot or will not proceed unless other actions are taken, or are interdependent parts of a larger action and depend on the larger action for their justification.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to ''adopt'' and use another Federal agency's CEs for proposed actions. 42 U.S.C. 4336c. To use another agency's CEs under section 109, the adopting agency must identify the relevant CEs listed in another agency's (''establishing agency'') NEPA procedures that covers the adopting agency's category of proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the CE for a category of actions is appropriate;

identify to the public the CE that the adopting agency plans to use for its proposed actions; and document adoption of the CE. 42 U.S.C. 4336c. NBRC has prepared this notice to meet these statutory requirements.

NBRC's Programs

Created in 2008, the Northern Border Regional Commission (NBRC) is a Federal-State partnership whose mission is to help alleviate economic distress and encourage private sector job creation in Maine, New Hampshire, New York, and Vermont. In its fifteen-year history, the NBRC has awarded over 400 grants through its primary Catalyst Program, the Forest Economy Program (FEP), the Timber for Transit program, and other special initiatives.

Since 2008, the NBRC has grown each year, both in size and appropriations, and was included in the 2021 Bipartisan Infrastructure Law (BIL) passed by Congress, which appropriated $150 million to the Commission for deployment across its four-State footprint in support of a wide range of economic development projects. Eligible recipients for NBRC grant funds include State and local governments, Indian Tribes, and public and nonprofit organizations.

Through its grantmaking, the NBRC funds projects in the following categories, as prescribed in 40 U.S.C., subtitle V, section 15501:

(1) to develop the transportation infrastructure of its region;

(2) to develop the basic public infrastructure of its region;

(3) to develop the telecommunications infrastructure of its region;

(4) to assist its region in obtaining job skills training, skills development and employment-related education, entrepreneurship, technology, and business development;

(5) to provide assistance to severely economically distressed and underdeveloped areas of its region that lack financial resources for improving basic health care and other public services;

(6) to promote resource conservation, tourism, recreation, and preservation of open space in a manner consistent with economic development goals;

(7) to promote the development of renewable and alternative energy sources; and

(8) to otherwise achieve the purposes of this subtitle.

Denali Commission's Program

Created by Congress in 1998, the Denali Commission is essentially similar to the NBRC in its mission and function. The Denali Commission Act of 1998 established the Denali Commission (Commission), and as part of the act, the Commission's mission of providing job training and other economic development services in rural communities was established with a specific focus on promoting rural development, and providing power generation, transmission facilities, modern communication systems, water and sewer systems and other infrastructure needs in rural Alaska.

Since its inception, the Denali Commission Act of 1998 has been updated several times expanding its mission to include the planning and construction of health care facilities and the establishment of the Denali Access System Program for surface transportation infrastructure and waterfront transportation projects. The NBRC collaborates extensively with the Denali Commission on both administrative and programmatic matters.

II. Denali Commission Categorical Exclusions

NBRC is in the process of developing its own list of CEs and, in the interim, has identified the following CEs listed in appendices A and B to subtitle B of the Denali Commission's NEPA implementing procedures, 45 CFR part 900. The NBRC will require all grantees to complete a CATEX Checklist, which will closely resemble the CATEX Checklist completed by applicants to the Denali Commission's programs. The NBRC will review the CATEX Checklist and project details and, if it determines that application of the CATEX is appropriate, will post a Memorandum for Record (MFR) on NBRC's NEPA-dedicated web page, which may be accessed by the public.

Because the Denali Commission and the NBRC serve similar purposes with respect to economic development in their respective Congressionally prescribed regions, the list of categories in the Denali procedures aligns closely with the categories of actions for which NBRC contemplates using the CE at this time.

A: General Categorical Exclusions

Actions consistent with any of the following categories are, in the absence of extraordinary circumstances, categorically excluded from further analysis in an EA or EIS:

A1. Routine administrative and management activities including, but not limited to, those activities related to budgeting, finance, personnel actions, procurement activities, compliance with applicable executive orders and procedures for sustainable or ''greened'' procurement, retaining legal counsel, public affairs activities (*e.g.,* issuing press releases, newsletters and notices of funding availability), internal and external program evaluation and monitoring (*e.g.,* site visits), database development and maintenance, and computer systems administration.

Application of the CE will be limited to the following NBRC activities:

- Internal operations of the NBRC.
- Grants that support discrete administrative and management activities funded under the authority granted in 40 U.S.C. 15501(a) such as internal planning, budgeting, and procurement activities.

A2. Routine activities that the Commission does to support its program partners and stakeholders, such as serving on task forces, ad hoc committees or representing Commission interests in other forums.

Application of the CE will be limited to the following NBRC activities:

- Participation in regional forums, *e.g.,* multi-funder forums;
- Single or multiple-agency visits to projects and potential projects;
- Participation in strategic planning initiatives of stakeholders and regional partners;
- Participation on ad hoc committees designed to elucidate community needs and economic development objectives.

A3. Approving and issuing grants for administrative overhead support.

Application of the CE will be limited to the following NBRC activities:

- Grants for capacity building initiatives in the NBRC's region to address limited capacity among partners and stakeholders, grantees and potential grantees. These initiatives include: Adding staff and/or contractual capacity within regional economic development entities for the purpose of technical assistance to grantees; Providing support for administrative overhead costs for these economic development entities; Providing grants for contractual support for grantees and potential grantees to be deployed through regional economic development entities.

A4. Approving and issuing grants for social services, education and training programs, including but not limited to support for Head Start, senior citizen programs, drug treatment programs, and funding internships, except for projects involving construction, renovation, or changes in land use.

Application of the CE will be limited to the following NBRC activities:

- Grants for workforce development and training programs, planning initiatives, community visioning processes, and other community-based capacity-building initiatives.

A5. Approving and issuing grants for facility planning and design.

Application of the CE will be limited to the following NBRC activities:

- Grants for discrete planning and design activities, such as climate resiliency planning, inventory assessments, and identifying local and regional sourcing of forest-based products, where such activities are independent of any actions taken to implement the resulting plans and designs.

A6. Nondestructive data collection, inventory, study, research, and monitoring activities (*e.g.,* field, aerial and satellite surveying, and mapping).

Application of the CE will be limited to the following NBRC activities:

- Grants to support discrete nondestructive data collection, inventory, study, research, and monitoring activities funded under 40 U.S.C. 15501(a).

A7. Research, planning grants and technical assistance projects that are not reasonably expected to commit the Federal Government to a course of action, to result in legislative proposals, or to result in direct development.

Application of the CE will be limited to the following NBRC activities:

- Grants to support data collection and research that furthers the NBRC's, and/or grantees', stakeholders', partners', etc. understanding of the region's needs, capacity, or funding gaps as it pertains to economic development as defined by the NBRC and expressly noted in 40 U.S.C. 15501(a).
- Approving and issuing grants to organization to provide technical advice and grant administration assistance to organizations (*e.g.,* community and economic development entities who provide technical and grant administration assistance to address lack of capacity at State, regional and local levels), where such assistance is independent of any implementation actions with potential environmental effects.

A8. Acquisition and installation of equipment including, but not limited to, EMS, emergency and non- expendable medical equipment (*e.g.,* digital imaging devices and dental equipment), and communications equipment (*e.g.,* computer upgrades).

Application of the CE will be limited to the following NBRC activities:

- Grants to support acquisition and installation of fiber optic cable upgrades and other communications equipment within the existing footprint of a building, vehicle, existing electrical or communications infrastructure to improve broadband access;
- Grants to support acquisition and installation of medical and emergency equipment for medical facilities within the existing footprint of a building or within a vehicle;
- Grants to support acquisition and installation of equipment within the existing footprint of a building or within a vehicle to support enhanced cellular access.

B: Program Categorical Exclusions

Actions consistent with any of the following categories are, in the absence of extraordinary circumstances, categorically excluded from further analysis and documentation in an EA or EIS upon completion of the Denali Commission CATEX checklist:

B1. Upgrade, repair, maintenance, replacement, or minor renovations and additions to buildings, roads, harbors and other maritime facilities, grounds, equipment, and other facilities, including but not limited to, roof replacement, foundation repair, ADA access ramp and door improvements, weatherization and energy efficiency related improvements, HVAC renovations, painting, floor system replacement, repaving parking lots and ground maintenance, that do not result in a change in the functional use of the real property.

Application of the CE will be limited to the following NBRC activities, all of which would occur within the existing footprint of a building or on adjacent disturbed land:

- Grants to support renovation of rural health facilities to bring them up to modern use standards;
- Grants to support upgrades, maintenance and repair of existing transportation infrastructure (*e.g.,* covered bridges) including for the purpose of resiliency to changing local climate;
- Grants to support connections to existing trails, for example, from a city street to a bike path, and renovating tourist destination hubs to ensure continued access to tourist centers in the region where potential impacts of connections are documented and do not substantially alter existing facilities, traffic patterns or other existing infrastructure;
- Grants to support additions to existing buildings, roads, harbors, and/or other maritime facilities to ensure continued access for purposes of economic development and/or community access, where the addition will not result in changes to the existing functional use, and where any additions occur on adjacent previously disturbed land.

B2. Engineering studies and investigations that do not permanently change the environment.

Application of the CE will be limited to the following NBRC activities:

- Grants to support improvement plans, rehabilitation planning, climate resiliency planning and the like, for projects including new water and wastewater infrastructure, outdoor recreation trails, and transportation studies for airports and roadways, where such assistance is independent of any implementation actions with potential environmental effects and does not result in surface disturbance.

B3. Construction or lease of new infrastructure including, but not limited to, healthcare facilities, community buildings, housing, and bulk fuel storage and power generation plants, where such lease or construction:

a. Is at the site of existing infrastructure and capacity is not substantially increased; or

b. Is for infrastructure of less than 12,000 square feet of useable space when less than two acres of surface land area are involved at a new site.

Application of the CE will be limited to the following NBRC activities, which would occur on previously disturbed land:

- Grants for new infrastructure at rural healthcare facilities;
- Grants for new infrastructure at childcare facilities;
- Grants for projects that upgrade or replace outdated power generation technology;
- Grants for water and wastewater infrastructure;

B4. Construction or modification of electric power stations or interconnection facilities (including, but not limited to, switching stations and support facilities).

Application of the CE will be limited to the following NBRC activities, which would occur on previously disturbed land:

- Grants to support the construction or modification of new or existing power stations and associated infrastructure in the region;

B5. Construction of electric powerlines approximately ten miles in length or less, or approximately 20 miles in length or less within previously disturbed or developed powerline or pipeline rights-of-way.

Application of the CE will be limited to the following NBRC activities:

- Grants to support new powerlines to communities seeking new connections or upgrades to existing infrastructure.

B7. Demolition, disposal, or improvements involving buildings or

structures when done in accordance with applicable regulations, including those regulations applying to removal of asbestos, polychlorinated biphenyls (PCBs), and other hazardous materials.

Application of the CE will be limited to the following NBRC activities, which would not involve the demolition of structures that are listed on or eligible for listing on the National Register of Historic Properties, or improvement activities outside the footprint of the existing structure:

- Grants to support demolition or improvement of buildings or structures to support economic development activities as specified in 40 U.S.C. 15501(a).

III. Documentation of CE and Public Notice

The NBRC will document the use of the above CEs for each project to which they are applied and will maintain this documentation in the project's records in the NBRC's online file storage system. The CEs will be documented in a ''Memorandum for Record'' format to stay consistent across projects. NBRC annually provides required NEPA dedicated training to our State, regional and local partners, as well as our grantees. NBRC's NEPA process, including all templates, guidance documents, procedures, etc., are made available to the public on NBRC's NEPA-dedicated web page.

IV. Consideration of Extraordinary Circumstances

If an agency determines that a CE covers a proposed action, the agency must evaluate the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b). NBRC does not currently have its own NEPA implementing procedures to guide its application of extraordinary circumstances. Until NBRC establishes NEPA implementing procedures, for purposes of considering extraordinary circumstances in connection with the Denali Commission CEs discussed in this notice, NBRC will consider whether the proposed action has the potential to result in significant effects by considering the factors listed in the Denali Commission's definition of extraordinary circumstances, including, but not limited to, a reasonable likelihood of significant impacts on environmentally sensitive resources; threatening a violation of a Federal, Tribal, State, or local law or requirement imposed for the protection of the environment; or disproportionate and adverse effects on communities with environmental justice concerns. NBRC would analyze proposed actions for the extraordinary circumstances in the Denali Commission's NEPA implementing procedures and consistent with the CEQ NEPA regulations. 45 CFR 900.204 (c). NBRC will then assess whether an extraordinary circumstance is present and if so, whether the CE may nonetheless be applied, consistent with 40 CFR 1501.4(b) or any successor regulation. If NBRC cannot apply a CE to a particular proposed action due to extraordinary circumstances, NBRC will prepare an EA or EIS, consistent with 40 CFR 1501.4(b)(2), or determine if the action is covered under an existing NEPA document. NBRC will document its consideration of extraordinary circumstances as part of the Memorandum for Record discussed in Part III above.

V. Consultation With the Denali Commission and Determination of Appropriateness

NBRC worked with the Denali Commission to identify Denali Commission CEs that could apply to NBRC proposed actions and began consultation in September 2023. During this consultation, the agencies discussed whether the categories of NBRC proposed actions would be appropriately covered by the Denali Commission CEs; each Agency's process for review of projects with respect to CEs; and the extraordinary circumstances that NBRC should consider before applying these CEs to NBRC's proposed actions. The consultation continued through early November 2023, and consisted of detailed email exchanges and virtual meetings with the Denali Commission's lead reviewer of NEPA-related items.

At the conclusion of that process, the agencies determined that NBRC's proposed use of the CEs as described in this notice would be appropriate because the categories of actions for which NBRC plans to use the CEs are covered by the Denali Commission CEs.

VI. Conclusion

This notice documents adoption of the Denali Commission CEs listed above in accordance with 42 U.S.C. 4336c(3), and they are available for use by NBRC effective immediately.

Jonathan O'Rourke,

Senior Program Specialist.

[FR Doc. 2024–04248 Filed 2–28–24; 8:45 am]

BILLING CODE 6820–SZ–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0035]

Agency Information Collection Activities; Comment Request; Annual Report on Appeals Process (RSA–722)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 29, 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–2024–SCC–0035. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Caneshia McAlister, 202–987–1927.

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: Annual Report on Appeals Process (RSA–722).

OMB Control Number: 1820–0563.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 78.

Total Estimated Number of Annual Burden Hours: 156.

Abstract: Pursuant to Subsection 102(c)(8)(A) and (B) of the Rehabilitation Act of 1973, as amended by Title IV of the Workforce Innovation and Opportunity Act, the RSA–722 is needed to meet specific data collection requirements on the number of requests for mediations, hearings, administrative reviews, and other methods of dispute resolution requested and the manner in which they were resolved. The information collected is used to evaluate the types of complaints made by applicants and eligible individuals of the vocational rehabilitation program and the final resolution of appeals filed. Respondents are State agencies that administer the Federal/State Program for Vocational Rehabilitation.

Dated: February 26, 2024.

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. 2024–04245 Filed 2–28–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0034]

Agency Information Collection Activities; Comment Request; Follow-Up Surveys to the 2023–24 National Teacher and Principal Survey (NTPS): 2024–25 Teacher Follow-Up Survey (TFS) and 2024–25 Principal Follow-Up

AGENCY: National Center for Education Statistics (NCES), 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 APRIL 29, 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–2024–SCC–0034. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, 202–245–6347.

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: Follow-Up Surveys to the 2023–24 NTPS: 2024–25 Teacher Follow-Up Survey (TFS) and 2024–25 Principal Follow-Up.

OMB Control Number: 1850–0617.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and households.

Total Estimated Number of Annual Responses: 26,049.

Total Estimated Number of Annual Burden Hours: 4,337.

Abstract: This request is to conduct data collection for the two follow-up surveys to the 2023–24 National Teacher and Principal Survey (NTPS)—the 2024–25 Teacher Follow-up Survey (TFS) and the 2024–25 Principal Follow-up Survey (PFS). The 2024–25 TFS is a one year follow-up of a subsample of teachers who responded to the 2023–24 NTPS, and the 2024–25 PFS is a one year follow-up of principals who responded to the 2023–24 NTPS. The TFS and PFS are conducted by the National Center for Education Statistics (NCES), of the Institute of Education Sciences (IES), within the U.S. Department of Education (ED).

The 2024–25 TFS and 2024–25 PFS, like earlier TFS and PFS collections, will measure the one year attrition rates of teachers and principals, respectively, who leave the profession and will permit comparisons of stayers, movers, and leavers to fulfill the legislative mandate for NCES to report on the ''condition of education in the United States.'' ''Stayers'' are teachers or principals who remain in the same school between the NTPS year of data collection and the follow-up year.

''Movers'' are teachers or principals who stay in the profession but change schools between the NTPS year and the follow-up year. ''Leavers'' are NTPS respondents who leave the teaching or principal profession between the NTPS year and the follow-up year.

The 2024–25 TFS analysis file will include TFS data in addition to data collected in the 2023–24 NTPS on teacher characteristics, qualifications, perceptions of the school environment and the teaching profession, and a host of other topics. Prior TFS data have played an important role in improving the understanding of the conditions that affect the balance between teacher attrition and retention. The NTPS and TFS provide national data on turnover in the teacher workforce, including rates of attrition from teaching, sources and characteristics of newly hired teachers, and characteristics and destinations of leavers. These data help shift the debate from the issue of teacher quantity to teacher quality; that is, from a focus on teacher shortages measured only in terms of the number of teaching positions left vacant to the qualifications and years of experience of teachers who stay in the classroom versus those who leave the profession. The cross-sectional repeated design of the TFS allows the analysis of trends related to these topics.

The 2024–25 PFS analysis file will include PFS data in addition to data on principal characteristics, qualifications, and perceptions of the school environment from data collected in the 2023–24 NTPS. Together, the NTPS and PFS will provide national data on turnover in the principal workforce, including rates of attrition from principalship, sources and characteristics of newly hired principals, characteristics and destinations of leavers, and due to the cross-sectional repeated design of the PFS, analyses of trends related to these topics.

This clearance request is to conduct both 2024–25 NTPS follow-up surveys (TFS and PFS), including all recruitment and data collection activities. This request seeks authorization for the 2024–25 TFS and 2024–25 PFS under the TFS single OMB number (OMB# 1850–0617).

This submission will undergo a 60-day public comment period, followed by an additional 30-day public comment period. This submission includes Supporting Statement Part A (justification), Part B (collection of information employing statistical methods), and Part C (item justification); Appendix A (respondent contact materials) and Appendix B (questionnaires). All submitted documents are subject to revision before the 30-day public comment period, and we encourage interested parties to return to these documents in late spring 2024 to see final drafts that will be submitted to OMB for their final review.

Dated: February 23, 2024.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–04192 Filed 2–28–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0033]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Teacher and Principal Survey of 2023–2024 (NTPS 2023–24) Data Collection

AGENCY: National Center for Education Statistics (NCES), 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 April 1, 2024.

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 Carrie Clarady, 202–245–6347.

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: National Teacher and Principal Survey of 2023–2024 (NTPS 2023–24) Data Collection.

OMB Control Number: 1850–0598.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 108,478.

Total Estimated Number of Annual Burden Hours: 52,757.

Abstract: The National Teacher and Principal Survey (NTPS), conducted every three years by the National Center for Education Statistics (NCES), is a system of related questionnaires that provides descriptive data on the context of elementary and secondary education. Redesigned from the Schools and Staffing Survey (SASS) with a focus on flexibility, timeliness, and integration with other ED data, the NTPS system allows for school, principal, and teacher characteristics to be analyzed in relation to one another. NTPS is an in-depth, nationally representative survey of first through twelfth grade public and private school teachers, principals, and schools. Kindergarten teachers in schools with at least a first grade are also surveyed. NTPS utilizes core content and a series of rotating modules to allow timely collection of important education trends as well as trend analysis. Topics covered include characteristics of teachers, principals, schools, teacher training opportunities, retention, retirement, hiring, and shortages.

The NTPS serves as the base year for two follow-up collections: The Principal Follow-up Survey (PFS) contacts principals who responded to the previous year's NTPS collection to determine whether, one year later, they are working as a principal at the same school as the previous year (''stayers''), have moved to a different school (''movers''), or have left the profession (''leavers''). The Teacher Follow-up Survey (TFS) contacts a sample of

teachers who responded to the previous year's NTPS collection in order to determine whether they are stayers, movers, or leavers, as well as additional questions about their career paths and employment experiences. (TFS and PFS are cleared as part of a separate package under OMB #1850–0617. The package for TFS/PFS 2024–25 will be cleared in 2024.)

For the 2021–22 and earlier TFS collections, our primary source of information on whether a teacher was a stayer, mover, or leaver (before we sampled and directly contacted those teachers) came from the school at which they worked during the previous year. However, not all schools report that information and, among those that do, they may not know the job status of the prior year's teachers. In order to determine whether that information can be collected more accurate and efficiently, we plan to ask NTPS teachers, at the end of the 2023–24 school year, whether they believe they will return to the same school in the 2024–25 school year. If their responses align with the information we later collect from schools and/or teachers who complete the TFS, we may be able to use this information to sample teachers for future administrations of the TFS.

For NTPS teachers who complete the NTPS Teacher Questionnaire web survey, on or after April 15, 2024, we will ask this question as the final item in the survey. For NTPS teachers who complete the survey before April 15, 2024 or who complete a paper questionnaire, we will send them an email invitation asking them to answer this additional question and, if needed, update their contact information. Teachers will only be asked this question once, but we have provided sample questions that reflect the two different ways in which the question may be asked. We estimate that this question will add 1 additional minute of burden for teachers from whom it is part of NTPS Teacher Questionnaire web survey, and 3 minutes for teachers who answer this item through a standalone web survey.

As part of this change, we have updated the estimated burden for teachers to complete the NTPS with the addition of this question in Part A. We have added the text of this question, shown here and in Appendix B, and the accompanying email for teachers who are sent a separate email invitation here and in Appendix A.

Dated: February 23, 2024.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–04159 Filed 2–28–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–697–001.
Applicants: Westlands Solar Blue (OZ) Owner, LLC.
Description: Tariff Amendment: Supplement to Application for MBR Authority to be effective 12/19/2023.
Filed Date: 2/21/24.
Accession Number: 20240221–5224.
Comment Date: 5 p.m. ET 3/13/24.

Docket Numbers: ER24–698–001.
Applicants: Castanea Project, LLC.
Description: Tariff Amendment: Supplement to Application for MBR Authority to be effective 12/19/2023.
Filed Date: 2/22/24.
Accession Number: 20240222–5000.
Comment Date: 5 p.m. ET 3/14/24.

Docket Numbers: ER24–1240–001.
Applicants: Public Service Company of New Mexico.
Description: Amendment to February 8, 2024, Notice of Cancellation of Public Service Company of New Mexico.
Filed Date: 2/20/24.
Accession Number: 20240220–5314.
Comment Date: 5 p.m. ET 3/12/24.

Docket Numbers: ER24–1291–000.
Applicants: Consolidated Edison Company of New York, Inc.
Description: Consolidated Edison Company of New York, Inc. submits Request for limited one-time waiver of section 7.4.1 of the New York Independent System Operator's Market Administration and Control Area Services Tariff.
Filed Date: 2/16/24.
Accession Number: 20240216–5290.
Comment Date: 5 p.m. ET 3/8/24.

Docket Numbers: ER24–1292–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Notice of Cancellation of BP 119—RS 313 to be effective 1/1/2024.
Filed Date: 2/21/24.
Accession Number: 20240221–5206.
Comment Date: 5 p.m. ET 3/13/24.

Docket Numbers: ER24–1293–000.
Applicants: Public Service Company of New Mexico.
Description: Petition for Limited Waiver of Public Service Company of New Mexico.
Filed Date: 2/20/24.
Accession Number: 20240220–5316.
Comment Date: 5 p.m. ET 3/12/24.

Docket Numbers: ER24–1294–000.
Applicants: Ameren Transmission Company of Illinois.
Description: § 205(d) Rate Filing: Submission of a Letter Agreement to be effective 2/23/2024.
Filed Date: 2/22/24.
Accession Number: 20240222–5031.
Comment Date: 5 p.m. ET 3/14/24.

Docket Numbers: ER24–1295–000.
Applicants: Moscow Development Company, LLC.
Description: Moscow Development Company, LLC Requests Waiver of Section 3.4 of Schedule 22 of the ISO New England Inc., Open Access Transmission Tariff.
Filed Date: 2/14/24.
Accession Number: 20240214–5236.
Comment Date: 5 p.m. ET 3/6/24.

Docket Numbers: ER24–1296–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1Q2024 Tariff Clean-Up Filing to be effective 2/1/2023.
Filed Date: 2/22/24.
Accession Number: 20240222–5043.
Comment Date: 5 p.m. ET 3/14/24.

Docket Numbers: ER24–1297–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2024–02–22_SA 4125 UE-Kelso 2 Solar 1st Rev GIA (J1299) to be effective 4/23/2024.
Filed Date: 2/22/24.
Accession Number: 20240222–5055.
Comment Date: 5 p.m. ET 3/14/24.

Docket Numbers: ER24–1299–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2024–02–22_SA 4243 UE-Kelso 2 Solar FSA (J1299) to be effective 4/23/2024.
Filed Date: 2/22/24.
Accession Number: 20240222–5063.
Comment Date: 5 p.m. ET 3/14/24.

Docket Numbers: ER24–1300–000.
Applicants: New York Independent System Operator, Inc., New York State Electric & Gas Corporation.
Description: § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO–NYSEG Joint 205: SGIA KCE NY10 SA2830 (CEII) to be effective 2/7/2024.

Filed Date: 2/22/24.
Accession Number: 20240222–5074.
Comment Date: 5 p.m. ET 3/14/24.
Docket Numbers: ER24–1301–000.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: American Transmission Systems, Incorporated submits tariff filing per 35.13(a)(2)(iii: ATSI submits one Construction Agreement, SA No. 6935 to be effective 4/23/2024.
Filed Date: 2/22/24.
Accession Number: 20240222–5087.
Comment Date: 5 p.m. ET 3/14/24.
Docket Numbers: ER24–1302–000.
Applicants: Idaho Power Company.
Description: § 205(d) Rate Filing: IPC/BPA Third Revised Service Agreement No. 334 to be effective 5/1/2024.
Filed Date: 2/22/24.
Accession Number: 20240222–5088.
Comment Date: 5 p.m. ET 3/14/24.
Docket Numbers: ER24–1303–000.
Applicants: National Grid Generation LLC.
Description: § 205(d) Rate Filing: A&R PSA Amendment No. 5 to be effective 5/1/2024.
Filed Date: 2/22/24.
Accession Number: 20240222–5095.
Comment Date: 5 p.m. ET 3/14/24.
Docket Numbers: ER24–1304–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: OATT Modifications, Part III and IV to be effective 4/23/2024.
Filed Date: 2/22/24.
Accession Number: 20240222–5109.
Comment Date: 5 p.m. ET 3/14/24.
Docket Numbers: ER24–1305–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Mid-Atlantic Interstate Transmission, LLC submits tariff filing per 35.13(a)(2)(iii: MAIT, LLC w/PPL Electric—Filing of a Revised IA No. 941 to be effective 4/23/2024.
Filed Date: 2/22/24.
Accession Number: 20240222–5120.
Comment Date: 5 p.m. ET 3/14/24.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH24–7–000.
Applicants: Spire Inc.
Description: Spire Inc. submits FERC–65A Notice of Change in Fact to Waiver Notification.
Filed Date: 2/20/24.
Accession Number: 20240220–5310.
Comment Date: 5 p.m. ET 3/12/24

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: February 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04186 Filed 2–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1288–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Washington County Solar, LLC

This is a supplemental notice in the above-referenced proceeding of Washington County Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 13, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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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: February 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04182 Filed 2–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP15–550–002; CP15–550–000]

Notice of Request for Extension of Time; Venture Global Calcasieu Pass, LLC

Take notice that on February 15, 2024, Venture Global Calcasieu Pass, LLC (Venture Global) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time (2023 Extension of Time Request), until February 21, 2025, to construct and make available for service a new liquefied natural gas (LNG) export terminal and associated facilities along the Calcasieu Ship Channel in Cameron Parish, Louisiana, authorized by the Commission in Docket No. CP15–550–000.[1]

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Venture Global's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain the rights afforded parties to the above captioned proceedings, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested.[2] For those extension requests that are contested, the Commission will aim to issue an order acting on the request within 45 days.[3] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[4] The Commission will not consider arguments that seek to re-litigate the issuance of the Authorization Order, including whether the Commission properly found the project to be not inconsistent with the public interest and whether the Commission's environmental analysis for the authorization complied with the National Environmental Policy Act.[5] The Director of the Office of Energy Projects, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests, and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy which must reference the Project docket number.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Acting 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.*

Comment Date: 5:00 p.m. Eastern Time on, March 8, 2024.

Dated: February 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04183 Filed 2–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1892–030]

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions; Great River Hydro, LLC

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 1892–030.

c. *Date Filed:* May 1, 2017; material amendment filed December 7, 2020.

d. *Applicant:* Great River Hydro, LLC (Great River Hydro).

e. *Name of Project:* Wilder Hydroelectric Project (project).

f. *Location:* The project is located on the Connecticut River in Orange and Windsor Counties, Vermont, and Grafton County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John Ragonese, FERC License Manager, Great River Hydro, LLC, 40 Pleasant Street, Suite 202, Portsmouth, NH 03801; (603) 498–2851 or *jragonese@greatriverhydro.com.*

i. *FERC Contact:* Steve Kartalia, (202) 502–6131 or *stephen.kartalia@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway 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/FERCOnline.aspx.*

[1] *Venture Global Calcasieu Pass, LLC,* 166 FERC ¶ 61,144 (2019) (Authorization Order) (requiring the facilities to be constructed by February 21, 2024).

[2] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2023).

[3] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

[4] *Id.*

[5] *Id.*

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 *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–1892–030.

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 ready for environmental analysis at this time.

l. *Project Description:* The Wilder Project consists of: (1) a 1,546-foot-long, 59-foot-high, concrete dam that includes: (a) a 400-foot-long non-overflow, earthen embankment (north embankment); (b) a 232-foot-long non-overflow, concrete bulkhead; (c) a 208-foot-long concrete forebay; (d) a 526-foot-long concrete, gravity spillway that includes: (i) six 30-foot-high, 36-foot-long tainter gates; (ii) four 17-foot-high, 50-foot-wide stanchion flashboards; (iii) a 15-foot-high, 20-foot-long skimmer gate (north gate); and (iv) a 10-foot-high, 10-foot-long skimmer gate (south gate); and (e) a 180-foot-long non-overflow, earthen embankment (south embankment); (2) a 45-mile-long, 3,100-acre impoundment with a useable storage volume of 13,350 acre-feet between elevations 380 and 385 feet National Geodetic Vertical Datum of 1929 (NGVD 29); (3) four approximately 25-foot-high, 20-foot-wide trashracks with 5-inch clear bar spacing and one approximately 28-foot-high, 20-foot-wide trashrack with 1.625-inch clear bar spacing; (4) a 181-foot-long, 50-foot-wide, 50-foot-high steel frame, brick powerhouse containing two 16.2-megawatt (MW) adjustable-blade Kaplan turbine-generator units and one 3.2–MW vertical Francis turbine-generator unit for a total project capacity of 35.6 MW; (5) three concrete draft tubes ranging from 9.5 to 20.5 feet in diameter; (6) 13.8-kilovolt generator leads that connect the turbine-generator units to two substation transformers; (7) an approximately 580-foot-long, 6-foot-wide fishway; and (8) appurtenant facilities.

Great River Hydro operates the project in a peaking mode in coordination with its downstream Bellows Falls Project No. 1855 and Vernon Project No. 1904. Average annual generation is approximately 156,303 MW-hours. Great River Hydro is proposing changes to project operation that would reduce impoundment fluctuations and increase the stability of downstream flow releases relative to current project operation, including targeted water surface elevation levels and flow ramping rates. Great River Hydro also proposes several protection, mitigation, and enhancement measures for aquatic, terrestrial, cultural, recreation resources, and threatened and endangered species. The specific proposed changes are described in the amended application and the settlement agreement filed on August 4, 2022.

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,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY 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. 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.

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.*

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

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.

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
Deadline for filing motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	April 2024.
Deadline for filing reply comments ...	May 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.

Dated: February 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04177 Filed 2–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1889–085]

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions; FirstLight MA Hydro LLC

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 1889–085.

c. *Date Filed:* April 29, 2016; material amendment filed December 4, 2020.

d. *Applicant:* FirstLight MA Hydro LLC (FirstLight).

e. *Name of Project:* Turners Falls Hydroelectric Project (project).

f. *Location:* The project is located on the Connecticut River in Windham County, Vermont, Cheshire County, New Hampshire, and Franklin County, Massachusetts. The current project boundary includes the approximately 20-acre Silvio Conte Anadromous Fish Laboratory, which is administered by the U.S. Geological Survey.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Alan Douglass, Regulatory Compliance Manager, 99 Millers Falls Road, Northfield, MA 01360; (413) 659–4416 or *alan.douglass@firstlightpower.com.*

i. *FERC Contact:* Steve Kartalia, (202) 502–6131 or *stephen.kartalia@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway 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/FERCOnline.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 *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–1889–085.

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 ready for environmental analysis at this time.

l. *Project Description:* The Turners Falls Project consists of: (1) a 630-foot-long, 35-foot-high dam (Montague dam) that includes: (a) four 120-foot-wide, 13.25-foot-high bascule gates; and (b) a 170-foot-long fixed section with a crest elevation of 185.5 feet National Geodetic Vertical Datum of 1929 (NGVD 29); (2) a 493-foot-long, 55-foot-high dam (Gill dam) that includes: (a) three 40-foot-wide, 39-foot-high tainter gates; and (b) 97.3- and 207.5-foot-long fixed sections with crest elevations of 185.5 feet NGVD 29; (3) a 2,110-acre impoundment with a useable storage volume of 16,150 acre-feet between elevations 176.0 feet and 185.0 feet NGVD 29; (4) a 214-foot-long, 33-foot-high gatehouse that includes six 9-foot-wide, 10.66-foot-high gates and nine 9.5-foot-wide, 12.6-foot-high gates; (5) a 2.1-mile-long, 120- to 920-foot-wide, 17- to 30-foot-deep power canal; (6) a 700-foot-long, 100-foot-wide, 16- to 23-foot-deep branch canal; (7) the Station No.1 generating facility that includes: (a) eight 15-foot-wide bays with trashracks with 2.625-inch clear-bar spacing; (b) four 100-foot-long, 13.1- to 14-foot-diameter penstocks; (c) a 134-foot-long, 64-foot-wide powerhouse that contains five turbine-generator units with a total installed capacity of 5.693 megawatts (MW); (d) four 21-foot-long, 6.5-foot-diameter draft tubes; (e) five 40- to 70-foot-long, 2.4-kilovolt (kV) generator leads that connect the turbine-generator units to a generator bus; (f) a 110-foot-long, 2.4-kV generator lead that connects the generator bus to a substation; and (g) a 20-foot-long, 2.4-kV generator lead that connects the substation to three transformers; (8) the Cabot Station generating facility that includes: (a) an intake structure with 217-foot-wide, 31-foot-high trashracks with 0.94-inch and 3.56-inch clear-bar spacing; (b) six 70-foot-long penstocks; (c) a 235-foot-long, 79.5-foot-wide powerhouse that contains six turbine-generator units with a total installed capacity of 62.016 MW; (d) six 41-foot-long, 12.5- to 14.5-foot-diameter draft tubes; (e) six 80- to 250-foot-long, 13.8-kV generator leads that connect the turbine-generator units to a generator bus; (f) a 60-foot-long, 13.8-kV generator lead that connects the generator bus to the powerhouse roof; and (g) a 200-foot-long, 13.8-kV generator lead that connects to a transformer; (9) eight 13.6-foot-wide, 16.7-foot-high power canal spillway gates that are adjacent to Cabot Station; (10) a 16.2-foot-wide, 13.1-foot-high log sluice gate in the Cabot Station forebay with an 8-foot-wide weir for downstream fish passage; (11) a 200-foot-long, 7-foot-diameter drainage tunnel (Keith Drainage Tunnel) and headgate; (12) a 955-foot-long, 5-foot-diameter lower drainage tunnel; (13) an 850-foot-long, 16-foot-wide, 10-foot-high fishway (Cabot fishway); (14) a 500-foot-long, 10-foot-wide, 10-foot-high fishway (Spillway fishway); (15) a 225-foot-long, 16-foot-wide, 17.5-foot-high fishway (Gatehouse fishway); and (16) appurtenant facilities.

The Turners Falls Project operates in peaking and run-of-river modes, depending on inflows. Average annual generation from 2011–2019 was approximately 332,351 MW-hours.

FirstLight proposes three changes to the current project boundary: (1) remove 0.2 acre of land associated with residential property; (2) add 0.8 acre of land for recreational purposes; and (3) remove 20.1 acres of land associated with the U.S. Geological Survey's Silvio Conte Anadromous Fish Laboratory.

FirstLight proposes to construct new fish passage facilities and recreational access trails. FirstLight also proposes changes to project operation that would generally reduce impoundment fluctuations and increase flow releases to the portion of the Connecticut River that is bypassed by the project. The specific proposed changes are described

in the amended application and the settlement agreements filed on March 31, 2023 and June 12, 2023.

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,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY 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. 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.

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.*

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

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.

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
Deadline for filing motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	April 2024.
Deadline for filing reply comments ...	May 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.

Dated: February 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04178 Filed 2–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL24–69–000]

Viridon Midcontinent LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On February 23, 2024, the Commission issued an order in Docket No. EL24–69–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether Viridon Midcontinent LLC's Formula Rate [1] is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Viridon Midcontinent LLC,* 186 FERC ¶ 61,138 (2024).

The refund effective date in Docket No. EL24–69–000, 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 No. EL24–69–000 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 (2023), 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. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

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: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting 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

[1] Viridon Midcontinent LLC submitted formula rate templates and formula rate implementation protocols for Midcontinent Independent System Operator, Inc.'s (MISO) Attachments O, GG, and MM of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff.

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: February 23, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04269 Filed 2–28–24; 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: RP24–416–000.
Applicants: Viking Gas Transmission Company.
Description: § 4(d) Rate Filing: Electric Power Cost Recovery Adjustment—2024 Rate to be effective 4/1/2024.
Filed Date: 2/22/24.
Accession Number: 20240222–5098.
Comment Date: 5 p.m. ET 3/5/24.

Docket Numbers: RP24–417–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20240222 Negotiated Rate to be effective 2/23/2024.
Filed Date: 2/22/24.
Accession Number: 20240222–5128.
Comment Date: 5 p.m. ET 3/5/24.

Docket Numbers: RP24–418–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing (Citadel_EDF) to be effective 4/1/2024.
Filed Date: 2/22/24.
Accession Number: 20240222–5151.
Comment Date: 5 p.m. ET 3/5/24.

Docket Numbers: RP24–419–000.
Applicants: Kinder Morgan Louisiana Pipeline LLC.
Description: Compliance filing: Penalty Revenue Crediting Report—KMLP 12 months ending December 2023 to be effective N/A.
Filed Date: 2/23/24.
Accession Number: 20240223–5018.
Comment Date: 5 p.m. ET 3/6/24.

Docket Numbers: RP24–420–000.
Applicants: Cove Point LNG, LP.
Description: § 4(d) Rate Filing: Cove Point—2024 Annual EPCA to be effective 4/1/2024.
Filed Date: 2/23/24.
Accession Number: 20240223–5022.
Comment Date: 5 p.m. ET 3/6/24.

Docket Numbers: RP24–421–000.
Applicants: Cove Point LNG, LP.
Description: § 4(d) Rate Filing: Cove Point—2024 Annual Fuel Retainage to be effective 4/1/2024.
Filed Date: 2/23/24.
Accession Number: 20240223–5027.
Comment Date: 5 p.m. ET 3/6/24.

Docket Numbers: RP24–422–000.
Applicants: Eastern Gas Transmission and Storage, Inc.
Description: § 4(d) Rate Filing: EGTS—2024 Fuel Retention Percentages to be effective 4/1/2024.
Filed Date: 2/23/24.
Accession Number: 20240223–5028.
Comment Date: 5 p.m. ET 3/6/24.

Docket Numbers: RP24–423–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing—A&R Nicor Gas Company to be effective 3/1/2024.
Filed Date: 2/23/24.
Accession Number: 20240223–5060.
Comment Date: 5 p.m. ET 3/6/24.

Docket Numbers: RP24–424–000.
Applicants: Kinder Morgan Illinois Pipeline LLC.
Description: Compliance filing: Penalty Revenue Annual Report for 2023 to be effective N/A.
Filed Date: 2/23/24.
Accession Number: 20240223–5069.
Comment Date: 5 p.m. ET 3/6/24.

Docket Numbers: RP24–425–000.
Applicants: Millennium Pipeline Company, LLC.
Description: § 4(d) Rate Filing: RAM 2024 to be effective 4/1/2024.
Filed Date: 2/23/24.
Accession Number: 20240223–5094.
Comment Date: 5 p.m. ET 3/6/24.

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 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: February 23, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04266 Filed 2–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL24–63–000]

Notice of Institution of Section 206 Proceeding and Refund Effective Date; Oak Trail Solar, LLC

On February 16, 2024, the Commission issued an order in Docket No. EL24–63–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether Oak Trail Solar, LLC's proposed Rate Schedule is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Oak Trail Solar, LLC,* 186 FERC ¶ 61,126 (2024).

The refund effective date in Docket No. EL24–63–000, 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 No. EL24–63–000 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 (2023), 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. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.breferenceroom@ferc.gov.*

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: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting 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: February 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04184 Filed 2–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1904–078]

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions; Great River Hydro, LLC

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. Project No.: 1904–078.

c. *Date Filed:* May 1, 2017; material amendment filed December 7, 2020.

d. *Applicant:* Great River Hydro, LLC (Great River Hydro).

e. *Name of Project:* Vernon Hydroelectric Project (project).

f. *Location:* The project is located on the Connecticut River in Windham County, Vermont, and Cheshire County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John Ragonese, FERC License Manager, Great River Hydro, LLC, 40 Pleasant Street, Suite 202, Portsmouth, NH 03801; (603) 498–2851 or *jragonese@greatriverhydro.com.*

i. *FERC Contact:* Steve Kartalia, (202) 502–6131 or *stephen.kartalia@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway 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/FERCOnline.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 *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–1904–078.

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 ready for environmental analysis at this time.

l. *Project Description:* The Vernon Project consists of: (1) a 956-foot-long, 58-foot-high concrete dam that includes: (a) 356-foot-long section integral to the powerhouse; and (b) a 600-foot-long overflow spillway section that includes: (i) a 9-foot-high, 6-foot-wide downstream fishway sluice; (ii) a 13-foot-high, 13-foot-wide trash/ice sluice; (iii) two 20-foot-high, 50-foot-wide tainter gates; (iv) four 10-foot-high, 50-foot-wide tainter gates; (v) two 10-foot-high, 50-foot-wide hydraulic panel bays; (vi) two 10-foot-high, 50-foot-wide stanchion bays; (vii) a 10-foot-high, 42.5-foot-wide stanchion bay; and (viii) eight 7-foot-high, 9-foot-wide hydraulic flood gates; (2) a 26-mile-long, 2,550-acre impoundment with a useable storage volume of 18,300 acre-feet between elevations 212.13 and 220.13 feet National Geodetic Vertical Datum of 1929 (NGVD 29); (3) eight approximately 30-foot-high trashracks with 1.75-inch clear bar spacing and two approximately 30-foot-high trashracks with 3.625-inch clear bar spacing; (4) a 356-foot-long, 55-foot-wide, 45-foot-high reinforced concrete, steel, and brick powerhouse containing four 2-megawatt (MW) vertical Francis turbine-generator units, four 4–MW vertical Kaplan turbine-generator units, and two 4.2–MW vertical Francis turbine-generator units, for a total project capacity of 32.4 MW; (5) ten concrete draft tubes ranging from 16 to 27 feet in diameter; (6) a 500-foot-long, 13.8-kilovolt underground generator lead that connects the turbine-generator units to two step-up transformers; (7) a

984-foot-long, 15-foot-wide upstream fishway; and (8) appurtenant facilities.

Great River Hydro operates the project in a peaking mode in coordination with its upstream Wilder Project No. 1892 and Bellows Falls Project No. 1855. Average annual generation is approximately 158,028 MW-hours. Great River Hydro is proposing changes to project operation that would reduce impoundment fluctuations and increase the stability of downstream flow releases relative to current project operation, including targeted water surface elevation levels and flow ramping rates. Great River Hydro also proposes several protection, mitigation, and enhancement measures for aquatic, terrestrial, cultural, recreation resources, and threatened and endangered species. The specific proposed changes are described in the amended application and the settlement agreement filed on August 4, 2022.

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,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY 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. 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.

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.*

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

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.

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
Deadline for filing motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	April 2024.
Deadline for filing reply comments ...	May 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.

Dated: February 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04176 Filed 2–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1855–050]

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions; Great River Hydro, LLC

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 1855–050.

c. *Date Filed:* May 1, 2017; material amendment filed December 7, 2020.

d. *Applicant:* Great River Hydro, LLC (Great River Hydro).

e. *Name of Project:* Bellows Falls Hydroelectric Project (project).

f. *Location:* The project is located on the Connecticut River in Windsor and Windham Counties, Vermont, and Sullivan and Cheshire Counties, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John Ragonese, FERC License Manager, Great River Hydro, LLC, 40 Pleasant Street, Suite 202, Portsmouth, NH 03801; (603) 498–2851 or *jragonese@greatriverhydro.com.*

i. *FERC Contact:* Steve Kartalia, (202) 502–6131 or *stephen.kartalia@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway 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/FERCOnline.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 *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a

paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–1855–050.

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 ready for environmental analysis at this time.

l. *Project Description:* The Bellows Falls Project consists of: (1) a 643-foot-long, 30-foot-high concrete dam that includes: (a) two 18-foot-high, 115-foot-wide steel roller gates; (b) two 13-foot-high, 121-foot-wide stanchion flashboards; and (c) a 13-foot-high, 100-foot-wide stanchion flashboard; (2) a 26-mile-long, 2,804-acre impoundment with a useable storage volume of 7,467 acre-feet between elevations 288.63 and 291.63 feet National Geodetic Vertical Datum of 1929 (NGVD 29); (3) a 1,700-foot-long, 36- to 100-foot-wide, 29-foot-deep stone-lined power canal; (4) a 130.25-foot-wide concrete forebay that includes trashracks with 4-inch clear bar spacing; (5) a 186-foot-long, 106-foot-wide, 52-foot-high steel frame, brick powerhouse containing three 13.6-megawatt (MW) vertical Francis turbine-generator units, for a total project capacity of 40.8 MW; (6) three approximately 20-foot-high, 31-foot-wide concrete draft tubes; (7) a 900-foot-long tailrace; (8) a 12-foot-wide, 10-foot-high ice sluice; (9) three 80-foot-long, 6.6-kilovolt generator leads that connect the turbine-generator units to two step-up transformers; (10) a 920-foot-long, 8-foot-wide fishway; (11) a concrete fish barrier dam in the bypassed reach; and (12) appurtenant facilities.

Great River Hydro operates the project in a peaking mode in coordination with its upstream Wilder Project No. 1892 and downstream Vernon Project No. 1904. Average annual generation is approximately 239,070 MW-hours. Great River Hydro is proposing several protection, mitigation, and enhancement measures for aquatic, terrestrial, cultural, recreation resources, and threatened and endangered species, as well as changes to project operation that would reduce impoundment fluctuations and increase the stability of downstream flow releases relative to current project operation, including targeted water surface elevation levels and flow ramping rates. Great River Hydro also proposes to install a new turbine on the downstream side of the spillway that would generate power using the 300-cubic feet per second proposed minimum flow to the bypassed reach. The specific proposed changes are described in the amended application, the settlement agreement filed on August 4, 2022, and the revised relicensing proposal filed on June 8, 2023.

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,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY 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. 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.

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You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

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.

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
Deadline for filing motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	April 2024.
Deadline for filing reply comments ...	May 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.

Dated: February 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04179 Filed 2–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2333–094]

Notice of Availability of Draft Environmental Assessment; Rumford Falls Hydro LLC

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the Rumford Falls Hydroelectric Project, located on the Androscoggin River in the Town of Rumford, Oxford County, Maine and has prepared a Draft Environmental Assessment (DEA) for the project. No federal land is occupied by project works or located within the project boundary.

The DEA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the DEA via the internet through the Commission's Home Page (*http://www.ferc.gov/*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.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. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–4784–106.

Any questions regarding this notice may be directed to Ryan Hansen at (202) 502–8074 or *ryan.hansen@ferc.gov.*

Dated: February 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04175 Filed 2–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2485–071]

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions; Northfield Mountain LLC

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2485–071.

c. *Date Filed:* April 29, 2016; material amendment filed December 4, 2020.

d. *Applicant:* Northfield Mountain LLC (Northfield).

e. *Name of Project:* Northfield Mountain Pumped Storage Project (project).

f. *Location:* The project is located on the Connecticut River in Windham County, Vermont, Cheshire County, New Hampshire, and Franklin County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Alan Douglass, Regulatory Compliance Manager, 99 Millers Falls Road, Northfield, MA 01360; (413) 659–4416 or *alan.douglass@firstlightpower.com.*

i. *FERC Contact:* Steve Kartalia, (202) 502–6131 or *stephen.kartalia@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway 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/FERCOnline.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 *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2485–071.

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 ready for environmental analysis at this time.

l. Project *Description:* The Northfield Mountain Pumped Storage Project consists of: (1) a 1-mile-long, 30-foot-wide, 30- to 140-foot-high main dam that includes: (i) an intake structure with two 7-foot-wide, 9-foot-high sluice gates and an 8-foot-diameter outlet pipe; and (ii) a 589-foot-long, 2-foot-diameter low-level outlet pipe; (2) a 425-foot-long, 25-foot-high dike (North dike); (3) a 2,800-foot-long, 45-foot-high dike (Northwest dike); (4) a 1,700-foot-long, 40-foot-long dike (West dike); (5) a 327-foot-long, 10- to 20-foot-high gravity dam; (6) an ungated 550-foot-long, 6-foot-high spillway structure with a 20-foot-long notch at an elevation of

1,005.0 feet National Geodetic Vertical Datum of 1929 (NGVD 29); (7) a 286-acre impoundment (upper reservoir) with a useable storage volume of 12,318 acre-feet between elevations 938.0 feet and 1,000.5 feet NGVD 29; (8) a 2,110-acre impoundment (lower reservoir or Turners Falls impoundment); (9) a 1,890-foot-long, 130-foot-wide intake channel with a 63-foot-long, 9-foot-high submerged check dam and two 6-foot-wide, 2.75-foot-high sluice gates and two 18-foot-wide stoplogs; (10) a 200-foot-long, 55-foot-wide, 80-foot-high pressure shaft; (11) an 853-foot-long, 31-foot-diameter penstock; (12) two 22-foot-diameter, 100- to 150-foot-long penstocks; (13) four 340-foot-long, 9.5- to 14-foot-diameter penstocks; (14) a 328-foot-long, 70-foot-wide powerhouse that contains four reversible pump turbine-generator units with a total installed capacity of 1,166.8 megawatts (MW); (15) four 25-foot-long, 11-foot-diameter draft tubes that transition to a 20-foot-long, 17-foot-diameter draft tube; (16) a 5,136-foot-long, 33-foot-wide, 31-foot-high horseshoe-shaped tailrace tunnel; (17) 35-foot-long, 40-foot-high trapezoid-shaped stoplogs with 74.3- to 99.5-foot-wide, 48-foot-high trashracks with 6-inch clear-bar spacing; (18) four 26-foot-long, 13.8-kilovolt (kV) generator leads that connect the turbine-generator units to four transformers; (19) two 3,000-foot-long, 345-kV transmission lines; and (20) appurtenant facilities.

The Northfield Mountain Pumped Storage Project generally operates in pumping mode when electricity demand is low and generating mode when electricity demand is high. In the summer and winter, the project generally operates in a peaking mode in the morning and late afternoon. In the spring and fall, the project may operate in a peaking mode one or two times a day depending on electricity demand. The existing license requires maintaining the upper reservoir between elevations 938.0 feet and 1,000.5 feet NGVD 29 (*i.e.,* a maximum reservoir drawdown of 62.5 feet). Average annual generation at the Northfield Mountain Project from 2011–2019 was 889,845 MW-hours, and average annual energy consumption for pumping from 2011 to 2019 was 1,189,640 MW-hours.

Northfield proposes three changes to the current project boundary: (1) remove 0.2 acre of land associated with residential property; (2) remove 8.1 acres of land referred to as ''Fuller Farm'' that include residential and agricultural structures; and (3) add 135.5 acres of land that include recreation trails.

Northfield proposes to increase the maximum water surface elevation of the upper reservoir to 1,004.5 feet NGVD 29 and decrease the minimum water surface elevation of the upper reservoir to 920.0 feet NGVD 29 (*i.e.,* a maximum reservoir drawdown of 84.5 feet) year-round. Northfield proposes to install a barrier net in the lower impoundment to prevent fish entrainment. Northfield also proposes to periodically dredge the upper reservoir and to construct new recreation access trails. The specific proposed changes are described in the amended application and the settlement agreements filed on March 31, 2023 and June 12, 2023.

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,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY 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. 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.

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.*

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

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.

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
Deadline for filing motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	April 2024.
Deadline for filing reply comments ...	May 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.

Dated: February 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04174 Filed 2–28–24; 8:45 am]

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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: RP24–408–000.

Applicants: Antero Resources Corporation, MU Marketing LLC, Antero Resources Corporation and MU Marketing LLC v. *Columbia Gulf Transmission, LLC.*

Description: Complaint of *Antero Resources Corporation and MU Marketing LLC* v. *Columbia Gulf Transmission, LLC.*

Filed Date: 2/20/24.

Accession Number: 20240220–5199.

Comment Date: 5 p.m. ET 3/21/24.

Docket Numbers: RP24–411–000.

Applicants: Midwestern Gas Transmission Company.

Description: § 4(d) Rate Filing: Annual Fuel Retention Percentage Adjustment—2024 Rate to be effective 4/1/2024.

Filed Date: 2/22/24.

Accession Number: 20240222–5049.

Comment Date: 5 p.m. ET 3/5/24.

Docket Numbers: RP24–412–000.

Applicants: Guardian Pipeline, L.L.C.

Description: § 4(d) Rate Filing: Electric Power Cost Recovery Surcharge Adjustment—Spring 2024 Rate to be effective 4/1/2024.

Filed Date: 2/22/24.

Accession Number: 20240222–5058.

Comment Date: 5 p.m. ET 3/5/24.

Docket Numbers: RP24–413–000.

Applicants: Northwest Pipeline LLC.

Description: Compliance filing: NWP Operational Sales and Purchases Report to be effective N/A.

Filed Date: 2/22/24.

Accession Number: 20240222–5089.

Comment Date: 5 p.m. ET 3/5/24.

Docket Numbers: RP24–414–000.

Applicants: Viking Gas Transmission Company.

Description: § 4(d) Rate Filing: Load Managment Cost Reconciliation Adjustment—2024 Rate to be effective 4/1/2024.

Filed Date: 2/22/24.

Accession Number: 20240222–5093.

Comment Date: 5 p.m. ET 3/5/24.

Docket Numbers: RP24–415–000.

Applicants: Viking Gas Transmission Company.

Description: § 4(d) Rate Filing: Fuel and Loss Retention Percentages Adjustment—Spring 2024 Rate to be effective 4/1/2024.

Filed Date: 2/22/24.

Accession Number: 20240222–5097.

Comment Date: 5 p.m. ET 3/5/24.

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: February 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04185 Filed 2–28–24; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1289–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Decatur Solar Energy Center, LLC

This is a supplemental notice in the above-referenced proceeding of Decatur Solar Energy Center, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 13, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: February 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04181 Filed 2–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–59–000]

WBI Energy Transmission, Inc.; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on February 16, 2024, WBI Energy Transmission, Inc. (WBI Energy), 1250 West Century Avenue, Bismarck, North Dakota 58503, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.208(b) of the Commission's regulations under the Natural Gas Act (NGA), and WBI Energy's blanket certificate issued in Docket No. CP82–487–000, for authorization to replace approximately 5.6 miles of its 12-inch-diameter Line Section 22 mainline pipeline located in Yellowstone County, Montana (2024 Elk Basin—Billings Replacement Project). The project is necessary for WBI Energy to comply with the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration class location requirements. The estimated cost for the project is $18.2 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. Public access to records formerly available in the Commission's physical Public Reference Room, which was located at the Commission's headquarters, 888 First Street NE, Washington, DC 20426, are now available via the Commission's website. For assistance, contact the Federal Energy Regulatory Commission at *Ferc OnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to Lori Myerchin, Director, Regulatory Affairs and Transportation Services, WBI Energy Transmission, Inc., 1250 West Century Avenue, Bismarck, North Dakota 58503, by phone at (701) 530–1563, or by email at *lori.myerchin@wbienergy.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 April 23, 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 person [2] 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 April 23, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

[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).

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA[5] by the intervention deadline for the project, which is April 23, 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 April 23, 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.

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

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 CP24–59–000 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''; or [6]

(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 CP24–59–000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Acting 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 *Ferc OnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Lori Myerchin, Director, Regulatory Affairs and Transportation Services, 1250 West Century Avenue, Bismarck, North Dakota 58503, or by email at *lori.myerchin@wbienergy.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: February 23, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04270 Filed 2–28–24; 8:45 am]

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[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.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8402–004]

American Climate Partners; Notice of Application for Surrender of Exemption Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Exemption.

b. *Project No:* P–8402–004.

c. *Date Filed:* October 12, 2023.

d. *Applicant:* American Climate Partners.

e. *Name of Project:* Rapidan Mill Hydroelectric Project.

f. *Location:* The project is located in Rapidan, on the Rapidan River, in Orange and Culpeper counties, Virginia.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Michael Collins, Executive Director, American Climate Partners, P.O. Box 901, Orange, VA 22960, 540–672–2542.

i. *FERC Contact:* Diana Shannon, (202) 502–6136, *diana.shannon@ferc.gov.*

j. *Cooperating agencies:* With this notice, the Commission is inviting Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests:* March 25, 2024.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERC OnlineSupport@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: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–8402–004. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request:* The exemptee proposes to surrender its exemption. To decommission the project, the exemptee proposes to remove the equipment used to operate the turbine preventing future generation. No physical changes to any project features are planned and no ground disturbance would occur under this proposal. The dam would remain in place. In the future, however, the exemptee indicates that removal of the

dam may be considered in collaboration with several other Federal and State resource agencies after Commission jurisdiction ends.

m. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERC OnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

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: February 23, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04268 Filed 2–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1298–006.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2024–02–23_MISO TO's Order 864 Compliance to be effective 1/27/2020.
Filed Date: 2/23/24.
Accession Number: 20240223–5054.
Comment Date: 5 p.m. ET 3/15/24.

Docket Numbers: ER22–2201–002.
Applicants: Delmarva Power & Light Company, PJM Interconnection, L.L.C.
Description: Compliance filing: Delmarva Power & Light Company submits tariff filing per 35: Delmarva Power & Light Compliance Filing in ER22–2201 to be effective 9/1/2022.
Filed Date: 2/23/24.
Accession Number: 20240223–5106.
Comment Date: 5 p.m. ET 3/15/24.

Docket Numbers: ER24–1306–000.
Applicants: Windy Flats Partners, LLC.
Description: Baseline eTariff Filing: Windy Flats Filing to be effective 4/22/2024.
Filed Date: 2/23/24.
Accession Number: 20240223–5000.
Comment Date: 5 p.m. ET 3/15/24.

Docket Numbers: ER24–1307–000.
Applicants: Glover Creek Solar, LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Baseline to be effective 4/12/2024.
Filed Date: 2/23/24.
Accession Number: 20240223–5039.
Comment Date: 5 p.m. ET 3/15/24.

Docket Numbers: ER24–1308–000.
Applicants: American Electric Power Service Corporation, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii: AEP submits Amended Billing Agent Agreement, SA No. 5677 to be effective 5/1/2024.
Filed Date: 2/23/24.
Accession Number: 20240223–5052.
Comment Date: 5 p.m. ET 3/15/24.

Docket Numbers: ER24–1309–000.
Applicants: El Sol Energy Storage LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 4/24/2024.
Filed Date: 2/23/24.
Accession Number: 20240223–5062.
Comment Date: 5 p.m. ET 3/15/24.

Docket Numbers: ER24–1310–000.
Applicants: Hardin Solar Energy II LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 4/24/2024.
Filed Date: 2/23/24.
Accession Number: 20240223–5064.
Comment Date: 5 p.m. ET 3/15/24.

Docket Numbers: ER24–1311–000.
Applicants: Walnut Bend Solar LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 4/24/2024.
Filed Date: 2/23/24.
Accession Number: 20240223–5065.
Comment Date: 5 p.m. ET 3/15/24.

Docket Numbers: ER24–1312–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: NYISO 205: LGIA Holtsville Energy Storage Project SA2836 (CEII) to be effective 2/8/2024.
Filed Date: 2/23/24.
Accession Number: 20240223–5100.
Comment Date: 5 p.m. ET 3/15/24.

Docket Numbers: ER24–1313–000.
Applicants: Baltimore Gas and Electric Company, Delmarva Power & Light Company, PECO Energy Company, Potomac Electric Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Baltimore Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: Request for Order Authorizing Abandoned Plant Incentive to be effective 4/24/2024.
Filed Date: 2/23/24.
Accession Number: 20240223–5113.
Comment Date: 5 p.m. ET 3/15/24.

Docket Numbers: ER24–1314–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Notice of Cancellation of United Power Rate Schedules to be effective 12/31/9998.

Filed Date: 2/23/24.
Accession Number: 20240223–5127.
Comment Date: 5 p.m. ET 3/15/24.
Docket Numbers: ER24–1315–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Notice of Cancellation of Rate Schedule FERC No. 176 to be effective 12/31/9998.
Filed Date: 2/23/24.
Accession Number: 20240223–5128.
Comment Date: 5 p.m. ET 3/15/24.
Docket Numbers: ER24–1316–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC–DEC Surplus Interconnection Related Agreements to be effective 2/1/2024.
Filed Date: 2/23/24.
Accession Number: 20240223–5135.
Comment Date: 5 p.m. ET 3/15/24.
Docket Numbers: ER24–1317–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Att AA to Implement ELCC and PBA Methodology to be effective 10/1/2025.
Filed Date: 2/23/24.
Accession Number: 20240223–5157.
Comment Date: 5 p.m. ET 3/15/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5 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: February 23, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04267 Filed 2–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN23–14–000]

Notice of Designation of Commission Staff as Non-Decisional; Ketchup Caddy, LLC and Philip Mango

With respect to an order issued by the Commission on February 21, 2024, in the above-captioned docket, with the exceptions noted below, the staff of the Office of Enforcement are designated as non-decisional in deliberations by the Commission in this docket.[1] Accordingly, pursuant to 18 CFR 385.2202 (2023), they will not serve as advisors to the Commission or take part in the Commission's review of any offer of settlement. Likewise, as non-decisional staff, pursuant to 18 CFR 385.2201 (2023), they are prohibited from communicating with advisory staff concerning any deliberations in this docket.

Exceptions to this designation as non-decisional are:

Danielle Mechling
Michael Raibman
Rebecca Wahlenmayer
Shawn Au
Benjamin Jarrett
Serrita Hill
Steven Bundick

Dated: February 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04173 Filed 2–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR24–6–000]

Notice of Complaint; Musket Corporation v. Colonial Pipeline Company

Take notice that on February 16, 2024, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.206 (2023), Musket Corporation filed a complaint against Colonial Pipeline Company (''Colonial'') challenging the justness and reasonableness of the rates charged by Colonial for transportation service pursuant to certain tariffs on file with the Commission.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondents in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[1] *Ketchup Caddy, LLC and Philip Mango,* 186 FERC ¶ 61,132 (2024).

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.*

Comment Date: 5:00 p.m. Eastern Time on March 17, 2024.

Dated: February 22, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04180 Filed 2–28–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0120; FRL–11793–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings (EPA ICR Number 1765.10, OMB Control Number 2060–0353) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through February 29, 2024. Public comments were previously requested via the **Federal Register** on May 18, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Additional comments may be submitted on or before April 1, 2024.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2003–0120, to: EPA online using *www.regulations.gov/* (our preferred method), or by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through February 29, 2024. An agency may neither conduct nor sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on May 18, 2023, during a 60-day comment period (88 FR 31748). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

Abstract: All manufacturers and importers of coatings and coating components subject to 40 CFR part 59, subpart B (National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings) must submit an initial report. The initial report must include the name and mailing address of the manufacturer or importer. The rule requires that containers of all subject automobile refinish coatings and coating components display the date of manufacture or a code indicating the date of manufacture. All manufacturers and importers of subject coatings and coating components must submit an explanation of all date codes used on automobile refinish coating and coating component containers. Date code explanations can be submitted with the initial report. Thereafter, respondents must submit explanations of any new date codes within 30 days of their first use.

The information collection includes initial and periodic reporting necessary for the EPA to ensure compliance with the promulgated federal rule for automobile refinish coatings. The rule will be enforced through random sampling of coatings to determine VOC content. Respondents are manufacturers and importers of automobile refinish coatings and coating components.

Form Numbers: None.

Respondents/affected entities: Manufacturers and importers of automobile refinish coatings and coating components.

Respondent's obligation to respond: Mandatory (40 CFR part 59, subpart B).

Estimated number of respondents: 32 (total).

Frequency of response: Initially and occasionally.

Total estimated burden: 14 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,850 (per year). There are no annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: The increase in burden from the most-recently approved ICR is an adjustment due to an increase in the number of respondents due to growth in the industry.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2024–04152 Filed 2–28–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2017–0692; FRL–11741–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Lead Training, Certification, Accreditation and Authorization Activities (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), ''Lead Training, Certification, Accreditation and Authorization Activities,'' (EPA ICR No. 2507.05 and OMB Control No. 2070–0195) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR which is currently approved through February 29, 2024. Public comments were previously requested via the **Federal Register** on April 26, 2023. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before April 1, 2024.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OPPT–2017–0692, to EPA online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Katherine Sleasman, Office of Program Support (7602M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–1204; email address: *sleasman.katherine@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR which is currently approved through February 29, 2024. 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.

Public comments were previously requested via the **Federal Register** on April 26, 2023, during a 60-day comment period (88 FR 25401). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This ICR renewal will cover the information collection activities associated with the reporting and recordkeeping requirements for individuals, firms and state and local government entities conducting lead-based paint (LBP) activities or renovations of target housing and child-occupied facilities (COFs); training providers; and states/territories/tribes/Alaskan native villages.

Form numbers: 8500–25, 8500–27, 747–B–99–002, 9600–050, 9600–051, and 9600–052.

Respondents/affected entities: Entities potentially affected by this ICR include persons who are engaged in LBP activities and/or perform renovations of target housing or COFs for compensation, dust sampling, or dust testing; or who perform LBP inspections, lead hazard screens, risk assessments or abatements in target housing or COFs; or who provide training or operate a training program for individuals who perform any of these activities; or state, territorial or Native American agencies that administer LBP activities and/or renovation programs.

Respondent's obligation to respond: Mandatory (40 CFR part 745).

Estimated number of respondents: 441,034 (total).

Frequency of response: On occasion.

Total estimated burden: 6,273,748 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $360,166,618 (per year), which includes $17,400,556 annualized capital or operation & maintenance costs.

Changes in the estimates: There is an increase of 1,022,428 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase reflects several adjustments to the estimates including revisions to the estimated number of respondents based on the number of respondents reporting to EPA for the prior information collection and revisions based on other market factors. Changes in burden estimates reflect changes within the housing renovation market, as measured by EPA's FLPP database, which tracks LBP and RRP activity over time, as reported to the Agency. This change is an adjustment.

Courtney Kerwin,

Director, Information Engagement Division.

[FR Doc. 2024–04154 Filed 2–28–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0269; FRL–11794–01–OMS]

Agency Information Collection Activities; Submission to Office of Management and Budget for Review and Approval; Comment Request; Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs, and Projects (EPA ICR Number 2130.07, OMB Control Number 2060–0561), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through February 29, 2024. Public comments were previously requested via the **Federal Register** on August 8, 2023 and the comment period was open for 60 days. This notice allows for an additional 30 days for public comments.

DATES: Additional comments may be submitted on or before April 1, 2024.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–HQ–OAR–2007–0269, to EPA online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other

information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Aaron Letterly, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number 734–214–4340, email address: *letterly.aaron@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through February 29, 2024. 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.

Public comments were previously requested via the **Federal Register** on August 8, 2023 during a 60-day comment period (88 FR 53483). This notice allows for an additional 30 days for public comments. Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

Abstract: Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported transportation activities are consistent with (''conform to'') the purpose of the State Air Quality Implementation Plan (SIP). Transportation activities include transportation plans, transportation improvement programs (TIPs), and federally funded or approved highway or transit projects. Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant National Ambient Air Quality Standards (NAAQS)) or interim milestones.

Transportation conformity applies under EPA's conformity regulations at 40 CFR part 93, subpart A, to areas that are designated nonattainment and maintenance areas for the following transportation-related criteria pollutants: ozone, particulate matter ($PM_{2.5}$ and PM_{10}), carbon monoxide (CO), and nitrogen dioxide (NO_2). EPA published the original transportation conformity rule on November 24, 1993 (58 FR 62188), and has subsequently published several revisions. EPA develops the conformity regulations in coordination with the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA). The federal government needs information collected under these regulations to ensure that metropolitan planning organization (MPO) and federal transportation actions are consistent with state air quality goals.

Form numbers: None.

Respondents/affected entities: MPOs, local transit agencies, state departments of transportation, and state and local air quality agencies.

Respondent's obligation to respond: Mandatory pursuant to Clean Air Act section 176(c) (42 U.S.C. 7506(c)) and 40 CFR part 93.

Estimated number of respondents: 145 (total).

Frequency of response: Typically, once every four years for transportation plans and TIPs, and for the largest MPOs with three or more NAAQS, once every three years for transportation plans and TIPs. As needed for projects.

Total estimated burden: 42,481 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $2,946,914 (per year), which includes $0 annualized capital or operation & maintenance costs.

Changes in the estimates: There is a decrease of 6,190 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease in burden was projected due to the requirement for transportation conformity ending in PM_{10}, NO_2, and CO maintenance areas that have reached the end of the 20-year maintenance period.

Courtney Kerwin,

Director, Information Engagement Division.

[FR Doc. 2024–04153 Filed 2–28–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2024–0073; FRL–11760–01–OCSPP]

Di-isodecyl Phthalate (DIDP) and Di-isononyl Phthalate (DINP); Draft Risk Evaluations; Science Advisory Committee on Chemicals (SACC) Peer Review; Request for Nominations of ad hoc Expert Reviewers

SUMMARY: The Environmental Protection Agency (EPA) is seeking public nominations of scientific and technical experts that EPA can consider for service as *ad hoc* reviewers assisting the Science Advisory Committee on Chemicals (SACC) with the peer review of the Agency's evaluation of the risks from di-isodecyl phthalate (DIDP) and di-isononyl phthalate (DINP) being conducted to inform risk management decisions under the Toxic Substances Control Act (TSCA). To facilitate nominations, this document provides information about the SACC, the intended topic for the planned peer review, the expertise sought for this peer review, instructions for submitting nominations to EPA, and the Agency's plan for selecting the *ad hoc* reviewers for this peer review. EPA is planning to convene a virtual public meeting of the SACC in the summer of 2024 to review the draft risk evaluations.

DATES: Submit your nominations on or before April 1, 2024.

ADDRESSES: Submit your nominations to the SACC at *SACC@epa.gov.*

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official (DFO) for the SACC is Dr. Alaa Kamel, Mission Support Division (7602M), Office of Program Support, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency; telephone number: (202) 564–5336 or call the SACC main office at (202) 564–8450; email address: *kamel.alaa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What action is the Agency taking?

The Agency is seeking public nominations of scientific and technical experts that EPA can consider for service as *ad hoc* reviewers assisting the SACC with the peer review of the Agency's evaluation of the risks from DIDP and DINP being conducted to inform risk management decisions under TSCA. EPA is planning a virtual public meeting to be held in the summer of 2024 for the SACC to consider and review the draft risk evaluations. At that

time, EPA will be soliciting comments from the SACC on the novel approaches used, the unique exposure analyses and other calculations, and selection of key hazard endpoints.

To facilitate nominations, this document provides information about the SACC, the intended topic for the planned peer review, the expertise sought for this peer review, instructions for submitting nominations to EPA, and the Agency's plan for selecting the *ad hoc* reviewers for this peer review.

B. What is the Agency's authority for taking this action?

The SACC was established by EPA in 2016 in accordance with TSCA section 26(o), 15 U.S.C. 2625(o), to provide independent advice and expert consultation with respect to the scientific and technical aspects of issues relating to the implementation of TSCA. The SACC operates in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. 10, and supports activities under TSCA, 15 U.S.C. 2601 *et seq.,* the Pollution Prevention Act (PPA), 42 U.S.C. 13101 *et seq.,* and other applicable statutes.

C. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of particular interest to those involved in the manufacture, processing, distribution, and disposal of chemical substances and mixtures, and/or those interested in the assessment of risks involving chemical substances and mixtures regulated under TSCA. Members of at-risk communities, non-governmental organizations (NGOs) (particularly those with an interest in protecting health for at-risk communities), and Federal, State and local officials may also be interested. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities to which this action may apply.

D. What should I consider as I submit my nominations to EPA?

Do not submit confidential business information (CBI) or other sensitive information to EPA through email. If your nomination contains any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting that information.

E. How can I stay informed about SACC activities?

You may subscribe to the following listserv for alerts regarding this and other SACC-related activities: *https://public.govdelivery.com/accounts/USAEPAOPPT/subscriber/new?topic_id=USAEPAOPPT_101.*

II. Background

A. What is the purpose of the SACC?

The SACC provides independent advice and recommendations to the EPA on the scientific and technical aspects of risk assessments, methodologies, and pollution prevention measures and approaches for chemicals regulated under TSCA. The SACC is comprised of experts in toxicology; environmental risk assessment; exposure assessment; and related sciences (*e.g.,* synthetic biology, pharmacology, biotechnology, nanotechnology, biochemistry, biostatistics, physiologically based pharmacokinetic (PBPK) modeling, computational toxicology, epidemiology, environmental fate, environmental engineering and sustainability). The SACC currently consists of 18 members. When needed, the committee will be assisted by *ad hoc* reviewers with specific expertise in the topics under consideration.

B. Why is EPA conducting these risk evaluations?

TSCA requires EPA to conduct risk evaluations on prioritized chemical substances and identifies the minimum components EPA must include in all chemical substance risk evaluations. The purpose of conducting risk evaluations is to determine whether a chemical substance presents an unreasonable risk to human health or the environment under the Conditions of Use (COUs). These evaluations include assessing unreasonable risks to relevant potentially exposed or susceptible subpopulations. As part of this process EPA: (1) Integrates hazard and exposure assessments using the best available science that is reasonably available to assure decisions are based on the weight of the scientific evidence, and (2) Conducts peer review for risk evaluation approaches that have not been previously peer reviewed. For more information about the three stages of EPA's process for ensuring the safety of existing chemicals (*i.e.,* prioritization, risk evaluation, and risk management), go to *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/how-epa-evaluates-safety-existing-chemicals.*

C. Why is EPA evaluating the risks from DIDP and DINP?

On May 24, 2019, EPA received requests to conduct risk evaluations for DIDP and DINP from ExxonMobil Chemical Company, Evonik Corporation, and Teknor Apex, through the American Chemistry Council's High Phthalates Panel (ACC HPP). In December 2019, EPA notified ACC HPP that the Agency had granted their manufacturer requested risk evaluations.

DIDP is a common chemical name for the category of chemical substances that includes the following substances: 1,2-benzenedicarboxylic acid, 1,2-diisodecyl ester (CASRN 26761–40–0) and 1,2-benzenedicarboxylic acid, di-C9-11-branched alkyl esters, C10-rich (CASRN 68515–49–1). Both CASRNs contain mainly C10 dialkyl phthalate esters.

DINP is a common chemical name for the category of chemical substances that includes the following substances: 1,2-benzenedicarboxylic acid, 1,2-isononyl ester (CASRN 28553–12–0) and 1,2-benzenedicarboxylic acid, di-C9-11-branched alkyl esters, C9-rich (CASRN 68515–48–0). Both CASRNs contain mainly C9 dialkyl phthalate esters. Both DIDP and DINP are primarily used as a plasticizer in polyvinyl chloride (PVC) in consumer, commercial, and industrial applications.

DIDP and DINP are both structurally phthalates, and therefore many aspects of physical-chemical (p-chem) properties and exposure (to humans and ecological species) are similar. Because of the similar exposure and physical chemical properties of DIDP and DINP, EPA is developing these individual risk evaluations in parallel, and similarly the SACC peer review of the draft risk evaluations will occur concurrently. Both have extremely low water solubility and will be preferentially sorbed into sediments, soils, and suspended solids in surface water and wastewater. Both are expected to be persistent in anaerobic environments. Therefore, ecological risk will be assessed primarily considering exposure via sediment and soil pathways. Under indoor settings, DIDP and DINP are expected to partition to airborne particles and are expected to have extended lifetime compared to outdoor settings.

For both DIDP and DINP, liver and developmental toxicity are indicated as the most sensitive and robust non-cancer hazards. However, these two phthalates differ in several important respects regarding their human health hazard profiles. For DIDP, the developmental toxicity is not characterized by androgen insufficiency, and data are insufficient to determine the carcinogenicity. For DINP, developmental toxicity results in androgen insufficiency (phthalate

syndrome), and the effects on the liver include cancer.

D. What is the topic of the planned SACC peer review?

EPA is planning this SACC peer review of the Agency's risk evaluations for DIDP and DINP. EPA expects to ask the SACC to consider and review the novel approaches, unique exposure analyses and other calculations, and selection of key hazard endpoints for the risk evaluations of DIDP and DINP. Feedback from this review will be considered in the development of the final risk evaluations of the two phthalates under TSCA.

EPA continues to work on risk evaluations of additional high-priority substance phthalates, in addition to the cumulative risk assessment (CRA) for the phthalates. The subsequent five individual risk evaluations and the CRA are not part of this peer review but will be brought to the SACC at a future date.

EPA intends to publish a separate document in the **Federal Register** to announce the availability of and solicit public comment on the draft risk evaluations that are submitted to the SACC for peer review, at which time EPA will provide instructions for submitting written comments and registering to provide oral comments at the peer review meeting planned for the summer of 2024.

III. Nominations for ad hoc Reviewers

A. Why is EPA seeking nominations for ad hoc reviewers?

As part of a broader process for developing a pool of candidates for SACC peer reviews, EPA is asking the public and stakeholders for nominations of scientific and technical experts that EPA can consider as prospective candidates for service as *ad hoc* reviewers assisting the SACC with the peer reviews. Any interested person or organization may nominate qualified individuals for consideration as prospective candidates for this review by following the instructions provided in this document. Individuals may also self-nominate.

Those who are selected from the pool of prospective candidates will be invited to attend the public meeting and to participate in the discussion of key issues and assumptions at the meeting. In addition, they will be asked to review and to help finalize the meeting minutes.

B. What expertise is sought for this peer review?

Individuals nominated for this SACC peer review should have expertise in one or more of the following areas: Risk assessment; ecological risk assessment, including terrestrial hazard/wildlife toxicology for feedback on Toxicity Reference Value (TRV) approach, bioaccumulation and fate/physical chemistry (p-chem) for trophic transfer, and analogue selection; General exposure, particularly, consumer products and indoor air; Ingestion exposure for mouthing/ingestion route and chemical migration to saliva, surface water concentrations, water solubility, and acute aquatic hazard (fate/P-chem and aquatic toxicology), and use of European Union (EU) percentages to assign production volumes for the Conditions of Use (engineering); Human health, including liver toxicity and developmental toxicology for DIDP (toxicology), cancer and peroxisome proliferator-activated receptor alpha (PPARa mode of action), and dose response assessment.

Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this review.

C. How do I make a nomination?

Submit your nomination as directed under **ADDRESSES** by the deadline indicated under **DATES**. Each nomination should include the following information: Contact information for the person making the nomination; Name, affiliation, and contact information for the nominee; and, The disciplinary and specific areas of expertise of the nominee.

D. Will ad hoc reviewers be subjected to an ethics review?

SACC members and *ad hoc* reviewers are subject to the provisions of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, conflict of interest statutes in Title 18 of the United States Code and related regulations. In anticipation of this requirement, prospective candidates for service on the SACC will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. EPA will evaluate the candidates' financial disclosure forms to assess whether there are financial conflicts of interest, appearance of a loss of impartiality, or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the SACC.

E. How will EPA select the ad hoc reviewers?

The selection of scientists to serve as *ad hoc* reviewers for the SACC is based on the function of the Committee and the expertise needed to address the Agency's charge to the Committee. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a federal department or agency or their employment by a federal department or agency, except EPA. Other factors considered during the selection process include availability of the prospective candidate to fully participate in the Committee's reviews, ability to be hired as an EPA Special Government Employee (SGE), absence of any conflicts of interest or appearance of loss of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of loss of impartiality, lack of independence, and bias may result in non-selection, the absence of such concerns does not assure that a candidate will be selected to serve on the SACC.

Numerous qualified candidates are often identified for SACC reviews. Therefore, selection decisions involve carefully weighing several factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives across reviewers. The Agency will consider all nominations of prospective candidates for service as *ad hoc* reviewers for the SACC that are received by the deadline listed under **DATES**. However, the final selection of *ad hoc* reviewers is a discretionary function of the Agency.

EPA anticipates selecting 8–10 *ad hoc* reviewers to assist the SACC in their review of the designated topic. EPA plans to make a list of candidates under consideration as prospective *ad hoc* reviewers for this review available for public comment in April 2024. The list will be available in the docket at *https://www.regulations.gov* (docket ID No. EPA–HQ–OPPT–2024–0073) and through the SACC website at *https://www.epa.gov/tsca-peer-review.*

Authority: 15 U.S.C. 2625(o); 5 U.S.C. 10.

Dated: February 23, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2024–04212 Filed 2–28–24; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1253; FR ID 205344]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before April 29, 2024. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1253.

Title: Section 74.803(c) and (d), Wireless Microphones.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or Households, Business or other for-profit; Not-for-profit institutions.

Number of Respondents and Responses: 65 respondents; 815 responses.

Estimated Time per Response: 0.5–2 hours.

Frequency of Response: Recordkeeping, third party disclosure, and on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 4(i), 4(j), 7(a) 301, 302(a), 303(f), 307(e), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 302(a), 303(f), 307(e), and 332.

Total Annual Burden: 818 hours.

Total Annual Cost: $55,313.

Needs and Uses: The Commission will submit this information collection to OMB as an extension after this 60-day comment period to obtain the full three-year clearance from them.

The information collection authorize licensed low power auxiliary station operations (referenced herein as ''wireless microphone'' operations) on additional frequency bands. Specifically, under section 74.803(c), the Commission permitted licensed wireless microphone operations on the 941.5–944 MHz, the 952.85–956.25 MHz, the 956.45–959.85 MHz, the 6875–6900 MHz, and the 7100–7125 MHz bands, provided the particular coordination requirements were met; under section 74.803(d), the Commission authorized operations on the 1435–1525 MHz band provided that requisite conditions, including coordination, were met. The Commission promoted its goal by accommodating wireless microphone users' needs through access to spectrum resources following the incentive auction and reconfiguration of the TV bands.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–04213 Filed 2–28–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

[File No. 202 3033]

Avast Limited et al.; 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 April 1, 2024.

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 ''Avast Limited, et al.; File No. 202 3033'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex A), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Cathlin Tully (202–326–3644), Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue 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 April 1, 2024. Write ''Avast Limited, et al.; File No. 202 3033,'' 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 ''Avast Limited, et al.; File No. 202 3033'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex A), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on 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 *https://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 April 1, 2024. 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'' or ''FTC'') has accepted, subject to final approval, an agreement containing consent order from Avast Limited, Avast Software s.r.o., and Jumpshot, Inc. (''Respondents''). The proposed consent order (''Proposed Order'') has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement, along with any comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the Proposed Order.

The FTC's proposed complaint (''Proposed Complaint'') alleges that Respondent Avast Limited, a United Kingdom limited liability company, together with Respondent Avast Software s.r.o. (collectively, ''Avast''), a Czech Republic limited liability company, collected consumers' browsing information through browser extensions and antivirus software (''Avast Software'') installed on consumers' computers and mobile devices. Through Respondent Jumpshot, Inc. (''Jumpshot''), Respondents sold this browsing data to third parties in non-aggregate, re-identifiable form.

According to the Proposed Complaint, the Avast Software collected browsing information from consumers, including uniform resource locators (URLs) of web pages visited, the URLs of background resources, consumers' search queries, and cookie values placed by third parties on consumers' computers. Among other things, the Avast Software collected browsing information revealing consumers' religious beliefs, health concerns, political leanings, location, financial status, visits to child-directed content, and interest in prurient content. Respondents combined this information with persistent identifiers, including identifiers created by Respondents that identified each consumer device uniquely, increasing the likelihood that consumers could be reidentified. As alleged in the Proposed Complaint, in many instances Respondents failed to disclose any information about their collection or sale of browsing information, and affirmatively represented that the Avast Software would ''[b]lock[ ] annoying tracking cookies that collect data on your browsing activities'' and ''[s]hield your privacy.''

The Proposed Complaint alleges that after Avast acquired Jumpshot in 2013, Avast rebranded Jumpshot in 2014 as an analytics company. From 2014 to 2020, the Proposed Complaint alleges, Jumpshot sold browsing information collected by the Avast Software to customers such as consulting firms, investment companies, advertising companies, marketing data analytics companies, individual brands, search engine optimization firms, and data brokers. The Proposed Complaint alleges that, while Respondents purported to remove consumers' identifying information before transferring browsing information to Jumpshot, the proprietary algorithm Avast developed and used to do so was not sufficient to anonymize the data, which Jumpshot then sold in non-aggregate form to its customers through a variety of products. In total, the Proposed Complaint alleges that Respondents sold consumers' browsing information, and insights derived from such data, to more than 100 customers, earning tens of millions in gross revenues. After receiving the FTC's civil investigative demand, Respondents shut down Jumpshot's operations ''with immediate effect.''

The Commission's three-count Proposed Complaint alleges that Respondents violated section 5(a) of the FTC Act by: (1) unfairly collecting consumers' browsing information, storing that information in granular form indefinitely, and selling that information in granular form to third parties, without adequate notice and without consumer consent; (2) representing that the Avast Software

would stop the collection and sale of consumers' browsing information but failing to disclose, or to disclose adequately, that Respondents, through the Avast Software, collected and sold consumers' browsing information; and (3) misrepresenting that consumers' browsing information would be transferred to Respondent Jumpshot and to third parties only in aggregate and anonymous form.

With respect to the first count, the Proposed Complaint alleges Respondents' practices caused, or are likely to cause, substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers themselves. The vast majority of consumers would not know the Avast Software would surveil their every move on the internet or their browsing information might be sold to more than 100 third parties in granular, re-identifiable form. Such practices constitute unfair acts or practices under Section 5 of the FTC Act.

With respect to the second count, the Proposed Complaint alleges Respondents claimed the Avast Software would stop the collection and sale of consumers' browsing information. The Proposed Complaint alleges that, in reality, and as noted above, Respondents' software collected consumers' browsing information which Respondents then sold to third parties. Respondent's failure to disclosure that material information was deceptive under Section 5 of the FTC Act.

With respect to the third count, the Proposed Complaint alleges Respondents claimed consumers' browsing information would be transferred to Respondent Jumpshot and to third parties only in aggregate and anonymous form. The Proposed Complaint alleges that, in reality, and as noted above, consumers' browsing information was transferred to Respondent Jumpshot and sold to third parties in non-aggregate and non-anonymous form. Such representations were, therefore, deceptive under Section 5 of the FTC Act.

Summary of the Proposed Order With Respondents

The Proposed Order contains injunctive relief designed to prevent Respondents from engaging in the same or similar acts or practices in the future. Part I prohibits Respondents from selling, licensing, transferring, sharing, or otherwise disclosing to third parties for advertising: (1) browsing information from Avast products; (2) products or services derived from such browsing information; or (3) models or algorithms derived from such data. This provision further requires Respondents to obtain affirmative express consent from consumers before Respondents use browsing data for third-party advertising, and to obtain affirmative express consent from consumers using non-Avast branded products before selling, licensing, transferring, sharing, or otherwise disclosing to third parties browsing information collected by such products for advertising.

Part II prohibits Respondents from misrepresenting: (1) the purpose of their collection, use, disclosure, or maintenance of Covered Information (*i.e.,* information from or about a consumer or their device, including browsing information); (2) the extent to which Covered Information is aggregated or anonymized; and (3) the extent to which they collect, use, disclose, or maintain Covered Information or otherwise protect the privacy, security, availability, confidentiality, or integrity of Covered Information.

Part III requires Respondents to delete all browsing information that Respondent Jumpshot received from the Avast Respondents and related models, algorithms, and software. This provision further requires Respondents to instruct all third parties that received browsing information from Respondent Jumpshot, any models or algorithms derived from such data, and any software developed to analyze such data, to delete or destroy such data, models, algorithms, or software.

Part IV requires that Respondents provide notice about the FTC's complaint and settlement with Respondents to consumers on the Avast websites, within Avast products, and via email to consumers who purchased or downloaded Avast products between 2014 and 2020. Part V requires that Respondents establish and implement, and thereafter maintain, a comprehensive privacy program that protects the privacy of consumers' personal information.

Part VI requires Respondents to obtain initial and biennial privacy program assessments by an independent, third-party professional for 20 years. Part VII requires Respondents to disclose all material facts to the assessor required by Part VI and prohibits Respondents from misrepresenting any fact material to the assessments required by Part VI. Part VIII requires each Respondent to submit an annual certification from a senior officer responsible for compliance with Part V that the Respondent has implemented the requirements of the Proposed Order and is not aware of any material noncompliance that has not been corrected or disclosed to the Commission.

Part IX requires Respondents to pay to the Commission $16,500,000 in monetary relief. Part X describes the procedures and legal rights related to that payment.

Parts XI–XIV 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. Part XV states that the Proposed Order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the Proposed Order, and it is not intended to constitute an official interpretation of the Proposed Complaint or Proposed Order, or to modify the Proposed Order's terms in any way.

By direction of the Commission.

April J. Tabor,

Secretary.

Statement of Chair Lina M. Khan, Joined by Commissioner Rebecca Kelly Slaughter and Commissioner Alvaro M. Bedoya

A person's browsing history can reveal extraordinarily sensitive information. A record of the websites someone visits can divulge everything from someone's romantic interests, financial struggles, and unpopular political views to their weight-loss efforts, job rejections, and gambling addiction.

Aware that internet users may want to protect their browsing history from data brokers and other trackers, some firms now market services to provide privacy protections online. Avast is one such firm. Since at least 2014, Avast has distributed browser extensions that it promoted through promising users enhanced privacy. It claimed, for example, that its products would ''block[ ] annoying tracking cookies that collect data on your browsing activities'' and ''[p]rotect your privacy by preventing . . . web services from tracking your online activity.'' It also stated that any sharing of user information would be in ''anonymous and aggregate'' form.[1]

The Commission's complaint charges that these statements by Avast were deceptive. The complaint details how Avast collected highly detailed browsing data from millions of users

[1] Complaint, *In re Avast Limited,* Docket No. C–XXXX (Feb. 15, 2024) ¶¶ 5–17, 31–39, *https://www.ftc.gov/system/files/ftc_gov/pdf/Complaint-Avast.pdf* [hereinafter Avast Complaint].

and then, through its subsidiary Jumpshot, sold those browsing records to over a hundred clients, including major advertising firms. Avast also released this data in individualized, re-identifiable form, allowing these browsing histories to be traced back to specific people—in direct contravention of what Avast had promised.[2] While the FTC's privacy lawsuits routinely take on firms that misrepresent their data practices, Avast's decision to expressly market its products as *safeguarding* people's browsing records and *protecting* data from tracking only to then sell those records is especially galling.[3] Moreover, the volume of data Avast released is staggering: the complaint alleges that by 2020 Jumpshot had amassed ''more than eight petabytes of browsing information dating back to 2014.'' Indeed, one advertising firm received detailed browsing information on 50 percent of Avast's entire user base world-wide, spanning the United States, United Kingdom, Mexico, Australia, Canada, and Germany.[4]

The FTC charges that Avast's conduct here was not only deceptive, but also an unfair practice, violating Section 5 of the FTC Act. Exposing people's detailed browsing data in ways that can be traced back to them marks an invasion of privacy and is likely to cause substantial injury. Because it is intrinsically sensitive, browsing data warrants heightened protection. Businesses that sell or share browser history data without affirmatively obtaining people's permission may be in violation of the law.

Today's action against Avast further builds out the Commission's work establishing that sensitive data triggers heightened privacy obligations and a default presumption against its sharing or sale. Through a series of cases, the FTC has been expounding on how firms are legally required to safeguard sensitive data. *Kochava, X-Mode,* and *InMarket* highlighted the sensitivity of precise geolocation data.[5] In *Rite Aid* and *Alexa,* the FTC highlighted the sensitivity of biometric data, such as facial attributes and voice recordings of children.[6] And in *GoodRx, BetterHelp,* and *Premom,* we underscored the heightened sensitivity of people's health information.[7] Today, we underscore the sensitivity of yet another type of information: people's browsing records.

Across these cases, we have established that businesses by default cannot sell people's sensitive data or disclose it to third parties for advertising purposes. We have also pursued bright-line bans. In *Rite Aid,* where we alleged that Rite Aid used unfair and discriminatory facial recognition software, we are seeking to ban its use of facial recognition for five years. In a trio of matters, *GoodRx, BetterHelp,* and *Premom*—all cases where health apps promised to keep secure users' highly personal health information but then turned around and sold that data to third parties for advertising purposes—we banned those companies from selling consumers' health information for such purposes. Here, we have obtained a similar ban, for the first time, with respect to a non-health service. Today's order also secures $16.5 million in relief—the highest monetary remedy in a *de novo* privacy violation case.

I am very grateful to the Division of Privacy and Identity Protection for their terrific work to protect Americans from privacy invasions and commercial surveillance, especially as it concerns their most sensitive data.

[FR Doc. 2024–04257 Filed 2–28–24; 8:45 am]

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[2] *Id.* at ¶¶ 18–30.

[3] For example, the complaint charges that Avast stated that its software would ''[s]hield your privacy. Stop anyone and everyone from getting to your computer.'' It similarly claimed that some of its products would allow users to ''[r]eclaim your browser. Get rid of unwanted extensions and hackers making money off your searches.'' Avast also represented that the Avast Secure Browser is ''Anti-Tracking'' and ''[p]rotects your privacy by preventing websites, advertising companies, and other web services from tracking your online activity.'' (*Id.* at ¶¶ 16–37). In reality, ''many of the Jumpshot products (or 'data feeds') provided third-party data buyers with extraordinary detail regarding how users navigated the internet, including each web page visited, precise timestamp, the type of device and browser, and the city, state, and country. Most of the data feeds included a unique and persistent device identifier associated with each particular browser allowing Jumpshot and the third-party buyer to trace individuals across multiple domains over time.'' *Id.* at ¶ 21.

[4] *Id.* at ¶ 30.

[5] *See* Press Release, Fed. Trade Comm'n, FTC Sues Kochava for Selling Data That Tracks People at Reproductive Health Clinics, Places of Worship, and Other Sensitive Locations (Aug. 29, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-sues-kochava-selling-data-tracks-people-reproductive-health-clinics-places-worship-other;* Press Release, Fed. Trade Comm'n, FTC Order Prohibits Data Broker X-Mode Social and Outlogic from Selling Sensitive Location Data (Jan. 9, 2024), *https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-order-prohibits-data-broker-x-mode-social-outlogic-selling-sensitive-location-data;* Press Release, Fed. Trade Comm'n, FTC Order Will Ban InMarket From Selling Precise Consumer Location Data (Jan. 18, 2024), *https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-order-will-ban-inmarket-selling-precise-consumer-location-data.*

[6] *See* Press Release, Fed. Trade Comm'n, Rite Aid Banned From Using AI Facial Recognition After FTC Says Retailer Deployed Technology Without Reasonable Safeguards (Dec. 19, 2023), *https://www.ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-says-retailer-deployed-technology-without;* Press Release, Fed. Trade Comm'n, FTC and DOJ Charge Amazon with Violating Children's Privacy Law by Keeping Kids' Alexa Voice Recordings Forever and Undermining Parents' Deletion Requests (May 31, 2023), *https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-doj-charge-amazon-violating-childrens-privacy-law-keeping-kids-alexa-voice-recordings-forever.*

[7] *See* Press Release, Fed. Trade Comm'n, FTC Enforcement Action to Bar GoodRx from Sharing Consumers' Sensitive Health Info for Advertising (Feb. 1, 2023), *https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-enforcement-action-bar-goodrx-sharing-consumers-sensitive-health-info-advertising;* Press Release, Fed. Trade Comm'n, FTC Gives Final Approval to Order Banning BetterHelp from Sharing Sensitive Health Data for Advertising, Requiring It to Pay $7.8 Million (July 14, 2023), *https://www.ftc.gov/news-events/news/press-releases/2023/07/ftc-gives-final-approval-order-banning-betterhelp-sharing-sensitive-health-data-advertising;* Press Release, Fed. Trade Comm'n, Ovulation Tracking App Premom Will be Barred from Sharing Health Data for Advertising Under Proposed FTC Order (May 17, 2023), *https://www.ftc.gov/news-events/news/press-releases/2023/05/ovulation-tracking-app-premom-will-be-barred-sharing-health-data-advertising-under-proposed-ftc.*

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0291; Docket No. 2024–0001; Sequence No. 3]

Information Collection; Federal Funding Accountability and Transparency Act Sub-Award Reporting System Registration Requirements for Prime Grant Awardees

AGENCY: Office of the Integrated Award Environment, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of the currently approved information collection requirement regarding FSRS Registration Requirements for Prime Grant Awardees.

DATES: Submit comments on or before April 29, 2024.

ADDRESSES: Submit comments identified by Information Collection 3090–0291, FSRS Registration Requirements for Prime Grant Awardees to *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching OMB control number 3090–0291. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0291, FSRS Registration Requirements for Prime Grant Awardees.'' Follow the

instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0291, FSRS Registration Requirements for Prime Grant Awardees on your attached document. If your comment cannot be submitted using *regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite Information Collection 3090–0291, FSRS Registration Requirements for Prime Grant Awardees, 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: Ms. Salomeh Ghorbani, Director, IAE Outreach and Stakeholder Engagement Division, at 703–605–3467 or *IAE_Admin@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Funding Accountability and Transparency Act (Pub. L. 109–282, as amended by section 6202(a) of Pub. L. 110–252), known as FFATA or the Transparency Act, requires information disclosure of entities receiving Federal financial assistance through Federal awards such as Federal contracts, sub-contracts, grants and sub-grants, FFATA 2(a),(2),(i),(ii). The system that collects this information is called the FFATA Sub-award Reporting System (FSRS, *www.fsrs.gov*). This information collection requires information necessary for prime awardee registration in FSRS to create a user log-in and enable sub-award reporting for their entity. To register in FSRS for a user log-in, an entity is required to provide their Unique Entity Identifier (UEI). FSRS then pulls core data about the entity from their System for Award Management (SAM) registration to include the legal business name, physical address, mailing address and Commercial and Government Entity (CAGE) code. The entity completes the FSRS registration by providing contact information within the entity for approval.

If a prime awardee has already registered in FSRS to report contracts-related Transparency Act financial data, a new log-in will not be required. In addition, if a prime awardee had a user account in the Electronic Subcontract Reporting System (eSRS), a new log-in will not be required.

B. Annual Reporting Burden

Respondents: 2,488.
Responses per Respondent: 1.
Total Annual Responses: 2,488.
Hours per Response: .5.
Total Burden Hours: 1,244.

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 General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0291, FSRS Registration Requirements for Prime Grant Awardees, in all correspondence.

Joanne Sosa,

Acting Director, Regulatory Secretariat Division, General Services Administration.

[FR Doc. 2024–04260 Filed 2–28–24; 8:45 am]

BILLING CODE 6820–WY–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–OH–24–001, National Center for Construction Safety and Health Research and Translation.

Dates and Times: May 13, 2024, 11 a.m.–6 p.m., EDT; and May 14, 2024, 1 p.m.–6 p.m., EDT.

Place: Video-Assisted Meeting.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Dan Hartley, Ed.D., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone: (304) 285–5812; Email: *DHartley@cdc.gov.*

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–04211 Filed 2–28–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–IP–24–017, Collaborative Research on Influenza and Other Respiratory Pathogens in South Africa; and RFA–IP–24–081, Public Health Epidemiology, Prevention and Control of Influenza and Other Respiratory Pathogens in China.

Date: May 17, 2024.

Time: 10 a.m.–5 p.m., EDT.

Place: Videoconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H24–6, Atlanta, Georgia 30329–4027. Telephone: (404) 718–8833; Email: *GAnderson@cdc.gov.*

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–04198 Filed 2–28–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

In accordance with 5 U.S.C. 1009(d), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463.

Name of Committee: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Dates: June 4–5, 2024.

Times: 11 a.m.–5 p.m., EDT.

Place: Teleconference.

Agenda: The meeting will convene to address matters related to the conduct of Study Section business and for the Study Section to consider safety and occupational health-related grant applications.

For Further Information Contact: Michael Goldcamp, Ph.D., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1095 Willowdale Road, Morgantown, West Virginia 26506. Telephone: (304) 285–5951; Email: *MGoldcamp@cdc.gov.*

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–04200 Filed 2–28–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC) and the Health Resources and Services Administration (HRSA) announce the following meeting of the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment (CHAC). This meeting is open to the public, limited only by the number of audio and web conference lines (1,000 lines are available). Time will be available for public comment (registration is required to provide oral comment).

DATES: The meeting will be held on April 9 and 10, 2024, from 9 a.m. to 4:30 p.m., EDT.

Written comments must be submitted by April 19, 2024. Registration to make oral comments must be submitted by March 26, 2024.

ADDRESSES: The telephone access number is 1–669–254–5252, Webinar ID: 160 972 1316, and the Passcode is 08044152. The web conference access is *https://cdc.zoomgov.com/j/1609721316?pwd=cUVqdUp5dlBNaDhhWERrcWdXUk9yUT09,* and the Passcode is dx%cJGp3. The number of available audio and web conference lines is 1,000.

FOR FURTHER INFORMATION CONTACT: Marah Condit, M.S., Committee Management Lead, Office of Policy, Planning, and Partnerships, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop US8–6, Atlanta, Georgia 30329–4027. Telephone: (404) 639–3423; Email: *nchhstppolicy@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment (CHAC) is charged with advising the Secretary of Health and Human Services; the Director, Centers for Disease Control and Prevention (CDC); and the Administrator, Health Resources and Services Administration (HRSA), regarding objectives, strategies, policies, and priorities for HIV, viral hepatitis, and STD prevention and treatment efforts including (1) surveillance; (2) epidemiologic, behavioral, health services, and laboratory research; (3) identification of policy issues and opportunities related to prevention and treatment including but not limited to professional education, healthcare delivery, social determinants of health, research, and prevention and treatment services; (4) strategic issues influencing the ability of CDC and HRSA to fulfill their missions; (5) development and implementation of federal programs focused on prevention and treatment; and (6) provide support to the agencies in their response to emerging health needs.

Matters to be Considered: The agenda will include discussions on (1) syndemic approach to testing, (2) using prescription data to support the HIV care continuum, (3) HIV and aging, (4) an update on DoxyPEP, (5) advancing diagnosis of hepatitis C virus infection, (6) an update from the Long-Acting Injectable Workgroup, (7) an update from the Community Partnerships Workgroup, (8) an update from the

Workforce Workgroup, and (9) an update from the Presidential Advisory Council on HIV/AIDS. Agenda items are subject to change as priorities dictate.

Public Participation

Written Public Comment: Members of the public are welcome to submit written comments in advance of the meeting. Written comments must be submitted by emailing *nchhstppolicy@cdc.gov* with subject line ''Spring CHAC Public Comment Registration'' by April 19, 2024.

Oral Public Comment: Individuals who would like to make an oral comment during the public comment period must register by emailing *nchhstppolicy@cdc.gov* with subject line ''Spring CHAC Public Comment Registration'' by March 26, 2024. The public comment period is on April 9, 2024, at 3:45 p.m., EDT.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–04197 Filed 2–28–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Advisory Board on Radiation and Worker Health, Subcommittee for Procedure Reviews, National Institute for Occupational Safety and Health

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC) announces the following meeting for the Subcommittee on Procedures Reviews (SPR) of the Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board). This meeting is open to the public, but without a public comment period. The public is also welcomed to listen to the meeting by joining the audio conference (information below). The audio conference line has 150 ports for callers.

DATES: The meeting will be held on March 14, 2024, from 11 a.m. to 4:30 p.m., EDT.

Written comments must be received on or before March 7, 2024.

ADDRESSES: You may submit comments by mail to: Rashaun Roberts, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1090 Tusculum Avenue, MS C–24, Cincinnati, Ohio 45226.

Meeting Information: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the pass code is 9933701.

FOR FURTHER INFORMATION CONTACT: Rashaun Roberts, Ph.D., Designated Federal Officer, National Center for Occupational Safety and Health, Centers for Disease and Prevention, 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226, Telephone: (513) 533–6800; Email: *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board) was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort. In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC.

The charter was issued on August 3, 2001, renewed at appropriate intervals, and rechartered under Executive Order 14109 on March 22, 2022, and will terminate on March 22, 2024.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The ABWRH Subcommittee on Procedure Reviews (SPR) is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor (Oak Ridge Associated Universities—ORAU).

Matters to be Considered: The agenda will include discussions on the following: 1. Carry-over items from November 16, 2023, SPR Meeting, including a. DCAS–PER–040 ''Mallinckrodt TBD Revisions,'' b. Peeks Street review—NIOSH, and c. ANL–W TBD revision—review application of ORAUT–RPRT–0097. 2. Newly-issued SC&A reviews, including a. ORAUT–RPRT–0071 ''External Dose Coworker Methodology,'' b. ORAUT–RPRT–0084 ''Two-Count Filter Method for Measurement of Thoron Progeny in Air,'' c. DCAS–PER–047 ST4 ''GJOO,'' d. ''Amchitka Island template,'' e. ''Albuquerque Operations Office template,'' f. DCAS–PER–068 ''Electro Metallurgical Co,'' g. DCAS–PER–070 ''Nuclear Metals Inc.,'' h. DCAS–PER–072 ''Seymour Specialty Wiring Co,'' i. ORAUT–RPRT–0060 ''Neutron Dose from Highly Enriched Uranium.''; 3. PERs previously identified as not needing a review; 4. Preparation for April 2024 Full ABRWH Meeting: Review of technical guidance documents ready for full Board approval; 5. Newly-Issued Guidance and Supplemental Topics. Agenda items are subject to change as priorities dictate. For additional information, please contact Toll Free 1 (800) 232–4636.

Meeting Information: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the pass code is 9933701.

Public Participation

Written Public Comment: The public is welcome to submit written comments

in advance of the meeting, to Rashaun Roberts, Ph.D., Designated Federal Officer, National Center for Occupational Safety and Health, Centers for Disease and Prevention, 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226, Telephone: (513) 533–6800; Email: *ocas@cdc.gov.* Written comments received in advance of the meeting will be included in the official record of the meeting.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–04210 Filed 2–28–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–IP–24–046, Nationwide Cohort To Estimate Burden of Respiratory Viruses and Immunologic Response (Blood Donor Cohort); Amended Notice of Closed Meeting

Notice is hereby given of a change in the closed meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–IP–24–046, Nationwide Cohort to Estimate Burden of Respiratory Viruses and Immunologic Response (Blood Donor Cohort); April 11–12, 2024, 10 a.m.–5 p.m., EDT, videoconference, in the original **Federal Register** notice. The meeting notice was published in the **Federal Register** on January 16, 2024, Volume 89, Number 10, pages 2618–2619.

The notice is being amended to change the meeting dates to a one-day meeting and should read as follows:

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–IP–24–046, Nationwide Cohort to Estimate Burden of Respiratory Viruses and Immunologic Response (Blood Donor Cohort).

Date: April 11, 2024.

Time: 10 a.m.–5 p.m., EDT.

The meeting is closed to the public.

For Further Information Contact: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H24–6, Atlanta, Georgia 30329–4027. Telephone: (404) 718–8833; Email: *GAnderson@cdc.gov*.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–04199 Filed 2–28–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10706 and CMS–10526]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by April 29, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10706 Generic Clearance for the Center for Clinical Standards and Quality IT Product and Support Teams

CMS–10526 Cost-sharing Reduction Reconciliation

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of

information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved information collection; *Title of Information Collection:* Generic Clearance for the Center for Clinical Standards and Quality IT Product and Support Teams; *Use:* The CMS Center for Clinical Standards and Quality (CCSQ) is responsible for administering appropriate information systems so that the public can submit healthcare-related information. While beneficiaries ultimately benefit, the primary users of CCSQ IT Product and Support Teams (CIPST) systems are healthcare facility employees and contractors. They are responsible for the collection and submission of appropriate beneficiary data to CMS to receive merit-based compensation.

The systems that support CCSQ programs includes but is not limited to: End-Stage Renal Disease Quality Reporting System (EQRS), Enterprise Shared Services (ESS), HCQIS ServiceNow (SNOW), Hospital Quality Reporting (HQR), Quality Improvement and Evaluation System (iQIES), Quality Management and Reporting System (QMARS), and Quality Payment Program (QPP).

The generic clearance will allow CMS to gather information to improve information systems that serve CMS audiences. CMS will gather this information using a mixture of qualitative and quantitative consumer research strategies (including formative research studies and methodological tests). CMS implements human-centered methods and activities for the improvement of policies, services, and products. This collection of information is necessary to enable CMS to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery.

As information systems and technologies are developed or improved upon, they can be tested and evaluated for end-user feedback regarding utility, usability, and desirability. The overall goal is to apply a human-centered engagement model to maximize the extent to which CIPST can gather ongoing feedback from consumers. Feedback helps engineers and designers arrive at better solutions, therefore minimizing the burden on consumers and meeting their needs and goals.

The activities under this clearance involve voluntary engagement with target CCSQ users to receive design and research feedback. The respondents will be voluntary end-users from self-selected customers, as well as convenience samples. It is our intent that selected respondents will either cover a broad range of customers or include specific characteristics related to certain products or services. All collections of information will allow us to continually refine our processes, systems, and services for the benefit of internal and external stakeholders. *Form Number:* CMS–10706 (OMB control number: 0938–1397); *Frequency:* Occasionally; *Affected Public:* Individuals and Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 54,750; *Total Annual Responses:* 54,750; *Total Annual Hours:* 17,850. (For policy questions regarding this collection contact Brandy Barnette at 410–786–6455).

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Cost-Sharing Reduction Reconciliation *Use:* Under established Department of Health and Human Services (HHS) regulations, although cost-sharing reduction (CSR) payments are not being advanced to qualified health plan (QHP) issuers at the present time, issuers are still permitted to submit data that compares the CSR-eligible enrollment for each issuer with their actual CSRs provided by the issuer for covered services for each eligible enrollee in a benefit year. HHS will compare this CSR-eligible enrollment with the actual CSRs provided by the issuers that participate in the optional data submission window to verify the issuer's reporting of CSRs provided. This revised collection does not add any data elements and continues to make summary plan level reporting optional.

Based upon CMS' experience in the CSR data collection and evaluation process, CMS is not making any substantive changes to this information collection. The only changes are to update the number of policies issuers will report data for, based on the most recent enrollment numbers in CSR plan variants as of June 15, 2023. There are no programmatic changes. The CSR Issuer Summary Report and Standard Methodology Template Plan and Policy Report remain the same. *Form Number:* CMS–10526 (OMB control number: 0938–1266); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 150; *Number of Responses:* 150; *Total Annual Hours:* 2,362.5. (For policy questions regarding this collection, contact Deborah Noymer at 301–448–3755.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–04151 Filed 2–28–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10882]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by April 29, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *https://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10882 The Medicare Advantage and Prescription Drug Programs: Part C and Part D Medicare Prescription Payment Plan Model Documents.

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* The Medicare Advantage and Prescription Drug Programs: Part C and Part D Medicare Prescription Payment Plan Model Documents; *Use:* Sections 1860D–2(b)(2)(E)(v)(II)–(IV) of the Act state the requirements for Part D sponsors and MA organizations in implementing the program, which include the processes for outreach to enrollees identified as likely to benefit, election, and termination. Subsection II states that any Part D enrollee may elect into the program prior to (aa) or during (bb) the plan year. Subsection III details that PDP sponsors and MA organizations must have a mechanism in place to inform enrollees that they are likely to benefit from electing into the program at the point of sale (POS). Subsection IV(aa) states that plans must terminate a beneficiary's participation in the program when the beneficiary fails to pay the amounts owed under this program.

CMS has developed the six materials in the attached package as model notices in order to provide standardized and consistent language for potential and active program participants, regardless of which Part D plan they may be enrolled in. CMS will require Part D plans to disseminate these notices, as appropriate, to Part D enrollees to fulfill the requirements of the Sections 1860D–2(b)(2)(E)(v)(II)–(IV) of the Act. *Form Number:* CMS–10882 (OMB control number: 0938–New); *Frequency:* Yearly; *Affected Public:* Private, Federal Government, Business or other for profits, Not-for-profits institutions; *Number of Respondents:* 1,065; *Total Annual Responses:* 3,195; *Total Annual Hours:* 127,800. (For policy questions regarding this collection contact Michael Brown at (872) 287–1370 or *michael.brown3@cms.hhs.gov.*)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–04302 Filed 2–28–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Generic Clearance for the Comprehensive Child Welfare Information System (CCWIS) Technical Assistance and Review Process (Office of Management and Budget #: 0970–0568)

AGENCY: Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Children's Bureau (CB), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) is requesting a 3-year extension of the Generic Clearance for the Comprehensive Child Welfare Information System (CCWIS) Technical Assistance (TA) and Review Process, (OMB #0970–0568, expiration 4/30/2024) and all approved information collections under this generic. There are no changes requested to the terms of the umbrella generic or to the currently approved information collections.

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 *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The CCWIS Technical Assistance and Review information collection includes two components.

The CCWIS Assessment Review (CAR) Process.

TA tools for title IV–E agencies to self-assess their conformity to CCWIS project and design requirements at 45 CFR 1355.52–3; The CCWIS requirements at 45 CFR 1355.55 require the review, assessment, and inspection of the planning, design, development, installation, operation, and maintenance of each CCWIS project on a continuing basis. The Advance Planning Document (APD) regulations at 45 CFR 95.621 require periodic reviews of state and local agency methods and practices to ensure information systems, including CCWIS, are utilized for purposes

consistent with proper and efficient administration.

This request is for an extension with no changes to the umbrella generic and all currently approved information collections, which can be found here: *https://www.reginfo.gov/public/do/PRAICList?ref_nbr=202311-0970-010.*

Respondents: Title IV–E agencies under the Social Security Act.

Annual Burden Estimates

ANNUAL BURDEN—CURRENTLY APPROVED INFORMATION COLLECTIONS

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
CCWIS Self-Assessment—Administration	55	1	10	550
CCWIS Self-Assessment—Adoption	55	1	10	550
CCWIS Self-Assessment—Case Management	55	1	10	550
CCWIS Self-Assessment—Foster Care and Service Provider Management	55	1	10	550
CCWIS Self-Assessment—Intake	55	1	10	550
CCWIS Self-Assessment—Investigation	55	1	10	550
CCWIS Self-Assessment: Child Welfare Contributing Agency (CWCA)	55	1	10	550
CCWIS Self-Assessment: Data Exchanges	55	1	10	550
CCWIS Self-Assessment: Data Quality	55	1	10	550
CCWIS Self-Assessment: Design Requirements	55	1	24	1,320
CCWIS Self-Assessment: Financial	55	1	10	550
CCWIS Self-Assessment: Reporting	55	1	10	550
CCWIS Self-Assessment: Security	55	1	10	550
CCWIS Self-Assessment: Title IV–E Foster Care Maintenance Eligibility	55	1	10	550
CCWIS Self-Assessment: User Experience	55	1	10	550
Total Annual Burden for Currently Approved Generics:				9,020

ANNUAL BURDEN—POTENTIAL ADDITIONAL INFORMATION COLLECTION REQUESTS

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Future Tools to be developed	55	5	10	2,750

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: 5 U.S.C. 301; 42 U.S.C. 470, 620 *et seq.,* 622(b), 629b(a), 652(b), 654A, 670 *et seq.,* 671(a), 1302, and 1396a(a).

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–04264 Filed 2–28–24; 8:45 am]

BILLING CODE 4184–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–2261, FDA–2022–E–2262, and FDA–2022–E–2263]

Determination of Regulatory Review Period for Purposes of Patent Extension; PREVNAR–20

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for PREVNAR–20 and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically,

including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–2261, FDA–2022–E–2262, and FDA–2022–E–2263 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; PREVNAR–20.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product PREVNAR–20 (Pneumococcal 20-valent Conjugate Vaccine). PREVNAR–20 is indicated for:

• Active immunization for the prevention of invasive disease caused by *Streptococcus pneumoniae* serotypes 1, 3, 4, 5, 6A, 6B, 7F, 8, 9V, 10A, 11A, 12F, 14, 15B, 18C, 19A, 19F, 22F, 23F, and 33F in individuals 6 weeks of age and older.

• Active immunization for the prevention of otitis media caused by *S. pneumoniae* serotypes 4, 6B, 9V, 14, 18C, 19F, and 23F in individuals 6 weeks through 5 years of age.

• Active immunization for the prevention of pneumonia caused by *S. pneumoniae* serotypes 1, 3, 4, 5, 6A, 6B, 7F, 8, 9V, 10A, 11A, 12F, 14, 15B, 18C, 19A, 19F, 22F, 23F, and 33F in individuals 18 years of age and older.

The indication for the prevention of pneumonia caused by *S. pneumoniae* serotypes 8, 10A, 11A, 12F, 15B, 22F, and 33F in individuals 18 years of age and older is approved under accelerated approval based on immune responses as measured by opsonophagocytic activity assay. Continued approval for this indication may be contingent upon verification and description of clinical benefit in a confirmatory trial.

Subsequent to this approval, the USPTO received patent term restoration applications for PREVNAR–20 (U.S. Patent No. 7,935,787) from Wyeth LLC, and (U.S. Patent Nos. 9,517,274; and 9,950,054), filed by Pfizer Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated January 18, 2023, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of PREVNAR–20 represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for PREVNAR–20 is 1,678 days. Of this time, 1,434 days occurred during the testing phase of the regulatory review period, while 244 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* November 5, 2016. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on November 5, 2016.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* October 8, 2020. FDA has verified the applicant's claim that the biologics license application (BLA) for PREVNAR–20 (BLA 125731) was initially submitted on October 8, 2020.

3. *The date the application was approved:* June 8, 2021. FDA has verified the applicant's claim that BLA 125731 was approved on June 8, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, these applicants seek 665 days or 961 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04229 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–E–2139]

Determination of Regulatory Review Period for Purposes of Patent Extension; NULIBRY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for NULIBRY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–E–2139 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; NULIBRY.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the

information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, NULIBRY (fosdenopterin). NULIBRY is indicated to reduce the risk of mortality in patients with molybdenum cofactor deficiency Type A. Subsequent to this approval, the USPTO received a patent term restoration application for NULIBRY (U.S. Patent No. 7,504,095) from Origin Biosciences, Inc., and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated September 21, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of NULIBRY represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for NULIBRY is 2,815 days. Of this time, 2,572 days occurred during the testing phase of the regulatory review period, while 243 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective: June 15, 2013. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on June 15, 2013.

2. The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act: June 29, 2020. FDA has verified the applicant's claim that the new drug application (NDA) for NULIBRY (NDA 214018) was initially submitted on June 29, 2020.

3. The date the application was approved: February 26, 2021. FDA has verified the applicant's claim that NDA 214018 was approved on February 26, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,529 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04226 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–1983 and FDA–2022–E–1985]

Determination of Regulatory Review Period for Purposes of Patent Extension; ISTURISA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ISTURISA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–1983 and FDA–2022–E–1985 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ISTURISA.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the

Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, ISTURISA (osilodrostat phosphate). ISTURISA is indicated for the treatment of adult patients with Cushing's disease for whom pituitary surgery is not an option or has not been curative. Subsequent to this approval, the USPTO received patent term restoration applications for ISTURISA (U.S. Patent Nos. 8,314,097; 8,609,862) from Recordati AG, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 28, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ISTURISA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ISTURISA is 4,393 days. Of this time, 4,026 days occurred during the testing phase of the regulatory review period, while 367 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* February 28, 2008. The applicant claims that May 30, 2013, is the date the investigational new drug application (IND) became effective. However, FDA's records indicate that the effective date of the IND was February 28, 2008, which was 30 days after FDA received the earliest IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* March 7, 2019. FDA has verified the applicant's claim that the new drug application (NDA) for ISTURISA (NDA 212801) was initially submitted March 7, 2019.

3. *The date the application was approved:* March 6, 2020. FDA has verified the applicant's claim that NDA 212801 was approved on March 6, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,148 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04231 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2023–E–2287 and FDA–2023–E–2114]

Determination of Regulatory Review Period for Purposes of Patent Extension; OPDUALAG

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for OPDUALAG and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2023–E–2287 and FDA–2023–E–2114 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; OPDUALAG.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product, OPDUALAG (nivolumab and relatlimab-rmbw). OPDUALAG is indicated for treatment of adult and pediatric patients 12 years of age or older with unresectable or metastatic melanoma. Subsequent to this approval, the USPTO received patent term restoration applications for OPDUALAG (U.S. Patent Nos. 9,505,839 and 10,377,824) from Bristol-Myers Squibb Company, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 28, 2023, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of OPDUALAG represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for OPDUALAG is 3110 days. Of this time, 2867 days occurred during the testing phase of the regulatory review period, while 243 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* September 13, 2013. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on September 13, 2013.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* July 19, 2021. FDA has verified the applicant's claim that the biologics license application (BLA) for OPDUALAG (BLA 761234) was initially submitted on July 19, 2021.

3. *The date the application was approved:* March 18, 2022. FDA has verified the applicant's claim that BLA 761234 was approved on March 18, 2022.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 552 days or 596 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To

meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04219 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–E–2112]

Determination of Regulatory Review Period for Purposes of Patent Extension; MOUNJARO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for MOUNJARO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–E–2112 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; MOUNJARO.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term

Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, MOUNJARO (tirzepatide). MOUNJARO is indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus. Subsequent to this approval, the USPTO received a patent term restoration application for MOUNJARO (U.S. Patent No. 9,474,780) from Eli Lilly and Company, and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated September 28, 2023, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of MOUNJARO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for MOUNJARO is 2,208 days. Of this time, 1,967 days occurred during the testing phase of the regulatory review period, while 241 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* April 28, 2016. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 28, 2016.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* September 15, 2021. The applicant claims September 14, 2021, as the date the new drug application (NDA) for MOUNJARO (NDA 215866) was initially submitted. However, FDA records indicate that NDA 215866 was submitted on September 15, 2021.

3. *The date the application was approved:* May 13, 2022. FDA has verified the applicant's claim that NDA 215866 was approved on May 13, 2022.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 129 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04157 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–E–0794]

Determination of Regulatory Review Period for Purposes of Patent Extension; SOGROYA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for SOGROYA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–E–0794 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; SOGROYA.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product SOGROYA (somapacitan-beco). SOGROYA is indicated for replacement of endogenous growth hormone in adults with growth hormone deficiency. Subsequent to this approval, the USPTO received a patent term restoration application for SOGROYA (U.S. Patent No. 8,779,109) from Novo Nordisk Health Care AG, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 24, 2022, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of SOGROYA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for SOGROYA is 2,200 days. Of this time, 1,833 days occurred during the testing phase of the regulatory review period, while 367 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* August 22, 2014. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 22, 2014.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* August 28, 2019. FDA has verified the applicant's claim that the

biologics license application (BLA) for SOGROYA (BLA 761156) was initially submitted on August 28, 2019.

3. *The date the application was approved:* August 28, 2020. FDA has verified the applicant's claim that BLA 761156 was approved on August 28, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,284 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04208 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–2221 and FDA–2022–E–2224]

Determination of Regulatory Review Period for Purposes of Patent Extension; KLISYRI

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for KLISYRI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

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- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

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- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–2221 and FDA–2022–E–2224 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; KLISYRI.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, KLISYRI (tirbanibulin). KLISYRI is indicated for the topical treatment of actinic keratosis of the face or scalp. Subsequent to this approval, the USPTO received patent term restoration applications for KLISYRI (U.S. Patent Nos. 7,300,931; 7,851,470) from Athenex Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated January 10, 2023, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of KLISYRI represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for KLISYRI is 4,899 days. Of this time, 4,548 days occurred during the testing phase of the regulatory review period, while 351 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* July 19, 2007. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on July 19, 2007.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* December 30, 2019. FDA has verified the applicant's claim that the new drug application (NDA) for KLISYRI (NDA 213189) was initially submitted on December 30, 2019.

3. *The date the application was approved:* December 14, 2020. FDA has verified the applicant's claim that NDA 213189 was approved on December 14, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,827 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04232 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0028]

Timothy Baxter; Final Order Announcing Termination Date of Debarment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) announcing that the debarment of Timothy Baxter will terminate on October 26, 2025.

DATES: This order is applicable February 29, 2024.

ADDRESSES: Submit comments electronically at *https://www.regulations.gov.* Written comments may be submitted to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Compliance and Enforcement, Office of Policy, Compliance, and Enforcement, Office of Regulatory Affairs, Food and Drug Administration, at 240–402–8743 or *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice dated February 27, 2023 (88 FR 12369), FDA issued an order debarring Dr. Timothy Baxter pursuant to section 306(b)(2)(B)(i)(I) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)(I)) for a period of 5 years from providing services in any capacity to a person with an approved or pending drug product application under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262). Through mutual agreement of the parties, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(d) of the FD&C Act and under authority delegated to the Assistant Commissioner, issues this order announcing that Dr. Baxter's period of debarment will now terminate on October 26, 2025.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04166 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–E–2087]

Determination of Regulatory Review Period for Purposes of Patent Extension; TEMBEXA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for TEMBEXA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

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- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

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- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–E–2087 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; TEMBEXA.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly

available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, TEMBEXA (brincidofovir) indicated for the treatment of human smallpox disease in adult and pediatric patients, including neonates. Subsequent to this approval, the USPTO received a patent term restoration application for TEMBEXA (U.S. Patent No. 9,303,051) from Chimerix, Inc. and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated September 13, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period, but that the approval of TEMBEXA did not represent the first permitted commercial marketing or use of the product. The USPTO also requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for TEMBEXA is 5,463 days. Of this time, 5,222 days occurred during the testing phase of the regulatory review period, while 241 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* June 22, 2006. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on June 22, 2006.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* October 7, 2020. FDA has verified the applicant's claim that the new drug application (NDA) for TEMBEXA (NDA 214460) was initially submitted on October 7, 2020.

3. *The date the application was approved:* June 4, 2021. FDA has verified the applicant's claim that NDA 214460 was approved on June 4, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,064 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

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Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04205 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–2104, FDA–2022–E–2105, FDA–2022–E–2106, and FDA–2022–E–2108]

Determination of Regulatory Review Period for Purposes of Patent Extension; SAPHNELO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for SAPHNELO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department

of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

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- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–2104, FDA–2022–E–2105, FDA–2022–E–2106, and FDA–2022–E–2108 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; SAPHNELO.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product SAPHNELO (anifrolumab-fnia). SAPHNELO is indicated for the treatment of adult patients with moderate to severe systemic lupus erythematosus who are receiving standard therapy. Subsequent to this approval, the USPTO received patent term restoration applications for SAPHNELO (U.S. Patent Nos. 7,662,381; 8,460,668; 9,493,570; and 9,988,459) from AstraZeneca AB (agent of E.R.

Squibb & Sons, L.L.C.), and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 28, 2022, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of SAPHNELO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for SAPHNELO is 4,578 days. Of this time, 4,213 days occurred during the testing phase of the regulatory review period, while 365 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* January 18, 2009. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 18, 2009.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* July 31, 2020. The applicant claims July 22, 2020, as the date the biologics license application (BLA) for SAPHNELO (BLA B761123) was initially submitted. However, FDA records indicate that BLA B761123 was submitted on July 31, 2020.

3. *The date the application was approved:* July 30, 2021. FDA has verified the applicant's claim that BLA B761123 was approved on July 30, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 5 days, 763 days, 778 days, and 1,673 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04203 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–E–0444]

Determination of Regulatory Review Period for Purposes of Patent Extension; EVKEEZA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for EVKEEZA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
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Written/Paper Submissions

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- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–E–0444 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; EVKEEZA.'' Received comments, those filed in a

timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product EVKEEZA (evinacumab-dgnb). EVKEEZA is indicated as an adjunct to other low-density lipoprotein-cholesterol lowering therapies for the treatment of adult and pediatric patients, aged 12 years and older, with homozygous familial hypercholesterolemia. Subsequent to this approval, the USPTO received a patent term restoration application for EVKEEZA (U.S. Patent No. 9,018,356) from Regeneron, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 8, 2022, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of EVKEEZA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for EVKEEZA is 3,002 days. Of this time, 2,756 days occurred during the testing phase of the regulatory review period, while 246 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* November 25, 2012. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on November 25, 2012.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* June 11, 2020. FDA has verified the applicant's claim that the biologics license application (BLA) for EVKEEZA (BLA 761181) was initially submitted on June 11, 2020.

3. *The date the application was approved:* February 11, 2021. FDA has verified the applicant's claim that BLA 761181 was approved on February 11, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 972 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket

No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04207 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2023–E–1444 and FDA–2023–E–1467]

Determination of Regulatory Review Period for Purposes of Patent Extension; VONJO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for VONJO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

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- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2023–E–1444 and FDA–2023–E–1467 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; VONJO.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, VONJO (pacritinib citrate) indicated for treatment of adults with intermediate or high-risk primary or secondary (post-polycythemia vera or post-essential thrombocythemia) myelofibrosis with a platelet count below 50 x 10^9/Liter. Subsequent to this approval, the USPTO received patent term restoration applications for VONJO (U.S. Patent Nos. 8,153,632 and 9,573,964) from CTI BioPharma Corp., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 28, 2023, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of VONJO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for VONJO is 5,138 days. Of this time, 4,802 days occurred during the testing phase of the regulatory review period, while 336 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* February 6, 2008. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on February 6, 2008.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* March 30, 2021. FDA has verified the applicant's claim that the new drug application (NDA) for VONJO (NDA 208712) was initially submitted on March 30, 2021.

3. *The date the application was approved:* February 28, 2022. FDA has verified the applicant's claim that NDA 208712 was approved on February 28, 2022.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,085 days or 5 years of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04162 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–3108, FDA–2022–E–3111, FDA–2022–E–3112, FDA–2022–E–3113, and FDA–2022–E–3114]

Determination of Regulatory Review Period for Purposes of Patent Extension; LEQVIO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for LEQVIO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

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confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

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• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–3108, FDA–2022–E–3111, FDA–2022–E–3112, FDA–2022–E–3113, and FDA–2022–E–3114 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; LEQVIO.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, LEQVIO (inclisiran sodium). LEQVIO is indicated as an adjunct to diet and maximally tolerated statin therapy for the treatment of adults with heterozygous familial hypercholesterolemia or clinical atherosclerotic cardiovascular disease, who require additional lowering of low-density lipoprotein cholesterol. Subsequent to this approval, the USPTO received a patent term restoration application for LEQVIO (U.S. Patent Nos. 8,222,222; 8,809,292; 8,828,956; 9,370,582; 10,125,369) from Novartis Pharmaceuticals Corporation, and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated January 10, 2023, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of LEQVIO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for LEQVIO is 2,134 days. Of this time, 1,403 days occurred during the testing phase of the regulatory review period, while 731 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* February 20, 2016. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on February 20, 2016.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* December 23, 2019. FDA has verified the applicant's claim that the new drug application (NDA) for LEQVIO (NDA 214012) was initially submitted on December 23, 2019.

3. *The date the application was approved:* December 22, 2021. FDA has

verified the applicant's claim that NDA 214012 was approved on December 22, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 492 days, 1,371 days, or 1,432 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04230 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–0654 and FDA–2022–E–0655]

Determination of Regulatory Review Period for Purposes of Patent Extension; ADUHELM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ADUHELM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–0654 and FDA–2022–E–0655 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ADUHELM.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://*

www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product ADUHELM (aducanumab-avwa). ADUHELM is indicated for the treatment of Alzheimer's disease. This indication is approved under accelerated approval based on reduction in amyloid beta plaques observed in patients treated with ADUHELM. Continued approval for this indication may be contingent upon verification of clinical benefit in confirmatory trial(s). Subsequent to this approval, the USPTO received patent term restoration applications for ADUHELM (U.S. Patent Nos. 8,906,367 and 10,131,708) from University of Zurich, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 28, 2022, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of ADUHELM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ADUHELM is 3,689 days. Of this time, 3,353 days occurred during the testing phase of the regulatory review period, while 336 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* May 4, 2011. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 4, 2011.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* July 7, 2020. FDA has verified the applicant's claim that the biologics license application (BLA) for ADUHELM (BLA 761178) was initially submitted on July 7, 2020.

3. *The date the application was approved:* June 7, 2021. FDA has verified the applicant's claim that BLA 761178 was approved on June 7, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 634 days and 1,197 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04214 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–E–2227]

Determination of Regulatory Review Period for Purposes of Patent Extension; RECORLEV

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for RECORLEV and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–E–2227 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; RECORLEV.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, RECORLEV (levoketoconazole) indicated for the treatment of endogenous hypercortisolemia in adult patients with Cushing's syndrome for whom surgery is not an option or has not been curative. Subsequent to this approval, the USPTO received a patent term restoration application for RECORLEV (U.S. Patent No. 9,918,984) from Xeris Pharmaceuticals, Inc. and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated October 19, 2023, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of

RECORLEV represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for RECORLEV is 5,812 days. Of this time, 5,507 days occurred during the testing phase of the regulatory review period, while 305 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* February 2, 2006. The applicant claims May 24, 2013, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was February 2, 2006, which was the first date after receipt of an earlier IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* March 1, 2021. FDA has verified the applicant's claim that the new drug application (NDA) for RECORLEV (NDA 214133) was initially submitted on March 1, 2021.

3. *The date the application was approved:* December 30, 2021. FDA has verified the applicant's claim that NDA 214133 was approved on December 30, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 844 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04156 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–0942; FDA–2022–E–0943; FDA–2022–E–0945; FDA–2022–E–0946; and FDA–2022–E–0947]

Determination of Regulatory Review Period for Purposes of Patent Extension; ONGENTYS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ONGENTYS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–0942; FDA–2022–E–0943; FDA–2022–E–0945; FDA–2022–E–0946; FDA–2022–E–0947 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ONGENTYS.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly

viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, ONGENTYS (opicapone) indicated as adjunctive treatment to levodopa/carbidopa in patients with Parkinson's disease experiencing ''off'' episodes. Subsequent to this approval, the USPTO received patent term restoration applications for ONGENTYS (U.S. Patent Nos. 8,168,793; 8,524,746; 9,550,759; 9,630,955; and 10,071,085) from Bial-Portela & CA., S.A., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 28, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ONGENTYS represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ONGENTYS is 3,306 days. Of this time, 2,940 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* April 9, 2011. The applicant claims June 27, 2011, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was April 9, 2011, which was 30 days after FDA's receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* April 26, 2019. FDA has verified the applicant's claim that the new drug application (NDA) for ONGENTYS (NDA 212489) was initially submitted on April 26, 2019.

3. *The date the application was approved:* April 24, 2020. FDA has verified the applicant's claim that NDA 212489 was approved on April 24, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 478 days, 498 days, 1,323 days, 1,395 days, or 1,640 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04233 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–2141; FDA–2022–E–2142; FDA–2022–E–2143; FDA–2022–E–2144; FDA–2022–E–2481; and FDA–2022–E–2482]

Determination of Regulatory Review Period for Purposes of Patent Extension; VEKLURY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for VEKLURY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–2141; FDA–2022–E–2142; FDA–2022–E–2143; FDA–2022–E–2144; FDA–2022–E–2481; and FDA–2022–E–2482 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; VEKLURY.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when

the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, VEKLURY (remdesivir) indicated for adults and pediatric patients (12 years of age and older and weighing at least 40 kilograms) for the treatment of coronavirus disease 2019 requiring hospitalization. Subsequent to this approval, the USPTO received patent term restoration applications for VEKLURY (U.S. Patent Nos. 8,008,264; 8,318,682; 9,724,360; 9,949,994; 10,065,958; and RE46762) from Gilead Sciences, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 21, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of VEKLURY represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for VEKLURY is 1,904 days. Of this time, 1,827 days occurred during the testing phase of the regulatory review period, while 77 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* August 8, 2015. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 8, 2015.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* August 7, 2020. FDA has verified Gilead Sciences, Inc.'s claim that the new drug application (NDA) for VEKLURY (NDA 214787) was submitted on August 7, 2020.

3. *The date the application was approved:* October 22, 2020. FDA has verified the applicant's claim that NDA 214787 was approved on October 22, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 429 days, 625 days, or 991 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04224 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–E–2090]

Determination of Regulatory Review Period for Purposes of Patent Extension; EVRYSDI

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for EVRYSDI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a

third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–E–2090 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; EVRYSDI.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, EVRYSDI (risdiplam) indicated for the treatment of spinal muscular atrophy in patients 2 months of age and older. Subsequent to this approval, the USPTO received a patent term restoration application for EVRYSDI (U.S. Patent No. 9,586,955) from Genentech, Inc. (agent for PtC Therapeutics Inc. and Hoffmann-La Roche Inc.), and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated September 13, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of EVRYSDI represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for EVRYSDI is 1,368 days. Of this time, 1,049 days occurred during the testing phase of the regulatory review period, while 319 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* November 10, 2016. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on November 10, 2016.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* September 24, 2019. FDA has verified the applicant's claim that the new drug application (NDA) for EVRYSDI (NDA 213535) was initially submitted on September 24, 2019.

3. *The date the application was approved:* August 7, 2020. FDA has verified the applicant's claim that NDA 213535 was approved on August 7, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension,

this applicant seeks 545 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 24, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04217 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–E–2056]

Determination of Regulatory Review Period for Purposes of Patent Extension; BREXAFEMME

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for BREXAFEMME and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–E–2056 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; BREXAFEMME.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management

Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, BREXAFEMME (ibrexafungerp tablets). BREXAFEMME is indicated for the treatment of adult and postmenarchal pediatric females with vulvovaginal candidiasis. Subsequent to this approval, the USPTO received a patent term restoration application for BREXAFEMME (U.S. Patent No. 8,188,085) from Scynexis, Inc., and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated October 19, 2023, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of BREXAFEMME represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for BREXAFEMME is 4,130 days. Of this time, 3,886 days occurred during the testing phase of the regulatory review period, while 244 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* February 11, 2010. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on February 11, 2010.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* October 1, 2020. FDA has verified the applicant's claim that the new drug application (NDA) for BREXAFEMME (NDA 214900) was initially submitted on October 1, 2020.

3. *The date the application was approved:* June 1, 2021. FDA has verified the applicant's claim that NDA 214900 was approved on June 1, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,768 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04150 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–2213 and FDA–2022–E–2214]

Determination of Regulatory Review Period for Purposes of Patent Extension; EPI–SENSE GUIDED COAGULATION SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for EPI–SENSE GUIDED COAGULATION SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents which claim that medical device.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://*

www.regulations.gov electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–2213 and FDA–2022–E–2214 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; EPI–SENSE GUIDED COAGULATION SYSTEM.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device EPI–SENSE GUIDED COAGULATION SYSTEM. EPI–SENSE GUIDED COAGULATION SYSTEM is indicated for the treatment of symptomatic long-standing persistent atrial fibrillation (continuous atrial fibrillation greater than 12 months duration) when augmented in a hybrid procedure with an endocardial catheter listed in the instructions for use, in patients who are refractory or intolerant to at least one Class I and/or III antiarrhythmic drug; and in whom the expected benefit from rhythm control outweighs the potential known risks associated with a hybrid procedure such as delayed post-procedure inflammatory pericardial effusions. Subsequent to this approval, the USPTO received patent term restoration applications for EPI–SENSE GUIDED COAGULATION SYSTEM (U.S. Patent Nos. 7,399,300 and 7,572,257) from AtriCure, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 21, 2022, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of EPI–SENSE GUIDED COAGULATION SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for EPI–SENSE GUIDED COAGULATION SYSTEM is 2,919 days. Of this time, 2,436 days occurred during the testing phase of the regulatory review period, while 483 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption for this device, under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)), became effective:* May 3, 2013. FDA has verified the applicant's claim that the date the investigational device exemption for human tests to begin, as required under section 520(g) of the FD&C Act, became effective May 3, 2013.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* January 2, 2020. The applicant claims October 31, 2018, as the date the premarket approval application (PMA) for EPI–SENSE GUIDED COAGULATION SYSTEM (PMA P200002) was initially submitted. However, FDA records indicate that PMA P200002 was initially submitted on January 2, 2020.

3. *The date the application was approved:* April 28, 2021. FDA has verified the applicant's claim that PMA P200002 was approved on April 28, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,826 days or 1,827 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04204 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2023–E–1548 and FDA–2023–E–1550]

Determination of Regulatory Review Period for Purposes of Patent Extension; CAMZYOS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for CAMZYOS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2023–E–1548 and FDA–2023–E–1550 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; CAMZYOS.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, CAMZYOS (mavacamten). CAMZYOS is indicated for the treatment of adults with symptomatic New York Heart Association class II–III obstructive hypertrophic cardiomyopathy to improve functional capacity and symptoms. Subsequent to this approval, the USPTO received patent term restoration applications for CAMZYOS (U.S. Patent Nos. 9,181,200; 9,585,883) from Myokardia, Inc. and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 28, 2023, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of CAMZYOS represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for CAMZYOS is 2,723 days. Of this time, 2,266 days occurred during the testing phase of the regulatory review period, while 457 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective: November 16, 2014. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on November 16, 2014.

2. The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act: January 28, 2021. FDA has verified the applicant's claim that the drug application (NDA) for CAMZYOS (NDA 214998) was initially submitted on January 28, 2021.

3. The date the application was approved: April 28, 2022. FDA has verified the applicant's claim that NDA 214998 was approved on April 28, 2022.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 679 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04165 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–4259]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Export Certificates for Food and Drug Administration Regulated Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by April 1, 2024.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0498. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Export Certificates for FDA Regulated Products

OMB Control Number 0910–0498—Revision

This information collection supports the implementation of FDA statutory and regulatory provisions and related forms. Sections 801(e) and 802 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 381(e) and 382) pertain to the export of FDA-regulated products and are intended to ease restrictions on exportation. The provisions also require the Agency to issue written export certifications within 20 days of any request. To offset Agency resource expenditures for processing certifications requests, the statute provides that FDA may charge firms a fee not to exceed $175.

The information collection contains FDA forms (Form FDA 3613, 3613a, 3613b, 3613c, 3613f, and 3613g) related to exporting FDA-regulated products. A description of each form is provided in table 1.

TABLE 1—CERTIFICATES AND USES

Type of certificate/Form FDA#	Use
Form FDA 3613: ''Supplementary Information Certificate to Foreign Government Requests''. ''Exporter's Certification Statement Certificate to Foreign Government'' ''Exporter's Certification Statement Certificate to Foreign Government (For Human Tissue Intended for Transplantation)''.	For the export of products legally marketed in the United States.
Form FDA 3613a: ''Supplementary Information Certificate of Exportability Requests''. ''Exporter's Certification Statement Certificate of Exportability''	For the export of products not approved for marketing in the United States (unapproved products) that meet the requirements of sections 801(e) or 802 of the FD&C Act.
Form FDA 3613b and Form FDA 3613f: ''Supplementary Information Certificate of a Pharmaceutical Product''. ''Exporter's Certification Statement Certificate of a Pharmaceutical Product''.	Conforms to the format established by the World Health Organization and is intended for use by the importing country when the product in question is under consideration for a product license that will authorize its importation and sale or for renewal, extension, amending, or reviewing a license.
Form FDA 3613c: ''Supplementary Information Non-Clinical Research Use Only Certificate''. ''Exporter's Certification Statement (Non-Clinical Research Use Only)''	For the export of a non-clinical research use only product, material, or component that is not intended for human use and which may be marketed in, and legally exported from the United States under the FD&C Act.
Form FDA 3613g: ''Certificate to Foreign Government for Devices Not Exported from the United States''.	For the shipping of devices not exported from the United States that may be legally marketed in the United States.

To obtain a fillable PDF file of each form, visit *https://www.fda.gov/about-fda/reports-manuals-forms/forms,* and type ''3613'' in the search field. We accept online applications for export certificates for specific product areas through web-based application systems. To access these web-based application systems, visit the FDA Industry Systems web page at *https://www.access.fda.gov.* For additional information on export certification processing for specific product areas refer to the following websites: *https://www.fda.gov/vaccines-blood-biologics/compliance-actions-biologics/exporting-cber-regulated-products,* (CBER); *https://www.fda.gov/medical-devices/importing-and-exporting-medical-devices/exporting-medical-devices* (CDRH); *https://www.fda.gov/drugs/human-drug-exports/electronic-certificates-pharmaceutical-product-general-information* (CDER); and *https://www.fda.gov/animal-veterinary/import-exports/exporting-animal-feed-and-animal-drugs* (CVM).

We are transitioning to a requirement for electronic submission of the forms related to medical device products. Therefore, we revised FDA Forms 3613, 3613a, 3613c, and 3613g to remove the paper submission instructions in the portions of the forms related to medical device products.

We developed the guidance document ''FDA Export Certification'' (August 2021) which is intended to provide a general description of FDA export certification to industry and foreign governments. The guidance document is available from our website at: *https://www.fda.gov/RegulatoryInformation/Guidances/ucm125789.htm.* Agency guidance documents are issued in accordance with our good guidance practice regulations in 21 CFR 10.115,

which provide for public comment at any time.

In the **Federal Register** of October 25, 2023 (88 FR 73349), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Forms FDA 3613, 3613a, 3613b, 3613c, 3613f, and 3613g; submission to FDA center	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Center for Biologics Evaluation and Research (CBER)	2,344	1	2,344	1	2,344
Center for Devices and Radiological Health (CDRH)	11,175	1	11,175	2	22,350
Center for Drug Evaluation and Research (CDER)	9,396	1	9,396	1	9,396
Center for Veterinary Medicine (CVM)	1,618	1	1,618	1	1,618
Total	24,533		24,533		35,708

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Appropriate centers within FDA review product information submitted by firms in support of the firms' certificate requests. We rely on respondents to certify their compliance with all applicable requirements of the FD&C Act both at the time the certification request is submitted to FDA and at the time the certification is submitted to the respective foreign government. Further information regarding FDA's Export Certificates may be found on our website at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/fda-export-certificates.*

The estimated burden for the information collection reflects an overall adjustment increase of 5,102 hours and a corresponding increase of 5,102 responses. CDER has instituted electronic certificates of pharmaceutical product (eCPP) to streamline the application process and reduce the time from receipt to issuance of export certificates. The increase in CDER export application requests is attributable to the implementation of the eCPP and an increase in drug exports. The increase is offset by a decrease in CVM and CBER export applications attributable to consequences of the COVID–19 pandemic. In addition, revised form instructions related to medical device products are included in the information collection request.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04155 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–2936 and FDA–2022–E–2937]

Determination of Regulatory Review Period for Purposes of Patent Extension; GEMTESA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for GEMTESA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and

identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–2936 and FDA–2022–E–2937 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; GEMTESA.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, GEMTESA (vibegron) indicated for the treatment of overactive bladder with symptoms of urge urinary incontinence, urgency, and urgency frequency in adults. Subsequent to this approval, the USPTO received patent term restoration applications for GEMTESA (U.S. Patent Nos. 8,247,415 and 8,653,260) from Urovant Sciences GmbH, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated January 19, 2023, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of GEMTESA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for GEMTESA is 3,953 days. Of this time, 3,589 days occurred during the testing phase of the regulatory review period, while 364 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* February 28, 2010. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on February 28, 2010.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* December 26, 2019. FDA has verified the applicant's claim that the new drug application (NDA) for GEMTESA (NDA 213006) was initially submitted on December 26, 2019.

3. *The date the application was approved:* December 23, 2020. FDA has verified the applicant's claim that NDA 213006 was approved on December 23, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,483 days and 1,433 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04221 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–0661; FDA–2022–E–0665; FDA–2022–E–0667; and FDA–2022–E–0670]

Determination of Regulatory Review Period for Purposes of Patent Extension; AMPLATZER AMULET

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for AMPLATZER AMULET and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
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- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–0661; FDA–2022–E–0665; FDA–2022–E–0667; and FDA–2022–E–0670 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; AMPLATZER AMULET.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's

regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device AMPLATZER AMULET. AMPLATZER AMULET is indicated to reduce the risk of thrombus embolization from the left atrial appendage in patients who have nonvalvular atrial fibrillation and who are at increased risk for stroke and systemic embolism based on CHADS2 or CHA2DS2–VASc scores, are suitable for short term anticoagulation therapy, and have appropriate rationale to seek a non-pharmacologic alternative to oral anticoagulation, taking into consideration the safety and effectiveness of the device. Subsequent to this approval, the USPTO received patent term restoration applications for AMPLATZER AMULET (U.S. Patent Nos. 8,034,061; 8,758,389; 8,961,556; and 10,201,337) from St. Jude Medical, Cardiology Division, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 13, 2022, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of AMPLATZER AMULET represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for AMPLATZER AMULET is 1,846 days. Of this time, 1,619 days occurred during the testing phase of the regulatory review period, while 227 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* July 27, 2016. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective on May 25, 2013. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on July 27, 2016, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* December 31, 2020. The applicant claims December 30, 2020, as the date the premarket approval application (PMA) for AMPLATZER AMULET (PMA P200049) was initially submitted. However, FDA records indicate that PMA P200049 was submitted on December 31, 2020.

3. *The date the application was approved:* August 14, 2021. FDA has verified the applicant's claim that PMA P200049 was approved on August 14, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 571 days, 1,085 days, 1,296 days, and 1,616 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket Nos. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04206 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–E–3291]

Determination of Regulatory Review Period for Purposes of Patent Extension; XERAVA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for XERAVA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

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Written/Paper Submissions

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- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–E–3291 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; XERAVA.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, XERAVA (eravacycline dihydrochloride). XERAVA is indicated for the treatment of complicated intra-abdominal infections in patients 18 years of age and older. Subsequent to this approval, the USPTO received a patent term restoration application for XERAVA (U.S. Patent No. 8,906,887) from Tetraphase Pharmaceutical, Inc., and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated November 29, 2019, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of XERAVA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for XERAVA is 3,265 days. Of this time, 3,022 days occurred during the testing phase of the regulatory review period, while 243 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* September 20, 2009. The applicant claims September 19, 2009, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 20, 2009, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* September 28, 2017. FDA has verified the applicant's claim that the new drug application (NDA) for XERAVA (NDA 211109) was initially submitted on September 28, 2017.

3. *The date the application was approved:* August 27, 2018. FDA has verified the applicant's claim that NDA 211109 was approved on August 27, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 608 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 22, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04227 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–0274; FDA–2022–E–0275; and FDA–2022–E–0276]

Determination of Regulatory Review Period for Purposes of Patent Extension; INQOVI

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for INQOVI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov_electronic* filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

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- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–0274; FDA–2022–E–0275; and FDA–2022–E–0276 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; INQOVI.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, INQOVI (decitabine and cedazuridine) indicated for the treatment of adult patients with myelodysplastic syndromes (MDS), including previously treated and untreated, de novo and secondary MDS with the following French-American-British subtypes (refractory anemia, refractory anemia with ringed sideroblasts, refractory anemia with excess blasts, and chronic myelomonocytic leukemia) and intermediate-1, intermediate-2, and high-risk International Prognostic Scoring System groups. Subsequent to this approval, the USPTO received patent term restoration applications for INQOVI (U.S. Patent Nos. 8,268,800; 8,618,075; and 9,567,363) from Otsuka Pharmaceutical Co., Ltd., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 28, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of INQOVI represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for INQOVI is 2,330 days. Of this time, 2,120 days occurred during the testing phase of the regulatory review period, while 210 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* February 21, 2014. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on February 21, 2014.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* December 11, 2019. FDA has verified the applicant's claim that the new drug application (NDA) for INQOVI (NDA 212576) was initially submitted on December 11, 2019.

3. *The date the application was approved:* July 7, 2020. FDA has verified the applicant's claim that NDA 212576 was approved on July 7, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 726 days, 1,270 days, or 2,330 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04234 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–0022]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device User Fee Cover Sheet, Form FDA 3601 and Device Facility User Fee Cover Sheet, Form 3601a

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the extension of this information collection.

DATES: Either electronic or written comments on the collection of information must be submitted by April 29, 2024.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2024–N–0022 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device User Fee Cover Sheet, Form FDA 3601 and Device Facility User Fee Cover Sheet, Form 3601a.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical

utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Device User Fee Cover Sheet, Form FDA 3601 and Device Facility User Fee Cover Sheet, Form FDA 3601a

OMB Control Number 0910–0511—Extension

This information collection supports the FDA medical device and device user fee programs. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Pub. L. 107–250), and the Medical Device User Fee Amendments of 2007 (Title II of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110–85)), authorizes FDA to collect user fees for certain medical device applications. Under this authority, companies pay a fee for certain new medical device applications or supplements submitted to the Agency for review. Because the submission of user fees concurrently with applications and supplements is required, the review of an application cannot begin until the fee is submitted. Form FDA 3601, the ''Medical Device User Fee Cover Sheet,'' is designed to provide the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to account for and track user fees. Form FDA 3601 and instructions are available online for registered users. The form provides a cross-reference between the fees submitted for an application with the actual submitted application by using a unique number tracking system. The information collected is used by FDA's Center for Devices and Radiological Health (CDRH) and FDA's Center for Biologics Evaluation and Research (CBER) to initiate the administrative screening of new medical device applications and supplemental applications.

Owners or operators of places of business (also called establishments or facilities) that are involved in the production and distribution of medical devices intended for use in the United States are required to register annually with FDA, a process known as establishment registration (21 CFR part 807, subparts A through D). (The information collection for medical device establishment registration and listing is approved under OMB control number 0910–0625.) All establishments required to register must pay a user fee. Form FDA 3601a, the ''Device Facility User Fee Cover Sheet,'' is designed to collect payments for the annual establishment registration fee for medical device establishments.

Under section 704(g) of the FD&C Act (21 U.S.C. 374(g)), FDA may accredit persons to inspect qualified manufacturers of class II and class III devices. An eligible establishment is permitted to select any FDA-accredited person to conduct an inspection in lieu of an FDA inspection, but the eligible establishment must submit notice to FDA for selection approval (see 21 U.S.C. 374(g)(1) and (g)(6)(B)). Referred to as the ''Accredited Persons Inspection Program,'' FDA publishes a complete list of accredited persons and the activities for which they are accredited on our website at Third Party Device Inspection,[1] along with additional information about the program.

The guidance document entitled ''FDA and Industry Procedures for Section 513(g) Requests for Information under the Federal Food, Drug, and Cosmetic Act'' (December 2019)[2] provides FDA's recommendations regarding provision of user fees for 513(g) requests for information under section 738(a)(2)(A)(ix) of the FD&C Act (21 U.S.C. 379j(a)(2)(A)(ix)). Instructions for submission and specific content elements are discussed in the guidance document in sections IV and V, respectively.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA form or activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
User Fee Cover Sheet					
Form FDA 3601 (Medical Device User Fee Cover Sheet).	6,182	1	6,182	0.30 (18 minutes) ..	1,855
Form FDA 3601a (Device Facility User Fee Cover Sheet).	24,086	1	24,086	0.17 (10 minutes) ...	4,095
Subtotal			30,268		5,950
Inspection by Accredited Persons Program Under Section 704 of the FD&C Act					
Request for accreditation	1	1	1	80	80
Notification of the intent to use an Accredited Person	10	1	10	15	150
Subtotal			11		230
Request for Information Under Section 513(g) of the FD&C Act					
Sections IV and V of Guidance; CDRH 513(g) requests.	114	1	114	12	1,368

[1] *https://www.fda.gov/medical-devices/postmarket-requirements-devices/third-party-inspection-devices.*

[2] FDA and Industry Procedures for Section 513(g) Requests for Information under the Federal Food, Drug, and Cosmetic Act | FDA.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

FDA form or activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Sections IV and V of Guidance; CBER 513(g) requests.	4	1	4	12	48
Subtotal			118		1,416
Total					7,596

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

User Fee Cover Sheet

According to FDA's database system, manufacturers of products subject to MDUFMA submit an average of 6,182 applications annually and submit an average of 24,086 Device Facility User Fee applications. However, not all manufacturers will have any cover sheet submissions in a given year and some may have multiple cover sheet submissions. The estimated hours per response are based on past FDA experience with the various cover sheet submissions and range from 5 to 30 minutes. The hours per response are based on the average of these estimates (18 minutes). The total hours are rounded to the nearest whole number.

Inspection by Accredited Persons Program Under Section 704 of the FD&C Act

Section 704(g) of the FD&C Act provides for accreditation of persons for the purpose of conducting inspections and provides the minimum requirements a person must meet to be accredited to conduct inspections (an Accredited Person). The burden estimate for requests for accreditation is based on the number of applications we've received. Once an organization is accredited, it will not be required to reapply.

The AP Program permits eligible manufacturers to use Accredited Persons to perform certain inspections. While all firms remain subject to inspection by FDA, eligible manufacturers have the option of requesting inspection by an Accredited Person. A device establishment is eligible for inspection by Accredited Persons if the establishment meets certain conditions of section 704(g)(6) of the FD&C Act, including that they provide notice of their intention to use an Accredited Person to conduct inspections of the establishment.

We estimate there are 4,000 domestic manufacturers and 4,000 foreign manufacturers that are eligible for inclusion under the AP program. Based on informal communications with industry, approximately 10 of these manufacturers may submit a request to use an Accredited Person in any given year.

Request for Information Under Section 513(g) of the FD&C Act

Respondents may elect to prepare their 513(g) request for information using CDRH's electronic Submission Template and Resource (eSTAR) voluntary guided submission preparation tool, which was developed to improve submission consistency and enhance efficiency in the review process. The total number of annual responses is based on the average number of 513(g) requests received each year by CDRH and CBER respectively.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04163 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–0920; FDA–2022–E–0921; FDA–2022–E–0923]

Determination of Regulatory Review Period for Purposes of Patent Extension; CAMCEVI

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for CAMCEVI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 27, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your

comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–0920; FDA–2022–E–0921; FDA–2022–E–0923 for Determination of Regulatory Review Period for Purposes of Patent Extension; CAMCEVI. Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, CAMCEVI (leuprolide mesylate) indicated for the treatment of adult patients with advanced prostate cancer. Subsequent to this approval, the USPTO received patent term restoration applications for CAMCEVI (U.S. Patent Nos. 9,572,857; 9,744,207; 10,646,572) from Foresee Pharmaceutials Co., Ltd. and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 21, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period, but that the approval of CAMCEVI did not represent the first permitted commercial marketing or use of the product. The USPTO also requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for CAMCEVI is 2,569 days. Of this time, 2,266 days occurred during the testing phase of the regulatory review period, while 303 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* May 15, 2014. The applicant claims April 14, 2014, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 15, 2014, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* July 27, 2020. FDA has verified the applicant's claim that the new drug application (NDA) for CAMCEVI (NDA 211488) was initially submitted on July 27, 2020.

3. *The date the application was approved:* May 25, 2021. FDA has verified the applicant's claim that NDA 211488 was approved on May 25, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 340 days, 834 days, or 928 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket Nos. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04218 Filed 2–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIH Support for Conferences and Scientific Meetings (Parent R13 Clinical Trial Not Allowed).

Date: March 26–28, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20852 (Video Assisted Meeting).

Contact Person: Caitlin A. Brennan, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20852, (301) 761–7792, *caitlin.brennan2@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 26, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–04254 Filed 2–28–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Instrumentation, Environmental, and Occupational Safety.

Date: March 20–21, 2024.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Hybrid Meeting).

Contact Person: Joonil Seog, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–9791, *joonil.seog@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Health Services Research: Health Information Technology to Improve Care Delivery.

Date: March 21–22, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mary Kate Baker, DRPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–5117, *katie.baker2@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; NIH Director's New Innovator Award Program (DP2).

Date: March 21–22, 2024.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Eugene Carstea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7818, Bethesda, MD 20892, (301) 408–9756, *carsteae@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Disease Management, Risk Prevention, and Health Behavior Change.

Date: March 21–22, 2024.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jennifer Di Noia, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000E, Bethesda, MD 20892, (301) 594–0288, *dinoiaj2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Metabolism and Reproductive Sciences.

Date: March 21, 2024.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, Bethesda, MD 20892, 301–435–1044, *chenhui@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Research Enhancement Awards: Molecular Genetics and Genomics.

Date: March 21, 2024.

Time: 1:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mollie Kim Manier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0510, *mollie.manier@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–24–001: Study and Techniques on Intimate Partner Violence in Different Populations.

Date: March 21, 2024.

Time: 12:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Helena Eryam Dagadu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3137, Bethesda, MD 20892, (301) 451–6273, *dagaduhe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Communication, Motor Function, and Human Development.

Date: March 22, 2024.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sara Louise Hargrave, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, Bethesda, MD 20892, (301) 443–7193, *hargravesl@mail.nih.gov.*

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; HIV Comorbidities and Clinical Studies Study Section.

Date: March 26–27, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Georgetown, 2350 M Street NW, Washington, DC 20037.

Contact Person: Shannon J. Sherman, Ph.D., Scientific Review Officer, Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–0715, *shannon.sherman@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: SBIR/STTR Commercialization Readiness Pilot (CRP) Program.

Date: March 26–27, 2024.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marie-Jose Belanger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 6188, MSC 7804, Bethesda, MD 20892, 301–435–1267, *belangerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Projects: Neuroscience and Genetics of Drug Abuse.

Date: March 26, 2024.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jacek Topczewski, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1002A1, Bethesda, MD 20892, (301) 594–7574, *topczewskij2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 26, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–04253 Filed 2–28–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Winter 2024 CISA SBOM-a-Rama

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Announcement of meeting.

SUMMARY: CISA will facilitate a public event to build on existing community-led work around Software Bill of Materials (SBOM) on specific SBOM topics. The goal of this meeting is to help the broader software and security community understand the current state of SBOM and what efforts have been made by different parts of the SBOM community, including CISA-facilitated, community-led work and other activity from sectors and governments.

DATES: February 29, 2024, 12 p.m. to 4 p.m. EST.

ADDRESSES: The event will be virtual. Connection and dial-in information for this virtual event will be available one week before this event at *https://www.cisa.gov/news-events/events/sbom-rama-winter-2024.*

FOR FURTHER INFORMATION CONTACT: Allan Friedman, 202–961–4349, *sbom@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: An SBOM has been identified by the cybersecurity community as a key aspect of modern cybersecurity, including software security and supply chain security. Executive Order (E.O.) 14028 declares that ''the trust we place in our digital infrastructure should be proportional to how trustworthy and transparent that infrastructure is, and to the consequences we will incur if that trust is misplaced.'' [1] SBOMs play a key role in providing this transparency.

E.O. 14028 defines SBOM as ''a formal record containing the details and supply chain relationships of various components used in building software.'' [2] The E.O. further notes that ''software developers and vendors often create products by assembling existing open source and commercial software components. The SBOM enumerates these components in a product.'' [3] Transparency from SBOMs aids multiple parties across the software lifecycle, including software developers, purchasers, and operators.[4] Recognizing the importance of SBOMs in transparency and security, and that SBOM evolution and refinement is likely to be most effective coming from the community; CISA is facilitating a public event which is intended to advance the software and security communities' understanding of SBOM creation, use, and implementation across the broader technology ecosystem.

I. SBOM Background

The idea of an SBOM is not novel.[5] It has been discussed and explored in the software industry for years, building on industrial and supply chain innovations.[6] Academics identified the potential value of a ''software bill of materials'' as far back as 1995,[7] and tracking use of third-party code is a longstanding software best practice.[8]

[1] E.O. 14028, Improving the Nation's Cybersecurity, 1, 86 FR 26633 (May 17, 2021).

[2] *Id.* at 10(j), 86 FR 26633 at 26646 (May 17, 2021).

[3] Ibid.

[4] Ibid.

[5] A brief summary of the history of a software bill of materials can be found in Carmody, S., Coravos, A., Fahs, G. et al. Building resilient medical technology supply chains with a software bill of materials. npj Digit. Med. 4, 34 (2021). *https://doi.org/10.1038/s41746-021-00403-w.*

[6] See ''Toyota Supply Chain Management: A Strategic Approach to Toyota's Renowned System'' by Ananth V. Iyer, Sridhar Seshadri, and Roy Vasher—a work about Edwards Deming's Supply Chain Management *https://books.google.com/books/about/Toyota_Supply_Chain_Management_A_Strateg.html?id=JY5wqdelrg8C.*

[7] Leblang D.B., Levine P.H., Software configuration management: Why is it needed and what should it do? In: Estublier J. (eds) Software Configuration Management Lecture Notes in Computer Science, vol. 1005, Springer, Berlin, Heidelberg (1995).

[8] The Software Assurance Forum for Excellence in Code (SAFECode), an industry consortium, has released a report on third party components that

Continued

Still, SBOM generation and sharing across the software supply chain was not seen as a commonly accepted practice in modern software. In 2018, the National Telecommunications and Information Administration (NTIA) convened the first multistakeholder process to promote software component transparency.[9] Over the subsequent three years, this stakeholder community developed guidance to help foster the idea of SBOM, including high-level overviews, initial advice on implementation, and technical resources.[10] When the NTIA-initiated, multistakeholder process concluded, NTIA noted ''what was an obscure idea became a key part of the global agenda around securing software supply chains.'' [11] In July 2022, CISA facilitated eight public listening sessions around four open topics (two for each topic): Cloud & Online Applications, Sharing & Exchanging SBOMs, Tooling & Implementation, and On-ramps & Adoption.[12] These public listening sessions resulted in the formation of four public, community-led workstreams around each of the four topics. The groups have been convening on a weekly basis since August 2022. More information can be found at *https://cisa.gov/SBOM.*

CISA believes that the concept of SBOM and its implementation would benefit from further refinement, and that a broad-based community effort can help scale and operationalize SBOM implementation. To support such a community effort to advance SBOM technologies, processes, and practices, CISA facilitated the 2023 CISA SBOM-a-Rama. The Winter 2024 SBOM-a-Rama will build on the 2023 event to offer updates as well as present new discussion topics for consideration by the community.

II. Topics for CISA SBOM-a-Rama

The goal of this meeting is to help the broader software and security community understand the current state of SBOM and what efforts have been made by different parts of the SBOM community, including CISA-facilitated, community-led work and other activity from sectors and governments. Attendees are invited to ask questions, share comments, and raise further issues that need attention. Specific presentations will be made on the community-led efforts around sharing SBOMs, cloud and online applications, tools and implementation, the Vulnerability Exploitability eXchange (VEX) model, and SBOM on-ramps and adoption. The event will also feature presentations and discussions on sector efforts around the world. CISA will also facilitate conversations on how the community can most efficiently make progress in addressing gaps in the SBOM ecosystem.

A full agenda will be posted in advance of the meeting at *https://www.cisa.gov/news-events/events/sbom-rama-winter-2024.*

III. Participation in the SBOM-a-Rama

This event is open to anyone. CISA welcomes participation from anyone interested in learning about the current state of SBOM practice and implementation including private sector practitioners, policy experts, academics, and representatives from non-U.S. organizations. Additional information, including the meeting link, will be available one week before the meeting date at *https://www.cisa.gov/news-events/events/sbom-rama-winter-2024.*

This notice is issued under the authority of 6 U.S.C. 652(c)(10)–(11) and 6 U.S.C. 659(c)(4).

Eric Goldstein,

Executive Assistant Director for Cybersecurity, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2024–04235 Filed 2–28–24; 8:45 am]

BILLING CODE 9110–9P–P

cites a range of standards. *Managing Security Risks Inherent in the Use of Third-party Components,* SAFECode (May 2017), *available at https://www.safecode.org/wp-content/uploads/2017/05/SAFECode_TPC_Whitepaper.pdf.*

[9] National Telecommunications and Information Administration (NTIA), Notice of Open Meeting, 83 FR. 26434 (June 7, 2018).

[10] *Ntia.gov/SBOM.*

[11] NTIA, *Marking the Conclusion of NTIA's SBOM Process* (Feb. 9, 2022), *https://www.ntia.doc.gov/blog/2022/marking-conclusion-ntia-s-sbom-process.*

[12] Public Listening Sessions on Advancing SBOM Technology, Processes, and Practices, *https://www.federalregister.gov/documents/2022/06/01/2022-11733/public-listening-sessions-on-advancing-sbom-technology-processes-and-practices.*

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2024–0008]

Agency Information Collection Activities: Actively Exploited Vulnerability Submission Form

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; new collection request and OMB control number is 1670–NNEW.

SUMMARY: The Vulnerability Management (VM) within Cybersecurity and Infrastructure Security Agency (CISA) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review.

DATES: Comments are encouraged and will be accepted until April 29, 2024.

ADDRESSES: You may submit comments, identified by docket number Docket # CISA–2024–0008, at:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number Docket # CISA–2024–0008. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher Murray, *christopher.murray@cisa.dhs.gov,* or 202–984–0874.

SUPPLEMENTARY INFORMATION: The Cybersecurity and Infrastructure Security Agency (CISA) operates the federal information security incident center. Through this center, CISA provides technical assistance and guidance on detecting and handling security Vulnerability Disclosures, compile and analyze incident information that threatens information security, inform agencies of current and potential threats and vulnerabilities, and provide intelligence or other information about cyber threats, vulnerabilities, and incidents to agencies. 44 U.S.C. 3556(a), see also 6 U.S.C. 659(c) (providing for cybersecurity services for both Federal Government and non-Federal Government entities).

CISA is responsible for performing coordinated Vulnerability Disclosure, which may originate outside the United States Government (USG) network/community and affect users within it, or originate within the USG community and affect users outside of it. Often, therefore, the effective handling of security incidents relies on information sharing among individual users, industry, and the USG, which may be facilitated by and through CISA. A dedicated form on the CISA website will allow for external reporting of vulnerabilities that the reporting entity believe to be Known Exploited Vulnerabilities (KEV) eligible. Upon submission, CISA will evaluate the information provided, and then will add to the KEV Catalog, if all KEV requirements are met.

For the developmental digital copy of this information collection for review, please contact the POC listed above in this notice request.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

Title: Actively Exploited Vulnerability Submission Form.

OMB Number: 1670–NEW.

Frequency: Per incident on a voluntary basis.

Affected Public: State, local, Territorial, and Tribal, International, private sector partners.

Number of Respondents: 2,725.

Estimated Time per Respondent: 0.167 hours.

Total Burden Hours: 454 hours.

Annual Cost Burden: $37,956.

Total Annualized Respondent Out-of-Pocket Cost: $0.

Total Annualized Government Cost: $145,924.

Robert J. Costello,

Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2024–04193 Filed 2–28–24; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0060]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Medical Certification for Disability Exceptions

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until April 29, 2024.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0060 in the body of the letter, the agency name and Docket ID USCIS–2008–0021. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2008–0021.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2008–0021in the search box. Comments must be submitted in English, or an English translation must be provided. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Medical Certification for Disability Exceptions.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–648; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the Form N–648 to substantiate a claim for an

exception to the requirements of section 312(a) of the Act. Only medical doctors, doctors of osteopathy, or clinical psychologists licensed to practice in the United States are authorized to certify Form N–648. By certifying the form, the doctor states that an applicant filing an Application for Naturalization, Form N–400, is unable to complete the English and/or civics requirements because of a physical or developmental disability or mental impairment(s).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N–648 Medical Professional is 19,527 and the estimated hour burden per response is 2 hours. The estimated total number of respondents for the information collection N–648 Applicant is 19,527 and the estimated hour burden per response is 8 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 195,270 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $17,775,089.

Dated: February 14, 2024.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2024–04265 Filed 2–28–24; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/ A0A501010.999900; OMB Control Number 1076–0017]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Financial Assistance and Social Services Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before April 1, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection request (ICR) should be sent within 30 days of publication of this notice to the Office of Information and Regulatory Affairs (OIRA) through *https://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref_nbr=202212-1076-010* or by visiting *https://www.reginfo.gov/public/do/PRAMain* and selecting ''Currently under Review—Open for Public Comments'' and then scrolling down to the ''Department of the Interior.''

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Steven Mullen, Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1001 Indian School Road NW, Suite 229, Albuquerque, New Mexico 87104; *comments@bia.gov;* (202) 924–2650. 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. You may also view the ICR at *https://www.reginfo.gov/public/Forward?SearchTarget=PRA&textfield=1076-0017.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on January 5, 2023 (88 FR 879). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The information collection allows BIA to determine whether an individual is eligible for assistance and services under 25 CFR part 20 when comparable financial assistance or social services either are not available or not provided by State, Tribal, county, local, or other Federal agencies. No third-party notification or public disclosure burden is associated with this collection.

Title of Collection: Financial Assistance and Social Services Program.

OMB Control Number: 1076–0017.

Form Number: 5–6601, 5–6602.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individual Indians seeking financial assistance or social services from BIA.

Total Estimated Number of Annual Respondents: 124,000 provide information on the application; of those, 72,000 contribute information to an employability assessment and ISP.

Total Estimated Number of Annual Responses: 196,000.

Estimated Completion Time per Response: One half hour for the application and 1 hour for the employability assessment and ISP.

Total Estimated Number of Annual Burden Hours: 134,000 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once per respondent.

Total Estimated Annual Nonhour Burden Cost: $0.

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

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Steven Mullen,

Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2024–04215 Filed 2–28–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–CEBE–37270; PPNECEBE00, PPMPSPD1Z.YM0000]

Cedar Creek and Belle Grove National Historical Park Advisory Commission Notice of Public Meetings

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, as amended, the National Park Service is hereby giving notice that the Cedar Creek and Belle Grove National Historical Park Advisory Commission (Commission) will meet as indicated below.

DATES: The Commission will meet on Thursday, March 21, 2024; Thursday, June 20, 2024; Thursday, September 19, 2024; and Thursday, December 19, 2024. All scheduled meetings will begin at 9 a.m. and will end by 11 a.m. (EASTERN).

ADDRESSES: The March 21, 2024, and December 19, 2024, meetings will be held via teleconference and in-person at Warren County Government Center, 220 North Commerce Avenue, Front Royal, VA 22630. The June 20, 2024, and September 19, 2024, meetings will be held via teleconference and in-person at the Middletown Town Hall Council Chambers, 7875 Church Street, Middletown, VA 22645. Information on joining the teleconference will be available on the Cedar Creek and Belle Grove National Park website at *https://www.nps.gov/cebe/learn/management/park-advisory-commission.htm.*

FOR FURTHER INFORMATION CONTACT: Karen Beck-Herzog, Site Manager, Cedar Creek and Belle Grove National Historical Park, P.O. Box 700, Middletown, Virginia 22645, telephone (540) 868–9176, email *karen_beck_herzog@nps.gov,* or visit the park website: *https://www.nps.gov/cebe/index.htm.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Commission was established by Congress to provide advice to the Secretary of the Interior on the preparation and implementation of the park's general management plan and to advise on land protection (16 U.S.C. 410iii–7). The meeting is open to the public. Individuals who are interested in the park, the implementation of the plan, or the business of the Commission are encouraged to attend the meeting. Interested members of the public may present, either orally or through written comments, information for the Commission to consider during the public meeting. Attendees and those wishing to provide comment are strongly encouraged to preregister through the contact information provided. Written comments may be sent to Karen Beck-Herzog (see **FOR FURTHER INFORMATION CONTACT**). All comments received will be provided to the Commission. A detailed final agenda will be posted 48 hours in advance of the meeting on the Commission's website at *https://www.nps.gov/cebe/learn/management/park-advisory-commission.htm.* If a meeting date and location are changed, the Superintendent will issue a press release and use local newspapers and/or radio stations to announce the rescheduled meeting. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Purpose of the Meeting: The topics to be discussed include: general management plan next steps, visitor services and interpretation, land protection planning, historic preservation, and natural resource protection.

Commission meetings consist of the following:

1. General Introductions
2. Park Operations Briefing
3. Reports and Discussions
4. Old Business
5. New Business
6. Public Comments
7. Closing Remarks

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

(Authority: 5 U.S.C. Ch. 10)

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2024–04201 Filed 2–28–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–CACO–37284; PPNECACOS0, PPMPSPD1Z.YM0000]

Cape Cod National Seashore Advisory Commission Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Park Service (NPS) is hereby giving notice that the meeting of the reestablished Cape Cod National Seashore Advisory Commission (Commission) will meet as indicated below.

DATES: The Commission will meet on Monday, April 8, 2024, at 1 p.m. and will end by 4 p.m. (eastern).

ADDRESSES: The meeting will be held at the Salt Pond Visitors Center, 50 Nauset Road, Eastham, Massachusetts 02642.

FOR FURTHER INFORMATION CONTACT: Jennifer Flynn, Superintendent and Designated Federal Officer, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, Massachusetts 02667, telephone (508) 771–2144 or *jennifer_flynn@nps.gov.* Individuals in the United States who are deaf, deafblind,

hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Commission was established by section 8 of Public Law 87–126, as amended, and expired on September 26, 2018. The Commission was reestablished by Div. DD, title VI, subtitle B, section 613 of Public Law 117–328, the Consolidated Appropriations Act, 2023. The Commission's new termination date is September 26, 2029. The purpose of the Commission is to consult with the Secretary of the Interior, or her designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of the Act establishing the Seashore. The meeting is open to the public. Interested persons may make oral presentations to the Commission. Such requests should be made to the Superintendent at the beginning of the meeting. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Written comments can be sent to Jennifer Flynn [see **FOR FURTHER INFORMATION CONTACT**]. All comments received will be provided to the Commission.

The Commission meeting location may change based on inclement weather or exceptional circumstances. If a meeting location is changed, the Superintendent will issue a press release and use local newspapers to announce the change. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Purpose of the Meeting: The Commission meeting will discuss the following:

1. Introduction of members and staff
2. Review Commission charter and charge identified by the Secretary of the Interior
3. Solicit recommended areas for focus for the Commission. What will the Commission advise park management on?
4. Determine next four meeting dates and subject of each meeting

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure of Information: Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. ch 10.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2024–04195 Filed 2–28–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–37494; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before February 17, 2024, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by March 15, 2024.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before February 17, 2024. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers.

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

DELAWARE

New Castle County

Scott A.M.E. Zion Church, 629 E 7th Street, Wilmington, SG100010113

DISTRICT OF COLUMBIA

District of Columbia

University Club of Washington, DC, 1135 Sixteenth Street NW, Washington, SG100010128

HAWAII

Maui County

The Bookkeeper's House, Pioneer Mill-Lahaina Ice Co., 271 Front St., Lahaina, SG100010125

OHIO

Paulding County

Paulding Downtown Historic District, Centered on the Paulding County Courthouse and roughly bounded by Harrison, Water, Caroline and Cherry Streets, Paulding, SG100010114

OREGON

Lake County

Alger Theatre, 24 South F Street, Lakeview, SG100010118

TENNESSEE

Haywood County

Woodlawn Baptist Church, Tibbs Road at TN–19, Nutbush, SG100010115

TEXAS

Potter County

Green Acres Apartments, 3118 SW 15th Ave., Amarillo, SG100010122

WISCONSIN

Jefferson County

Loewe-Weis-Wilson Farm, 504 East Main Street, Village of Palmyra, SG100010116

A request for removal has been made for the following resource(s):

LOUISIANA

Tangipahoa Parish

Tangipahoa School, Jct. of Jackson and Tarpley Sts., Tangipahoa, OT03000705

Additional documentation has been received for the following resource(s):

MONTANA

Silver Bow County

Butte-Anaconda Historic District (Additional Documentation), 100 East Broadway, Butte, AD66000438

NEW JERSEY

Hudson County

First Reformed Dutch Church of Bergen Neck (Additional Documentation), Avenue C and 33rd St., Bayonne, AD82003274

SOUTH DAKOTA

Charles Mix County

Geddes Historic District (Additional Documentation), Off SD 50, Geddes, AD73001737

VERMONT

Bennington County

Arlington Village Historic District (Additional Documentation), Roughly Main St., School St., E Arlington Rd., and Battenkill Dr., Arlington, AD89001936

Nomination(s) submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nomination(s) and responded to the Federal Preservation Officer within 45 days of receipt of the nomination(s) and supports listing the properties in the National Register of Historic Places.

HAWAII

Honolulu County

Barbers Point Light, (Light Stations of the United States MPS), Southwest end of Olai Street, 0.1 mile west of Barbers Point Beach Park, Kapolei vicinity, MP100010117

Authority: Section 60.13 of 36 CFR part 60.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2024–04209 Filed 2–28–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2024–0001]

Notice of Availability of a Draft Programmatic Environmental Impact Statement for Expected Wind Energy Development in the New York Bight; Extension of Comment Period

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Draft programmatic environmental impact statement; extension of comment period.

SUMMARY: On January 12, 2024, the Bureau of Ocean Energy Management (BOEM) published a notice of availability (NOA) in the **Federal Register** announcing a public comment period for the draft programmatic environmental impact statement (PEIS) that analyzes the potential impacts of wind energy development in six lease areas of the New York (NY) Bight. BOEM is extending the comment period on the draft PEIS. This notice announces an extension of the public comment period, which will now end on March 13, 2024. After BOEM addresses comments provided, BOEM will publish a final PEIS.

DATES: The comment period for the notice published January 12, 2024, at 89 FR 2249, is extended. Comments must be received no later than March 13, 2024.

ADDRESSES: The draft PEIS and detailed information about the project can be found on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/new-york-bight.* Comments can be submitted in any of the following ways:

- Delivered by mail or delivery service, enclosed in an envelope labeled, ''NY BIGHT PEIS'' and addressed to Chief, Division of Environmental Assessment, Office of Environmental Programs, Bureau of Ocean Energy Management, 45600 Woodland Road, VAM–OEP, Sterling, Virginia 20166; or
- *Through the regulations.gov web portal:* Navigate to *https://www.regulations.gov* and search for Docket No. BOEM–2024–0001. Select the document in the search results on which you want to comment, click on the ''Comment'' button, and follow the online instructions for submitting your comment. A commenter's checklist is available on the comment web page. Enter your information and comment, then click ''Submit.''

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski, BOEM Office of Environmental Programs, 45600 Woodland Road, VAM–OEP, Sterling, Virginia 20166, (703) 787–1703 or *jill.lewandowski@boem.gov.*

SUPPLEMENTARY INFORMATION: Please refer to the NOA published in the **Federal Register** (89 FR 2249) on January 12, 2024, for further information.

Comments already submitted in response to the January 12, 2024, NOA do not need to be resubmitted. BOEM discourages the submittal of anonymous comments.

Please include your name and address as part of your comment. BOEM makes all comments in their entirety, including the names and addresses of respondents, available for public review online and during regular business hours. You may request that BOEM withhold your name, address, or any other personal identifiable information (PII) included in your comment from the public record. However, BOEM cannot guarantee that it will be able to do so. If you wish your name, address, or other PII to be withheld, you must state your request prominently in a cover letter and explain the harm that you fear from its disclosure such as unwarranted privacy invasion, embarrassment, or injury. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Even if BOEM withholds your PII in the context of this notice, your comment is subject to the Freedom of Information Act (FOIA) (5 U.S.C. 552). Your information will only be withheld if a determination is made that one of the FOIA exemptions to disclosure applies. Such a determination will be made in accordance with the Department's FOIA implementing regulations (43 CFR part 2) and applicable law.

BOEM protects business confidential information in accordance with the Freedom of Information Act (5 U.S.C. 552) and the Department of the Interior's implementing regulations (43 CFR part 2 and 30 CFR part 585).

Authority: 42 U.S.C. 4231 *et seq.* (NEPA, as amended) and 40 CFR 1506.6.

Karen Baker,

Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management.

[FR Doc. 2024–04246 Filed 2–28–24; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–685 and 731–TA–1599–1601 and 1603 (Final)]

Tin Mill Products From Canada, China, Germany, and South Korea; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of imports of tin mill products from Canada, China, and Germany, provided for in subheadings 7210.11.00, 7210.12.00, 7210.50.00, 7212.10.00, 7212.50.00, 7225.99.00, and 7226.99.01 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and imports of the subject merchandise from China that have been found to be subsidized by the government of China.[2] The Commission further finds that imports of these products from South Korea that Commerce has determined are sold in the United States at LTFV are negligible and terminates the antidumping duty investigation concerning South Korea.

Background

The Commission instituted these investigations effective January 18, 2023, following receipt of petitions filed with the Commission and Commerce by Cleveland-Cliffs Inc. (''Cleveland-Cliffs''), Cleveland, Ohio, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (''USW''), Pittsburgh, Pennsylvania. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of tin mill products from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and imports from Canada, China, and Germany, were sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)).[3] Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** (88 FR 60484, September 1, 2023, revised 88 FR 65194, September 21, 2023). The Commission conducted its hearing on January 4, 2024. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on February 26, 2024. The views of the Commission are contained in USITC Publication 5492 (February 2024), entitled *Tin Mill Products from Canada, China, Germany, and South Korea: Investigation Nos. 701–TA–685 and 731–TA–1599–1601 and 1603 (Final).*

By order of the Commission.

Issued: February 26, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–04238 Filed 2–28–24; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 89 FR 1542, 89 FR 1538, 89 FR 1529, 89 FR 1545, 89 FR 1532 (January 10, 2024).

[3] Commerce published notice in the **Federal Register** of an affirmative final determination in connection with the investigation concerning tin mill products from South Korea (89 FR 1545, January 10, 2024) and negative final determinations in connection with the investigations concerning tin mill products from the Netherlands, Taiwan, Turkey, and the United Kingdom (89 FR 1524, 89 FR 1526, 89 FR 1520, 89 FR 1535, January 10, 2024). Accordingly, effective January 10, 2024, the Commission terminated its antidumping duty investigations concerning tin mill products from the Netherlands, Taiwan, Turkey, and the United Kingdom (89 FR 3694, January 19, 2024).

INTERNATIONAL TRADE COMMISSION

[USITC SE–24–009]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 7, 2024 at 11 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–590 and 731–TA–1397 (Review) (Sodium Gluconate, Gluconic Acid, and Derivative Products from China). The Commission currently is scheduled to complete and file its determinations and views of the Commission on March 15, 2024.
5. *Outstanding action jackets:* none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: February 27, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–04365 Filed 2–27–24; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0100]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement of a Previously Approved Collection Census of Jails 2024–26; Correction

ACTION: Notice; correction.

SUMMARY: The Department of Justice published a document in the **Federal Register** of February 26, 2024, concerning request for comments on an information collection. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Zhen Zheng, (202) 598–9955.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of February 26, 2024, in FR Doc. 2024–03768, on page 1, in the third paragraph column, correct the **DATES** caption to read:

DATES: Comments are encouraged and will be accepted for 30 days until March 27, 2024.

Dated: February 26, 2024.

Darwin T. Arceo,

DOJ Clearance Officer.

[FR Doc. 2024–04276 Filed 2–28–24; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0118]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Authorization for Release of Information

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until April 29, 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, contact: Jaclyn N. Wiltshire, Personnel Security Division, either by mail at U.S. Department of Justice, PSD—Room (1E–300), 99 New York Ave. NE, Washington, DC 20226, by email at *Niki.Wiltshire@atf.gov,* or telephone at 202–648–9260.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: The Authorization for Release of Information (ATF F 8620.56) is used to determine if a candidate for federal or contractor employment at the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) meets federal employment suitability requirements. Revisions to ATF F 8620.56 include removing the declination statement and signature/date fields and inserting a field for the candidate's personal email addresses, which will allow ATF to conduct searches of social media websites. This information collection (IC) is being revised to make minor material changes to the form, such as removing the declination statement and signature/date fields and including a field for the respondent's personal email addresses, which will allow ATF to conduct searches of social media websites.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Authorization for Release of Information.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* ATF Form 8620.56.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond: Affected Public:* Individuals or households.

The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will utilize this collection once annually, and it will take each respondent approximately 5 minutes to complete their responses.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 167 hours, which is equal to 2,000 (total respondents) * 1 (# of response per respondent) * 0.08 (5 minutes).

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 (min)	Total annual burden (hours)
ATF Form 8620.56	2,000	1/annually	2,000	5	167
Unduplicated Totals	2,000		2,000		167

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: February 26, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–04277 Filed 2–28–24; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Equal Access to Justice Act

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of the

Assistant Secretary for Administration and Management (OASAM)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before April 1, 2024.

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: Wilson Vadukumcherry by telephone at 202–693–0110, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The information collections under OMB Control No. 1225–0013 provides for payment of fees and expenses to eligible parties who have prevailed against the Department in certain administrative proceedings. In order to obtain an award, the statute and associated regulations (29 CFR part 16) require the filing of an application. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 6, 2023 (88 FR 84833).

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–OASAM.

Title of Collection: Equal Access to Justice Act.

OMB Control Number: 1225–0013.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 10.

Total Estimated Annual Time Burden: 50 hours.

Total Estimated Annual Other Costs Burden: $23.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Wilson Vadukumcherry,

Senior PRA Analyst.

[FR Doc. 2024–04280 Filed 2–28–24; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2024–018]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of a request for comments regarding an information collection.

SUMMARY: We are renewing a generic information collection request (generic ICR) entitled Generic Clearance for NARA Public and Education Program Registration. This notice announces that we plan to submit this generic ICR plan to OMB for approval under the Paperwork Reduction Act and solicits comments on specific aspects of the collection plan. We will use this to collect information from individuals registering for an education or other program at NARA.

DATES: We must receive written comments on or before April 29, 2024.

ADDRESSES: Send comments to Paperwork Reduction Act Comments (MP), Room 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, or by email to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Tamee Fechhelm by telephone at 301–837–1694 with requests for additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite comments on: (a) whether collecting this information is necessary for proper performance of the agency's functions, including whether the information will have practical utility; (b) the accuracy of our estimate of the information collection's burden on respondents; (c) ways to enhance the quality, utility, and clarity of the information we propose to collect; (d) ways to minimize the burden on respondents of collecting the information, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources people need to provide the information, including time to review instructions, process and maintain the information, search data sources, and respond.

Explanation of Generic ICRs

A generic ICR is a request for OMB to approve a plan for conducting more than one information collection using very similar methods when (1) we can evaluate the need for and the overall practical utility of the data in advance, as part of the review of the proposed plan, but (2) we cannot determine the details of the specific individual collections until a later time. Most generic clearances cover collections that are voluntary, low burden (based on a consideration of total burden, total respondents, or burden per respondent), and uncontroversial. This notice, for example, describes a general plan to gather registration information from members of the public who wish to participate in programs at NARA, through a series of registration forms used for a variety of current and future education programs at different facilities. As part of this plan, we construct, distribute, and use the registration forms in a similar manner, but customize each one for the type and location of the program involved.

Because we seek public comment on the plan, we do not need to seek public comment on each specific information

collection that falls within the plan when we later develop the individual information collection. This saves the Government time and burden, and it streamlines our ability to gather registration information so we can provide more responsive programs. However, we still submit each specific information collection (*e.g.,* each form) to OMB for review, in accordance with the terms of clearance set upon approval of the plan. OMB assesses the individual forms for PRA requirements, ensures that they fit within the scope of this generic ICR plan, and includes the specific forms in the PRA public docket prior to our use of them.

Specifics on This Information Collection

Title: Generic Clearance for NARA Public and Education Program Registration.

Description: This generic information collection request allows us to gather information from those members of the public who wish to register for public events, education programs, tours, and training sponsored by NARA. We will not use these forms for quantitative information collections designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance.

Purpose: Collecting this information allows us to register participants for NARA's public, education, and training programs throughout the agency's locations, and to collect and process credit card payments. The information is also used to develop mailing lists for distribution of education-related information and special NARA training events, based on the request or expressed interest of the person registering. Advance registration allows NARA offices to schedule the tours, training, and events to maximize the participants' time and to accommodate the participants in the space. The information collected from registrants will help ensure that users have an effective, efficient, and satisfying experience with our programs, in compliance with E.O. 12862. Without the ability to collect this information, NARA would not be able to effectively organize events, resulting in possibly turning away members of the public from events that might be overbooked.

Conditions: We will submit a specific information collection for approval under this generic clearance only if it meets the following conditions:

- The collection is voluntary;
- The collection is low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and is low-cost for both the respondents and the Federal Government;
- The collection is non-controversial and does not raise issues of concern to other Federal agencies;
- Personally identifiable information (PII) is collected only to the extent necessary and is retained only for the period of time required by NARA records schedules;
- Information gathered will be used only internally for program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

As a general matter, information collections under this generic collection request will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. In this notice, NARA solicits comments concerning the following information collection:

Title: Generic Clearance for NARA Public and Education Program Registration.

OMB number: 3095–0074.

Agency form numbers: NA Forms 2027, 2029, 2030, 2032, 11009, 11009C.

Type of review: Regular.

Projected affected public: Individuals or households, business or other for-profit, not-for-profit institutions, schools, Federal, State, local, or Tribal government organizations.

Projected average estimates for the next three years:

Average expected annual number of forms: 6.

Average projected number of respondents per form: 1.

Estimated number of respondents in total: 10,000.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 1,667 hours.

Abstract: We offer a variety of education programs, public programs, tours, training, and events throughout the country. In order to register participants, we use various online and paper registration forms. Advance registration allows NARA offices to schedule the tours, training, and events to maximize the participants' time and to accommodate the participants in the space.

Sheena Burrell,

Executive for Information Services/CIO.

[FR Doc. 2024–04242 Filed 2–28–24; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Mathematical and Physical Sciences (#66) (MPS AC).

Date and Time: March 26, 2024; 10:00 a.m. to 4:50 p.m.; March 27, 2024: 8:55 a.m. to 2:00 p.m.

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314/Hybrid participation for AC Members, Presenters, Visitors and Guests.

To attend the meeting in person, all visitors must contact the Directorate for Mathematical and Physical Sciences at least 48 hours prior to the meeting to arrange for a visitor's badge.

All visitors must access NSF via the Visitor Center entry adjacent to the south building entrance on Eisenhower Avenue on the day of the meeting to receive the visitor's badge. It is suggested that visitors allow time to pass through security screening.

To attend virtually, please use the link provided on the MPS AC website located at *http://www.nsf.gov/mps/advisory.jsp.*

Type of Meeting: Open.

Contact Person: Catalina Achim, National Science Foundation, 2415 Eisenhower Avenue, Room E9335, Alexandria, Virginia 22314; Telephone: 703/292–2048.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to MPS programs and activities.

Agenda

Tuesday, March 26, 2024

- Call to Order and Official Opening of the Meeting
- Approval of Prior Meeting Minutes—MPS AC Chair
- MPS Update by Assistant Director
- Science Highlight
- NSF Budget
- 2nd Report by the MPS AC Next-Generation Gravitational Wave Observatory Subcommittee

- Follow up to the 2nd Report of the MPS AC Facilities Subcommittee
- Generative AI and the Proposal Review Process
- Preparation for Discussion with NSF Director's Chief of Staff
- Closing Remarks and Adjourn Day 1

Wednesday, March 27, 2024

- Welcome and Overview of Agenda
- Science Highlight
- Digital Twins
- Strengthening the Links between MPS and EDU Directorates
- NSF Branding Policy
- Preparation for Discussion with NSF Director's Chief of Staff
- Meeting and Discussion with NSF Director's Chief of Staff
- Closing Remarks and Adjourn Day 2

Note: A final/updated agenda will be available on the MPS AC website located at *http://www.nsf.gov/mps/advisory.jsp.*

Dated: February 23, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–04158 Filed 2–28–24; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99597; File No. SR–NYSEARCA–2024–17]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 6.91P–O

February 23, 2024.

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 February 14, 2024, NYSE Arca, Inc. (''NYSE Arca'' 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 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 modify Rule 6.91P–O (Electronic Complex Order Trading) to specify additional trading interest that would result in the early end of a Complex Order Auction (''COA''). 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 modify Rule 6.91P–O (Electronic Complex Order Trading) to specify additional trading interest that would result in the early end of a Complex Order Auction (''COA''). This proposed amendment to the Exchange's complex order trading rule would align with the recently modified complex order trading rule of the Exchange's affiliated options exchange, NYSE American LLC (''NYSE American'').[4]

Rule 6.91P–O reflects how Electronic Complex Orders (''ECOs'') will trade on the Exchange [5] and paragraph (f) to this rule describes the handling of ECOs submitted to the Complex Order Auction (COA) process.[6] When a COA Order initiates a COA, the Exchange disseminates a Request for Response (''RFR'') to solicit potentially price-improving ECO interest—which solicited interest includes interest designated to respond to the COA (*i.e.,* COA GTX Orders) and unrelated price-improving ECO interest (resting and newly arriving) that arrives during the Response Time Interval (each an ''RFR Response'') (collectively, the ''auction interest'').[7] The COA lasts for the duration of the Response Time Interval unless, during the COA, the Exchange receives certain options trading interest that requires the COA to conclude early.[8] When the COA concludes, the COA Order executes first with price-improving ECO interest, next with any contra-side interest, including the leg markets (if permissible),[9] and any remaining balance (that is not cancelled) is ranked in the Consolidated Book (the ''Consolidated Book'' or ''Book'').[10] Once the COA Order executes to the extent possible—whether with the best-priced Complex Orders or the best-priced interest in the leg markets—and is placed in the Book, the Exchange will update its complex order book and, if applicable, the Exchange BBO (as a result of any executions of the COA Order with the leg markets).

The Exchange proposes to modify Rule 6.91P–O(f)(3) to add new

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *Compare* proposed Rule 6.91P–O(f)(3)(E) *with* NYSE American Rule 980NYP(f)(3)(E). *See also* SR–NYSEAMER–2024–03 (the ''NYSE American COA/cQCC Filing'') *See* Securities Exchange Act Release No. 99354 (January 17, 2024), 89 FR 4358 (January 17 [sic], 2024) (SR–NYSEAMER–2024–03) (permitting NYSE American to adopt NYSE American Rule 980NYP(f)(3)(E) on an immediately effective basis and granting waiver of the 30-day operative delay).The Exchange notes that NYSE American Rule 980NYP is substantively identical to Rule 6.91P–O, except that the latter rule includes the rule update proposed herein.

[5] *See generally* Rule 6.91P–O (Electronic Complex Order Trading). Unless otherwise specified, all capitalized terms used herein have the same meaning as is set forth in Rule 6.91P–O.

[6] *See* Rules 6.91P–O(f) (Execution of ECOs During a COA), (f)(1) (Initiation of a COA), (f)(2) (Pricing of a COA). *See also* Rule 6.91P–O(a)(3)(A) (defining a ''COA Order'' as an ECO designated as eligible to initiate a COA).

[7] *See* Rules 6.91P–O(a)(3)(B) (defining, and detailing the information included in, each RFR); (a)(3)(C) (defining each ''RFR Response'' as, among other things, ''any ECO'' received during the Response Time Interval that is in the same complex strategy as, and is marketable against, the COA Order); and (a)(3)(D) (defining the Response Time Interval as the period during which RFR Responses may be entered, which period ''will not be less than 100 milliseconds and will not exceed one (1) second,'' as determined by the Exchange and announced by Trader Update). *See* Rule 6.91P–O(b)(2)(C) (defining a ''COA GTX Order,'' including that such order is submitted in response to an RFR announcing a COA and will trade with the COA Order to the extent possible and then cancel).

[8] *See* Rule 6.91P–O(f)(3)(A)–(D) (setting forth the circumstances under which a COA will conclude before the end of the Response Time Interval).

[9] The Exchange notes that there are certain limitations to how an ECO, including a COA Order post-COA, may interact with the leg markets. *See, e.g.,* Rule 6.91P–O(e)(1)(A) (providing, in relevant part, that the leg markets will trade first with an ECO, but only if the legs can execute with the ECO ''in full or in a permissible ratio,'' and, once the leg markets trade with the ECO to the extent possible, such ECO will trade with same-priced ECOs resting in the Book). *See also* Rule 6.91P–O(e)(1)(C)–(D) (describing ECOs that are not permitted to trade with the leg markets).

[10] *See* Rule 6.91P–O(f)(4)(A)–(C) (Allocation of COA Orders) (providing, in relevant part, that when a COA ends early or at the end of the RTI, a COA Order trades first with price-improving interest, next ''with any contra-side interest, including the leg markets, unless the COA is designated as a Complex Only Order'' and any remaining portion is ranked in the Consolidated Book and the COA Order is processed as an ECO pursuant to Rule 6.91P–O(e) (Execution of ECOs During Core Trading Hours). *See* Rule 1.1 (defining Consolidated Book as ''the Exchange's electronic book of orders and quotes.'').

paragraph (E), which would provide that a COA in progress will end early any time there is a Complex Qualified Contingent Cross (''QCC'') Order submitted in the same complex strategy as the COA Order.[11] By its terms, a Complex QCC Order ''that is not rejected'' by the Exchange, ''will immediately trade in full at its price.''[12] To avoid rejection, a Complex QCC Order must satisfy certain price validations, including that each option leg must be priced at or between the NBBO and may not be priced worse than the Exchange BBO; and, that the transaction price must be equal to or better than the best-priced Complex Orders, unless the best-priced Complex Orders contains displayed Customer interest, in which case the transaction price must improve such interest.[13] In addition, each component leg of the Complex QCC Order must trade at a price that is better than displayed Customer interest on the Consolidated Book.[14]

As noted above, until a COA concludes, the Book is not updated to reflect any COA Order executions (with price-improving auction interest or with resting ECO or leg market interest) or any balance of the COA Order ranking in the Book. Thus, to allow the later-arriving Complex QCC Order to be evaluated based on the most up-to-date Book, the Exchange proposes to end a COA upon the arrival of a Complex QCC Order in the same complex strategy. This proposed early termination would allow the Exchange to incorporate executions from the COA, or any remaining balance of the COA Order, to conduct the requisite price validations per Rule 6.62P–O(g)(1)(D) for the Complex QCC Order (*i.e.,* based on the NBBO, Exchange BBO, and best-priced Complex Orders on the Exchange following the COA Order executions and ranking).[15]

The proposed rule change would be consistent with current Rule 6.91P–O(f)(3)(A)–(D), which describes four circumstances that cause the early end of a COA to ensure that later-arriving interest does not trade ahead of a COA Order and to ensure that the Book is updated to reflect executions resulting from the COA. The Exchange believes that the proposed rule change achieves this same objective. As with the existing early end scenarios, the proposed early end of a COA does not prevent the COA Order from trading with any interest, including price-improving interest, that arrived prior to the early termination (*i.e.,* because of a Complex QCC Order in the same complex strategy as the COA). In addition, any portion of the COA Order that does not trade in the COA is placed on the Consolidated Book where it continues to have opportunities to trade.[16] Finally, the Exchange notes that proposed Rule 6.91P–O(f)(3)(E) is identical to American Rule 980NYP(f)(3)(E).

In addition to NYSE American, the Exchange notes that at least two other (non-affiliated) options exchanges offer both Complex QCC Orders and COA functionality and each has opted for a different way to address the race condition posed by these two features. For example, per the technical specifications for complex orders executed on Cboe Exchange Inc. (''Cboe''), a Complex QCC Order is ''immediately executed or canceled on entry'' and is not ''restricted by other auction types going on at the same time'' and, as such, the price validations on the later-arriving Complex QCC are (apparently) done without consideration of the COA process and its potential impact on Cboe's Complex Order Book.[17] Alternatively, on MIAX Options Exchange (''MIAX''), a later-arriving Complex QCC Order is rejected ''if, at the time of receipt'' the complex strategy is subject to, among other things, ''a Complex Auction pursuant to Rule518(d).''[18]

The Exchange believes that its proposal to codify by rule its distinct approach to resolving the same issue faced by Cboe and MIAX would provide the best protection to its market participants and would mirror the approach taken by NYSE American.[19] Specifically, by ending a COA upon the arrival of a Complex QCC Order in the same complex strategy, the Exchange ensures that the COA Order executes to the extent possible and that the Exchange relies on the most-up-to-date Book (following executions in the COA) to validate the price of the Complex QCC. This proposed approach prevents the Exchange from ignoring complex orders being auctioned when conducting price validations for later-arriving Complex QCC Orders or from rejecting potentially valid Complex QCC Orders that arrive during a COA. As such, the Exchange believes that its proposal would help preserve—and maintain investor's confidence in—the integrity of the Exchange's local market. As such, the Exchange believes that the proposed change would benefit investors and would not place an undue burden on competition because investors are free to direct their complex order flow to other options exchanges, including Cboe or MIAX. Likewise, once this proposed rule change is effective, other options exchanges, including Cboe and MIAX, are free to copy the order handling proposed herein.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[20] in general, and furthers the objectives of Section 6(b)(5),[21] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with

[11] *See* proposed Rule 6.91P–O(f)(3)(E). *See* Rules 6.62P–O(g)(1)(A) (providing that a ''Complex QCC Order'' is a QCC with more than one option leg and specifying that ''each option leg must have at least 1,000 contracts'') and (g)(1)(D) (setting forth the pricing requirements that a Complex QCC Order must meet, or else it will be rejected). The Exchange notes that Rule 6.62P–O(g)(1), regarding Complex QCC Orders, is identical to NYSE American Rules 900.3NYP(g)(1).

[12] *See* Rule 6.62P–O(g)(1)(A) (providing that a QCC Order, including a Complex QCC Order, ''that is not rejected per paragraph (g)(1)(C) [Execution of QCC Orders] or (D) [Execution of Complex QCC Orders] below will immediately trade in full at its price''). As noted above, Rule 6.62P–O(g)(1), regarding Complex QCC Orders, is identical to NYSE American Rules 900.3NYP(g)(1).

[13] *See* Rule 6.62P–O(g)(1)(D)(i)–(iii).

[14] *See* Rule 6.91P–O(g)(1)(D)(i).

[15] The Exchange notes that, to date, there have been zero instances of a Complex QCC Order arriving during (and resulting in the early end) of a COA in the same complex strategy, pursuant to Rule 6.91P–O, which was implemented in July 2022 coincident with the Exchange's migration to its Pillar trading platform.

[16] *See supra* note 10 (describing that any remaining portion of a COA Order following the COA will be placed on the Consolidated Book and will be processed as an ECO).

[17] *See* Cboe, US Options Complex Book Process, Section 10, Complex Qualified Contingent Cross (Complex QCC), available here: *https://cdn.cboe.com/resources/membership/US-Options-Complex-Book-Process.pdf* (providing that, on Cboe, ''Complex QCCs will not be restricted by other auction types going on at the same time in the Complex or Simple Book''). The Exchange was unable to find a codification in Cboe's rules of this technical specification (*i.e.,* that Complex QCC Orders are executed without regard for any ongoing auctions). The Exchange notes that the complex auction process described in Cboe Rule 5.33(d) is substantially similar to the Exchange's COA process. *Compare* Rule 6.91P–O (f) *with* Cboe Rule 5.33(d)(3) (describing Complex Order Auction process).

[18] *See* MIAX Rule 516(h)(4) (describing a Complex QCC Order or ''cQCC Order'' and providing that such order will be rejected ''if, at the time of receipt of the cQCC Order: (i) the strategy is subject to . . . a Complex Auction pursuant to Rule 518(d)''). The Exchange notes that the complex auction process described in MIAX Rule 518(d) is substantially similar to the Exchange's COA process.

[19] *See* supra note 4, NYSE American COA/cQCC Filing (setting forth the same arguments as set forth herein in support of the identical approach to end early a COA in progress upon receipt of a Complex QCC in the same strategy). *See also* NYSE American Rule 980NYP(f)(3)(E).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed amendment to Rule 6.91P–O(f)(3) regarding the additional circumstance that would cause a COA to end early would promote just and equitable principles of trade because it would ensure that the COA Order is executed to the extent possible and, if applicable, is ranked in the Consolidated Book before the Exchange evaluates the later-arriving Complex QCC Order. As noted above, until the COA concludes, the Book is not updated to reflect any COA Order executions (with price-improving auction interest or with resting ECO or leg market interest) or any balance of the COA Order ranking in the Book. This proposed early termination would then allow the Exchange to incorporate executions from the COA, or any remaining balance of the COA Order, to conduct the requisite price validations for the Complex QCC Order (per Rule 6.62P–O(g)(1)(D)) based on the most up-to-date Book (*i.e.,* based on the NBBO, Exchange BBO, and best-priced Complex Orders on the Exchange following the COA).[22] The proposed change is not new or novel as it is identical to the complex order trading rule on NYSE American to end early a COA in progress upon receipt of a Complex QCC in the same complex strategy.[23]

As noted herein, current Rule 6.91P–O(f)(A)-(D) describes four circumstances under which a COA must end early to ensure that later-arriving interest does not trade ahead of a COA Order and to ensure that the Book is updated to reflect executions resulting from the COA. The Exchange believes that the proposed rule change achieves this same objective. As with the existing early end scenarios, the proposed early end of a COA does not prevent the COA Order from trading with any interest, including price-improving interest, that arrived prior to the early termination (*i.e.,* because of a Complex QCC Order in the same complex strategy as the COA). As such, the proposed change would benefit investors because it would ensure the timely executions of COA Orders (at potentially improved prices) and would also allow a timely execution of the Complex QCC Orders in the same complex strategy as the COA Order. In addition, the proposal would ensure that the prices used to validate a Complex QCC Order would incorporate executions from the COA, or any remaining balance of the COA Order.[24]

At least two other options exchanges have taken different approaches to address how to handle the arrival of a Complex QCC Order while a Complex Order Auction is in progress. As noted herein, the Exchange believes that its proposed approach would provide the best protection to investors because ending a COA upon receipt of a Complex QCC Order would ensure that the COA Order executes to the extent possible and that the Exchange relies on the most-up-to-date Book (following executions in the COA) to validate the price of the Complex QCC Order. Thus, the Exchange believes the proposed rule change would promote just and equitable principles of trade because it would help preserve—and maintain investor's confidence in—the integrity of the Exchange's local market.

Finally, the Exchange believes that modifying the rule as proposed would add clarity and transparency to Rule 6.91P–O regarding the handling of COA Orders.

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 intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would apply in the same manner to all similarly-situated market participants that opt to utilize the COA process, the use of which is voluntary and, as such, market participants are not required to avail themselves of this process.

The Exchange does not believe that its proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change is designed to ensure that both a COA Order and a Complex QCC Order receive timely executions based on current market conditions, which change is identical to NYSE American Rule 980NYP(f)(3)(E). To the extent that other options exchanges, like Cboe or MIAX, offer complex order auctions and Complex QCC Orders, such exchanges are free to adopt (if they have not already done so) the early termination provision proposed herein.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[25] and Rule 19b–4(f)(6) thereunder.[26] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[27]

A proposed rule change filed under Rule 19b–4(f)(6)[28] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[29] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[30] of the Act to determine whether the proposed rule

[22] *See supra* note 15 (noting that, to date, there have been zero instances of a Complex QCC Order arriving during (and resulting in the early end) of a COA in the same complex strategy, pursuant to Rule 6.91P–O).

[23] *See* NYSE American Rule 980NYP(f)(3)(E).

[24] As noted herein, any portion of the COA Order that does not trade in the COA is placed in the Consolidated Book where it continues to have opportunities to trade. *See, e.g., supra* note 10.

[25] 15 U.S.C. 78s(b)(3)(A)(iii).

[26] 17 CFR 240.19b–4(f)(6).

[27] *Id.* In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[28] 17 CFR 240.19b–4(f)(6).

[29] 17 CFR 240.19b–4(f)(6)(iii).

[30] 15 U.S.C. 78s(b)(2)(B).

change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSEARCA–2024–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2024–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2024–17 and should be submitted on or before March 21, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–04171 Filed 2–28–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99594; File No. SR–OCC–2024–001]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Concerning Its Process for Adjusting Certain Parameters in Its Proprietary System for Calculating Margin Requirements During Periods When the Products It Clears and the Markets It Serves Experience High Volatility

February 23, 2024.

On January 10, 2024, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2024–001 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to codify OCC's process for adjusting certain parameters in its proprietary system for calculating margin requirements during periods when the products OCC clears and the markets it serves experience high volatility.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on January 25, 2024.[4] The Commission has received comments regarding the Proposed Rule Change.[5]

Section 19(b)(2)(i) of the Exchange Act [6] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, 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 unless the Commission extends the period within which it must act as provided in Section 19(b)(2)(ii) of the Exchange Act.[7] Section 19(b)(2)(ii) of the Exchange Act allows the Commission to designate a longer period for review (up to 90 days from the publication of notice of the filing of a proposed rule change) if the Commission finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents.[8]

The 45th day after publication of the Notice of Filing is March 10, 2024. In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change and therefore is extending this 45-day time period.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,[9] designates April 24, 2024 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–OCC–2024–001.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–04170 Filed 2–28–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99592; File No. SR–NYSE–2024–07]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

February 23, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 12, 2024, 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 and II below, which Items have been prepared by the self-regulatory

[31] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, at 89 FR 5062.

[4] Securities Exchange Act Release No. 99393 (Jan. 19, 2024), 89 FR 5062 (Jan. 25, 2024) (File No. SR–OCC–2024–001) (''Notice of Filing'').

[5] Comments on the Proposed Rule Change are available at *https://www.sec.gov/comments/sr-occ-2024-001/srocc2024001.htm*.

[6] 15 U.S.C. 78s(b)(2)(i).

[7] 15 U.S.C. 78s(b)(2)(ii).

[8] *Id.*

[9] *Id.*

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 eliminate obsolete Crossing Session pricing. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to eliminate obsolete Crossing Session I (''CS I'') and Crossing Session II (''CS II'') pricing.

The Exchange proposes to implement these changes to its Price List effective February 12, 2024.

Background

CS I permitted execution, at the Exchange's closing price, of single-stock, single-sided closing price orders and crosses of single-stock, closing price buy and sell orders. The Exchange did not charge for CS I executions. CS I was eliminated in 2009.[4]

CS II ran on the Exchange from 4:00 p.m. to 6:30 p.m. Eastern Time and handled member organization crosses of baskets of securities of aggregate-priced buy and sell orders.[5] Currently, the Exchange charges a fee of $0.0004 per share (both sides) for executions in CS II. Fees for executions in CS II are capped at $300,000 per month per member organization. In 2023, the Exchange determined to cease offering CS II and decommissioned the Off-Hours Trading Facility, effective January 31, 2024. The Exchange announced the implementation date by Trader Update.[6]

Proposed Rule Change

The Exchange proposes to delete CS I and II fee pricing in its entirety. Both crossing sessions are no longer operative. As noted above, CS I was eliminated in 2009 and CS II was decommissioned at the end of January 2024. Since the Exchange no longer offers after hours crossing sessions, the Exchange proposes to delete the section of the Price List titled ''Crossing Sessions I and II'' in its entirety as obsolete.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, 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

The Exchange believes that the proposed elimination of crossing session fees is reasonable because the fees are no longer being charged. The Exchange believes it is reasonable to delete obsolete fees from the Price List because it would streamline the Price List and reduce confusion as to which fees are applicable on the Exchange. The Exchange believes that amending the Price List to remove fees that are no longer charged would promote the protection of investors and the public interest because it would promote clarity and transparency in the Price List, thereby enabling market participants to navigate the Exchange's Price List more easily.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates fees among its market participants because the obsolete crossing session fees that the Exchange proposes to eliminate would be eliminated in their 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 obsolete fees would apply to all similarly-situated member organizations 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

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 obsolete fees would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating obsolete fees 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 obsolete fees would make the Price List more accessible and transparent and facilitate market participants' understanding of

[4] In 2009, in connection with certain technology upgrades and the launch of NYSE MatchPoint, an electronic equity-trading facility that was later decommissioned, the Exchange eliminated all CS I order types and migrated that business to NYSE MatchPoint. See Securities Exchange Act Release No. 59570 (March 12, 2009), 74 FR 11800, 11800–01 (March 19, 2009) (SR–NYSE–2009–28) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending NYSE Rules 13, 902, 903, 904, 905 and Rule 906 To Eliminate Certain Order Types From the Off-Hours Trading Facility). Aggregate-priced coupled orders were retained in Rules 900–907, which were the rules governing the Exchange's Off-Hours Trading Facility at the time. As noted below, aggregate-priced coupled orders were entered and executed in CS II. See id., at 11801, n. 8. Rules 900–907 were deleted in 2022 and replaced by current NYSE Rule 7.39. See Securities Exchange Act Release No. 95498 (August 12, 2022), 87 FR 50906, 50906–07 (August 18, 2022) (SR–NYSE–2022–37) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Rule 7.39 and Delete Current Rules 900–907). *See also* notes 4 & 5, *infra.*

[5] *See* NYSE Rule 7.39.

[6] On June 30, 2023, the Exchange announced that it would cease offering CS II and decommission the Off-Hours Trading Facility on December 29, 2023. On August 3, 2023, the Exchange announced that it would cease offering CS II and decommission the Off-Hours Trading Facility on January 31, 2024. In connection with the effective decommissioning of the Off-Hours Trading Facility, the Exchange recently filed with the Commission to delete Rule 7.39. *See* SR–NYSE–2024–06. *See generally* note 4, *supra.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) & (5).

the fees charged for services currently offered by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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,[9] 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 proposal relates solely to elimination of an obsolete crossing session fees and, as such, would not have any impact on intra- or inter-market competition because the proposed change is solely designed to accurately reflect the services that the Exchange currently offers, thereby adding clarity to the Price List.

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 is effective upon filing pursuant to Section 19(b)(3)(A)[10] of the Act and subparagraph (f)(2) of Rule 19b–4[11] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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 under Section 19(b)(2)(B)[12] of the Act to determine whether the proposed rule change should be approved or disapproved.

[9] 15 U.S.C. 78f(b)(8).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78s(b)(2)(B).

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–2024–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2024–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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–2024–07 and should be submitted on or before March 21, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–04168 Filed 2–28–24; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99593; File No. SR–NYSEAMER–2024–10]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Change, as Modified by Amendment No. 2 To Amend Rule 915 To Permit the Listing and Trading of Options on the Bitwise Bitcoin ETF, the Grayscale Bitcoin Trust, and Any Trust That Holds Bitcoin

February 23, 2024.

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 February 9, 2024, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change, which filing was partially amended by Amendment No. 2 thereto on February 15, 2024, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 915 to permit the listing and trading of options on the Bitwise Bitcoin ETF, the Grayscale Bitcoin Trust (BTC), and any trust that holds bitcoin. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange filed Amendment No. 1 on February 15, 2024 to add specificity regarding how the options on Bitcoin ETPs are settled. On February 15, 2024, the Exchange withdrew Amendment No. 1 and filed Amendment No. 2 to correct a pagination error.

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 Rule 915 (Criteria for Underlying Securities), Commentary .10, to allow the Exchange to list and trade options on the Bitwise Bitcoin ETF (''BITC''), the Grayscale Bitcoin Trust (BTC) (''GBTC''), and any trust that holds only bitcoin and cash (collectively, ''Bitcoin ETPs'').[5] The Exchange notes that other options exchanges have filed similar rule proposals that are currently pending with the Commission to allow the listing and trading of options on trusts that hold bitcoin.[6]

Commentary .06 to Rule 915 (hereinafter ''Commentary .06'') provides that, subject to certain other criteria set forth in Rule 915, securities deemed appropriate for options trading include ETFs that represent certain types of interests,[7] including interests in certain specific trusts that hold financial instruments, money market instruments, or precious metals (which are deemed commodities).

Bitcoin ETPs, including the Bitwise Bitcoin ETF (''BITC'') and the Grayscale Bitcoin Trust (''GBTC''), are bitcoin-backed commodity ETPs structured as trusts.[8] Similar to any ETFs currently deemed appropriate for options trading under Rule 915, the investment objective of a Bitcoin ETP trust is for its shares to reflect the performance of bitcoin (less the expenses of the trust's operations), offering investors an opportunity to gain exposure to bitcoin without the complexities of bitcoin delivery. As is the case for ETFs currently deemed appropriate for options trading, a Bitcoin ETP's shares represent units of fractional undivided beneficial interest in the trust, the assets of which consist principally of bitcoin and are designed to track bitcoin or the performance of the price of bitcoin and offer access to the bitcoin market.[9]

Bitcoin ETPs provide investors with cost efficient alternatives that allow a level of participation in the bitcoin market through the securities market. The primary substantive difference between Bitcoin ETPs and ETFs currently deemed appropriate for options trading are that ETFs may hold securities, certain financial instruments, and specified precious metals (which are commodities), while Bitcoin ETPs hold bitcoin (which is also deemed a commodity).[10] The Exchange believes that offering options on Bitcoin ETPs, including to BITC and GBTC, will benefit investors by providing them with an additional, relatively lower cost investing tool to gain exposure to spot Bitcoin as well as a hedging vehicle to meet their investment needs in connection with Bitcoin products and positions.

Bitcoin ETPs will trade in the same manner as options on other ETFs (including commodities ETFs) on the Exchange.[11] In particular, and as detailed below, Exchange rules that apply to the listing and trading of all options on ETFs on the Exchange, including, for example, rules that govern listing criteria, expirations, exercise prices, minimum increments, position and exercise limits, margin

[5] *See* proposed Commentary .10 to Rule 915. The Commission recently approved rule changes to list and trade shares of ''Bitcoin-Based Commodity-Based Trust Shares'' pursuant to Rule 8.201–E(c)(1) (Commodity-Based Trust Shares), including the Bitwise Bitcoin ETF, the Grayscale Bitcoin Trust (BTC). *See* Securities Exchange Act Release No. 99306 (January 10, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units), 89 FR 3008 (January 17, 2024) (SR–NYSEARCA–2023–44; SR–NYSEARCA–2021–90).

[6] *See, e.g.,* Securities Exchange Act Release No. 99396 (January 19, 2024), 89 FR 5047 (January 24, 2024) (SR–ISE–2024–03) (proposal to amend, on an accelerated basis, Nasdaq ISE's initial listing rule to allow the listing and trading of options on the iShares Bitcoin Trust on Nasdaq ISE); and Securities Exchange Act Release No. 99397 (January 12, 2024), 89 FR 5079 (January 19, 2024) (SR–MIAX–2024–03) (proposal to amend, on an accelerated basis, MIAX's initial listing rule to allow the listing and trading of options on ETFs that represent interests in a trust that holds bitcoin, designating them as ETFs deemed appropriate for options trading on MIAX). *See also* Securities Exchange Act Release No. 99398 (January 19, 2024), 89 FR 5029 (January 25, 2024) (SR–NYSEARCA–2024–06) (proposal to amend, on an accelerated basis, NYSE Arca's initial listing rule to allow the listing and trading of options on Commodity-Based Trust Shares, which generic listing standard would, if approved, permit options on Commodity ETFs backed by bitcoin). Pursuant to the Exchange's Rules, the Exchange would only have authority to list and trade options on ETFs if the underlying securities are trading as NMS stocks.

[7] *See* Commentary .06, which permits options trading on ETFs that are traded on a national securities exchange and are defined as an ''NMS stock'' in Rule 600(b)(55) of Regulation NMS, that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse purchase agreements (the ''Financial Instruments''), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the ''Money Market Instruments'') comprising or otherwise based on or representing investments in indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments); interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust (''Currency Trust Shares''); commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (''Commodity Pool Units''); or represents an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (''NAV''), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (''Managed Fund Share''); provided that all of the conditions listed in Rules 915 and 916 are met.

[8] *See supra* note 4 (regarding order approving rule changes to list and trade shares of ''Bitcoin-Based Commodity-Based Trust Shares'' pursuant to Rule 8.201–E(c)(1) (Commodity-Based Trust Shares), including BITC and GBTC. For a complete description of the BITC and the GBTC, *see* SR–NYSEARCA–2023–44 and SR–NYSEARCA–2021–90, respectively.

[9] The trust may include minimal cash. *See e.g.,* Securities Exchange Act Release No. 99306 (January 8, 2024), 89 FR 2297, 2298 (January 12, 2024) (SR–NYSEARCA–2023–44) (providing that, for BITC, the ''only assets will be bitcoin and cash'').

[10] Similar to other commodity ETFs in which options may be listed on the Exchange pursuant to Rule 915, Commentary .10 (*e.g.,* SPDR Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the ETFS Gold Trust, the ETFS Silver Trust, the ETFS Palladium Trust, or the ETFS Platinum Trust), both GBTC and BITC are trusts that essentially offer analogous objectives and benefits to investors.

[11] As with any ETF that trades on the Exchange, the Exchange would not list and trade options on Bitcoin ETPs, including the Bitwise Bitcoin ETF and the Grayscale Bitcoin Trust (BTC), unless such instruments satisfied all applicable criteria in Rules 915 and 916, as applicable.

requirements, customer accounts and trading halt procedures, will likewise apply to the listing and trading of options on Bitcoin ETPs on the Exchange.

The Exchange's initial listing standards for ETFs on which options may be listed and traded on the Exchange will apply to Bitcoin ETPs. The Exchange expects Bitcoin ETPs to satisfy the initial listing standards as set forth in Rule 915(a) (generally) and Commentary .06 (which applies to ETFs specifically). Pursuant to Rule 915(a), a security (which includes ETFs) on which options may be listed and traded on the Exchange must be duly registered (with the Commission) and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Act,) and be characterized by a substantial number of outstanding shares that are widely held and actively traded. In addition, Commentary .06 requires that ETFs must either (1) meet the criteria and standards set forth in Commentary .01 to Rule 915,[12] or (2) the ETFs are available for creation and redemption each business day as set forth in Commentary .06(a)(ii).

Options on Bitcoin ETPs will also be subject to the Exchange's continued listing standards set forth in Commentary .07 to Rule 916 which provides that options on ETFs may be subject to the suspension of opening transactions as follows: (1) the ETFs no longer meets the terms of Commentary .01 to Rule 916; (2) following the initial twelve-month period beginning upon the commencement of trading of the ETFs, there are fewer than 50 record and/or beneficial holders of the ETFs for 30 or more consecutive trading days; (3) the value of the underlying commodity is no longer calculated or available; or (4) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable. Additionally, ETFs will be deemed to not meet the requirements for continued approval, and the Exchange will not open for trading any additional series of option contracts covering the ETF if such security ceases to be an ''NMS stock'' as provided for Commentary .01(5) to Rule 915 or the ETF is halted from trading on its primary market.[13]

Options on Bitcoin ETPs listed pursuant to proposed Commentary .10 to Rule 915 would be physically [14] settled contracts with American-style exercise [15] and would be included within the definition of securities as such terms are used in the Exchange's rules and, as such, would be subject to Exchange rules and procedures that currently govern the trading of securities on the Exchange, including Exchange rules governing the trading of equity options. Furthermore, the Exchange's rules pertaining to position and exercise limits or margin shall apply to options on Bitcoin ETPs.

Specifically, consistent with Rule 903, which governs the opening of options series on a specific underlying security (including ETFs), the Exchange will open at least one expiration month for options on Bitcoin ETPs and may also list series of options on Bitcoin ETPs for trading on a weekly [16] or quarterly [17] basis. The Exchange may also list long-term equity option series (''LEAPS'') [18] that expire from twelve to thirty-nine months from the time they are listed.

Pursuant to Rule 903, Commentary .05(a), which governs strike prices of series of options on ETFs, the interval between strike prices of series of options on ETFs approved for options trading (per Commentary .06) will be fixed at a price per share which is reasonably close to the price per share at which the underlying security is traded in the primary market at or about the same time such series of options is first open for trading on the Exchange, or at such intervals as may have been established on another options exchange prior to the initiation of trading on the Exchange. With respect to the Short Term Options Series or Weekly Program, during the month prior to expiration of an option class that is selected for the Short Term Option Series Program, the strike price intervals for the related non-Short Term Option (''Related non-Short Term Option'') shall be the same as the strike price intervals for the Short Term Option.[19] Specifically, the Exchange may open for trading Short Term Option Series at strike price intervals of (i) $0.50 or greater where the strike price is less than $100, and $1 or greater where the strike price is between $100 and $150 for all option classes that participate in the Short Term Options Series Program; (ii) $0.50 for option classes that trade in one dollar increments and are in the Short Term Option Series Program; or (iii) $2.50 or greater where the strike price is above $150.[20] Additionally, the Exchange may list series of options pursuant to the $1 Strike Price Interval Program,[21] the $0.50 Strike Program,[22] the $2.50 Strike Price Program,[23] and the $5 Strike Program.[24] Rule 960NY governs the minimum increment for bids and offers for both equity and index options. Pursuant to Rule 960NY, where the price of a series of options in Bitcoin ETPs is less than $3.00 the minimum increment will be $0.05, and where the price is $3.00 or higher, the minimum increment will be $0.10 [25] consistent with the minimum increments for options on other ETFs listed on the Exchange. Any and all new series of options on Bitcoin ETPs that the Exchange lists will be consistent and comply with the expirations, strike prices, and minimum increments set forth in Rules 915, 903, and 970NY, as applicable.

Position and exercise limits for options on ETFs, including options on Bitcoin ETPs, are determined pursuant to Rules 904 and 905, respectively. Position and exercise limits for ETFs

[12] *See* Commentary .01 to Rule 915, which sets forth minimum requirements for the underlying security which include, but are not limited to, 7,000,000 underlying shares, 2,000 shareholders, and trading volume of 2,400,000 shares over the preceding twelve months. Additionally, the rule requires that the market price per share of the underlying security must be at least $7.50 for the majority of business days during the three calendar months preceding the date of selection of an option class. For underlying securities that are deemed Covered Securities, as defined under Section 18(b)(1)(A) of the Securities Act of 1933, the closing market price of the underlying security must be at least $3.00 per share for the previous three consecutive business days prior to the date of selection of an option class.

[13] *See* Commentary .07 to Rule 916. For avoidance of doubt and consistent with this proposal, the Exchange proposes to amend Rule 916 to include in Bitcoin in ETPs in the list of ETFs subject to the continued listing standards. *See* proposed Commentary .11 to Rule 916 (proving that ''[f]or purposes of Commentary .07 of this Rule 916, shares of the SPDR® Gold Trust (symbol: GLD), iShares COMEX Gold Trust (symbol: IAU), the iShares Silver Trust (symbol: SLV), and the ETFS Silver Trust (symbol: SIVR), the ETFS Gold Trust (symbol: SGOL), the ETFS Palladium Trust (symbol: PALL), the ETFS Platinum Trust (symbol: PPLT), *the Bitwise Bitcoin ETF (symbol: BITC), the Grayscale Bitcoin Trust (BTC) (symbol: GBTC), and any trust that holds bitcoin,* are deemed to be ''Exchange-Traded Fund Shares'') (emphasis added).

[14] *See* Amendment No 2.

[15] *See* Rule 902 (Rights and Obligations of Holders and Writers), which provides that the rights and obligations of holders and writers of option contracts of any class of options dealt in on the Exchange shall be as set forth in the Rules of the Clearing Corporation. *See also* OCC Rules, Chapter VIII, which governs exercise and assignment, and Chapter IX, which governs the discharge of delivery and payment obligations arising out of the exercise of physically settled stock option contracts. OCC Rules can be located at: *https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occrules.pdf.*

[16] *See* Rule 903(h).

[17] *See* Rule 903, Commentary .09.

[18] *See* Rule 903, Commentary .03.

[19] *See* Rule 903, Commentary .10(d).

[20] *Id.*

[21] *See* Rule 903, Commentary .06.

[22] *See* Rule 903, Commentary .13.

[23] *See* Rule 903, Commentary .07(a).

[24] *See* Rule 903, Commentary .12.

[25] Options that are eligible to participate in the Penny Interval Program have a minimum increment of $0.01 below $3.00 and $0.50 above $3.00. *See* Rule 970NY(a)(3).

options vary according to the number of outstanding shares and the trading volumes of the underlying ETF over the past six months, where the largest in capitalization and the most frequently traded ETFs have an option position and exercise limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization ETFs have position and exercise limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, recapitalizations, etc.) on the same side of the market. Further, Rule 462, which governs margin requirements applicable to the trading of all options on the Exchange including options on ETFs, will also apply to the trading of Bitcoin ETP options.

* * * * *

The Exchange notes that options on Bitcoin ETPs would not be available for trading until The Options Clearing Corporation (''OCC'') represents to the Exchange that it is fully able to clear and settle such options. The Exchange has also analyzed its capacity and represents that it and The Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional traffic associated with the listing of options on Bitcoin ETPs. The Exchange believes any additional traffic that would be generated from the trading of options on Bitcoin ETPs would be manageable. The Exchange represents that Exchange members will not have a capacity issue as a result of this proposed rule change.

The Exchange represents that the same surveillance procedures applicable to all other options on other ETFs currently listed and traded on the Exchange will apply to options on Bitcoin ETPs. The Exchange's existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior which might arise from listing and trading options on ETFs, including the options on Bitcoin ETPs. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of options on Bitcoin ETPs in all trading sessions and to deter and detect violations of Exchange rules. In addition, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Bitcoin ETPs. Also, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG, or from other exchanges with which the Exchange has entered into a comprehensive surveillance sharing agreement (''CSSA''). The Exchange will enter into new CSSAs with other exchanges as necessary to effectively monitor the trading of options on Bitcoin ETPs. The Exchange represents that these procedures will be adequate to properly monitor Exchange trading of options on Bitcoin ETPs and to deter and detect violations of Exchange rules.

Finally, quotation and last sale information for ETFs is available via the Consolidated Tape Association (''CTA'') high speed line. Quotation and last sale information for such securities is also available from the exchange on which such securities are listed. Quotation and last sale information for options on Bitcoin ETPs will be available via OPRA and major market data vendors.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[26] in general and furthers the objectives of Section 6(b)(5) of the Act[27] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

In particular, the Exchange believes that the proposal to list and trade options on Bitcoin ETPs will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors because offering options on Bitcoin ETPs will provide investors with a greater opportunity to realize the benefits of utilizing options on an ETF based on spot bitcoin, including cost efficiencies and increased hedging strategies. The Exchange believes that offering options on a competitively priced ETF based on spot bitcoin will benefit investors by providing them with an additional, relatively lower cost risk management tool allowing them to manage, more easily, their positions, and associated risks, in their portfolios in connection with exposure to spot bitcoin. Today, the Exchange lists options on other commodity ETFs structured as a trust, which essentially offer analogous objectives and benefits to investors, and for which the Exchange has not identified any issues with the continued listing and trading of options on those ETFs.

The Exchange also believes the proposal to permit options on Bitcoin ETPs will remove impediments to and perfect the mechanism of a free and open market and a national market system, because options on Bitcoin ETPs will comply with current Exchange rules as discussed herein. Specifically, options on Bitcoin ETPs must satisfy the initial listing standards and continued listing standards currently in the Exchange rules, applicable to options on all ETFs, including options on other commodity ETFs already deemed appropriate for options trading on the Exchange pursuant to Rule 915, Commentary .10. Further, Exchange rules that currently govern the listing and trading of options on ETFs, including permissible expirations, strike prices, minimum increments, position and exercise limits, and margin requirements, will govern the listing and trading of options on Bitcoin ETPs.

The Exchange represents that it has the necessary systems capacity to support any additional traffic that may be generated by the trading of options on Bitcoin ETPs. In addition, the Exchange represents that its existing surveillance procedures are adequate to properly monitor the trading of options on Bitcoin ETPs in all trading sessions and to deter and detect violations of Exchange rules. The Exchange further represents that it will implement new surveillance procedures, as necessary, to effectively monitor the trading of options on Bitcoin ETPs. Finally, the Commission has previously approved the listing and trading of options on other commodity ETFs structured as a trust, such as SPDR Gold Trust,[28] the iShares COMEX Gold Trust,[29] the iShares Silver Trust,[30] the ETFS Gold Trust,[31] and the ETFS Silver Trust.[32]

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] *See* Securities Exchange Act Release No. 57897 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR–Amex–2008–15; SR–CBOE–2005–11; SR–ISE–2008–12; SR–NYSEArca–2008–52; and SR–Phlx–2008–17) (Order Granting Approval of a Proposed Rule Change, as Modified, and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified, Relating to Listing and Trading Options on the SPDR Gold Trust).

[29] *See* Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (SR–Amex–2008–68; SR–BSE–2008–51; SR–CBOE–2008–72; SR–ISE–2008–58; SR–NYSEArca–2008–66; and SR–Phlx–2008–58) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to the Listing and Trading Options on Shares of the iShares COMEX Gold Trust and the iShares Silver Trust).

[30] *Id.*

[31] *See* Securities Exchange Act Release No. 61483 (February 3, 2010), 75 FR 6753 (February 10, 2010) (SR–CBOE–2010–007; SR–ISE–2009–106; SR–NYSEAmex–2009–86; and SR–NYSEArca–2009–110) (Order Granting Approval of Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Listing and Trading Options on the ETFS Gold Trust and the ETFS Silver Trust).

[32] *Id.*

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition: The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as options on Bitcoin ETPs will be subject to initial listing standards and continued listing standards the same as other options on ETFs listed on the Exchange. Further, options on Bitcoin ETPs will be subject to Exchange rules that currently govern the listing and trading of options on ETFs, including permissible expirations, strike prices, minimum increments, position and exercise limits, and margin requirements. Moreover, options on Bitcoin ETPs will be equally available to all market participants who wish to trade such options. Finally, and as stated above, the Exchange already lists options on other commodity ETFs structured as a trust.

Intermarket Competition: The Exchange does not believe the proposal will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the extent that permitting options on Bitcoin ETPs to trade on the Exchange may make the Exchange a more attractive marketplace to market participants, such market participants are free to elect to become market participants on the Exchange. Additionally, other options exchanges are free to amend their listing rules, as applicable, to permit them to list and trade options on Bitcoin ETPs. The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition as it is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors by providing them with a lower-cost option to hedge their investment portfolios. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues that offer similar products. Ultimately, the Exchange believes that offering options on Bitcoin ETPs for trading on the Exchange will promote competition by providing investors with an additional, relatively low-cost means to hedge their portfolios and meet their investment needs in connection with spot bitcoin prices and bitcoin related products and positions.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2024–10 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–2024–10. 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–2024–10 and should be submitted on or before March 21, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99591; File No. SR–NYSE–2024–08]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Content of the NYSE Best Quote & Trades Data Feed

February 23, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 14, 2024, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[33] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the content of the NYSE Best Quote & Trades (''NYSE BQT'') data feed to identify the current day consolidated first price and last price of a security published by the securities information processors for all listed equity securities. 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 enhance the content of NYSE BQT to identify the current day consolidated first price and last price of a security published by the securities information processors (''SIPs'') for all listed equity securities.

The NYSE BQT [4] data feed provides a unified view of best bid and offer (''BBO'') and last sale information (''Trades'') for the Exchange and its affiliates, NYSE Arca, Inc. (''NYSE Arca''), NYSE American LLC (''NYSE American''), NYSE National, Inc. (''NYSE National'') and NYSE Chicago, Inc. (''NYSE Chicago'') and consists of data elements from ten existing market data feeds: NYSE Trades,[5] NYSE BBO,[6] NYSE Arca Trades,[7] NYSE Arca BBO,[8] NYSE American Trades,[9] NYSE American BBO,[10] NYSE National Trades,[11] NYSE National BBO,[12] NYSE Chicago Trades,[13] and NYSE Chicago BBO.[14]

NYSE BBO, NYSE Arca BBO, NYSE American BBO, NYSE National BBO and NYSE Chicago BBO are existing data feeds that distribute on a real-time basis the same BBO information that NYSE, NYSE Arca, NYSE American, NYSE National and NYSE Chicago, respectively, report under the Consolidated Quotation (''CQ'') Plan for inclusion in the CQ Plan's consolidated quotation information data stream. NYSE Trades, NYSE Arca Trades, NYSE American Trades, NYSE National Trades and NYSE Chicago Trades are existing data feeds that distribute on a real-time basis the same last sale information that NYSE, NYSE Arca, NYSE American, NYSE National and NYSE Chicago, respectively, report under the Consolidated Tape Association (''CTA'') Plan for inclusion in the CTA Plan's consolidated data streams. Among other things, NYSE BQT also includes consolidated volume for all listed equity securities regardless of where a transaction is executed.

The Exchange also previously amended NYSE BQT to include the consolidated high and consolidated low price for all equity securities as obtained directly from the SIPs.[15] The consolidated high and consolidated low price for all equity securities is disseminated via NYSE BQT after the CTA Plan and Unlisted Trading Privileges (''UTP'') Plan SIP delay period.[16]

Now, in addition to the information currently provided in NYSE BQT, the Exchange proposes to include the current day consolidated first price [17] and current day consolidated last price of a security published by the SIPs for all listed equity securities as obtained directly from the SIPs. The consolidated first price and consolidated last price for all equity securities would be disseminated via NYSE BQT after the CTA and UTP Plan delay period. The delay period for CTA equity securities is currently 15 minutes after publication and the delay period for UTP equity securities is 15 minutes after the end of the current day. Such information would provide NYSE BQT users with a static benchmark against which to compare price movements shown on NYSE BQT using first and last prices in the consolidated market. The Exchange's proposal is in response to requests by subscribers using NYSE BQT, and also to achieve feature parity with a competitor exchange's data product.[18]

The NYSE BQT data feed is offered in a capacity similar to that of a vendor. The Exchange, NYSE Arca, NYSE American, NYSE National and NYSE Chicago are the exclusive distributors of the 10 BBO and Trades feeds [19] from which certain data elements are taken to create NYSE BQT. By contrast, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that composes the NYSE BQT data feed. Other vendors would be able, if they chose, to create a data feed with the same information included in NYSE BQT, and to distribute it to clients with no greater latency than the Exchange would be able to distribute NYSE BQT.

The Exchange will announce the implementation date of this proposed rule change by Trader Update, which, subject to the effectiveness of this proposed rule change, will be no later than the second quarter of 2024. The Exchange is not proposing any change to the fees for NYSE BQT as a result of this modification.

[4] *See* Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, To Establish the NYSE Best Quote and Trades Data Feed).

[5] *See* Securities Exchange Act Release Nos. 59290 (January 23, 2009), 74 FR 5707 (January 30, 2009) (SR–NYSE–2009–05); and 59606 (March 19, 2009), 74 FR 13293 (March 26, 2009) (SR–NYSE–2009–04).

[6] *See* Securities Exchange Act Release No. 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30).

[7] *See* Securities Exchange Act Release Nos. 59289 (January 23, 2009), 74 FR 5711 (January 30, 2009) (SR–NYSEArca–2009–06); and 59598 (March 18, 2009), 74 FR 12919 (March 25, 2009) (SR–NYSEArca–2009–05).

[8] *See* Securities Exchange Act Release No. 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR–NYSEArca–2010–23).

[9] *See* Securities Exchange Act Release No. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR–NYSEAmex–2010–35).

[10] *See* Securities Exchange Act Release No. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR–NYSEAmex–2010–35).

[11] *See* Securities Exchange Act Release No. 83350 (May 31, 2018), 83 FR 26332 (June 6, 2018) (SR–NYSENAT–2018–09).

[12] *See* Securities Exchange Act Release No. 83350 (May 31, 2018), 83 FR 26332 (June 6, 2018) (SR–NYSENAT–2018–09).

[13] *See* Securities Exchange Act Release No. 87389 (October 23, 2019), 84 FR 57904 (October 29, 2019) (SR–NYSECHX–2019–15).

[14] *See* Securities Exchange Act Release No. 87389 (October 23, 2019), 84 FR 57904 (October 29, 2019) (SR–NYSECHX–2019–15).

[15] *See* Securities Exchange Act No. 93000 (September 15, 2021), 86 FR 52505 (September 21, 2021) (SR–NYSE–2021–51) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Content of the NYSE Best Quote & Trades).

[16] *Id.*

[17] Consolidated first price is the first last-sale eligible trade published by the SIP.

[18] *See* Securities Exchange Act No. 91241 (March 2, 2021), 86 FR 13427 (March 8, 2021) (SR–NASDAQ–2021–010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Enhance the End of Day Summary Message on Nasdaq Last Sale Plus).

[19] These data feeds are offered pursuant to pre-existing and already effective rules filed with the Commission; those rules will not be altered by this filing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) [20] of the Act (''Act''), in general, and furthers the objectives of Section 6(b)(5) [21] of the Act, in particular, 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 mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the NYSE BQT market data feed to those interested in receiving it. The NYSE BQT data feed is a product that relies on the Exchange's receipt of underlying data, which is available to all market participants, before it can aggregate and consolidate information to create the NYSE BQT; this is a process that a vendor could also perform. Accordingly, the Exchange is not the only distributor of the NYSE BQT data feed.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [22] in that it supports (1) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (2) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

Furthermore, the Exchange believes that the proposed rule change is consistent with Rule 603 of Regulation NMS,[23] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker dealers increased authority and flexibility to offer new and unique market data to consumers of such data. 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.

The proposed rule change is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by identifying the consolidated first price and consolidated last price of a security published by the SIPs for all listed equity securities as obtained directly from the SIPs. Such information would provide NYSE BQT users with a static benchmark against which to compare price movements shown on NYSE BQT using first and last prices in the consolidated market. Therefore, the consolidated first and consolidated last price for listed equity securities would provide meaningful information to investors.

The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving such information. As noted above, another exchange currently provides similar price information in its market data product.[24] Therefore, the Exchange believes the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest as it would provide an additional avenue for investors to receive this information from a competing product.

In addition, this proposal would not permit unfair discrimination because NYSE BQT will continue to be available to all of the Exchange's customers through SFTI and market data vendors on an equivalent basis. In addition, any customer that wished to continue to be able to purchase one or more of the individual underlying data feeds would be able to do so.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[25] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will enhance competition because it would enable the Exchange to include the consolidated first price and consolidated last price of a security published by the SIPs for all listed equity securities as part of NYSE BQT, thereby enabling it to better compete with similar market data products offered by another exchange that includes such information.[26] As noted above, the Exchange already offers NYSE BQT and this proposed rule change simply amends the content of the current market data product to include the consolidated first and consolidated last price for all listed equity securities. The Exchange is not the exclusive distributor of the consolidated first and consolidated last price information that would compose the amended NYSE BQT data feed. Vendors would be able, if they chose, to create a data feed with the same information as NYSE BQT and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange's product. Specifically, a competing vendor could receive the consolidated first and consolidated last price from the SIPs and include that information as part of their market data products to be disseminated to customers pursuant to the same terms and policies as the Exchange.[27]

The Exchange believes the proposal will have no impact on intramarket competition as the proposal is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other. Therefore, the Exchange believes the inclusion of the consolidated first and consolidated last price in NYSE BQT would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [28] and Rule

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78k–1.

[23] 17 CFR 242.603.

[24] *See,* note 18, *supra.*

[25] 15 U.S.C. 78f(b)(8).

[26] *See,* note 18, *supra.*

[27] *See* CTA Consolidated Volume Display Policy with FAQ at *https://www.ctaplan.com/publicdocs/ctaplan/Policy_CTA_Consolidated_Volume_Display_with_FAQ.pdf.*

[28] 15 U.S.C. 78s(b)(3)(A)(iii).

19b–4(f)(6) thereunder.[29] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[30] and Rule 19b–4(f)(6)(iii) thereunder.[31]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[32] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2024–08 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–2024–08. 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–2024–08 and should be submitted on or before March 21, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–04167 Filed 2–28–24; 8:45 am]

BILLING CODE 8011–01–P

[29] 17 CFR 240.19b–4(f)(6).

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[32] 15 U.S.C. 78s(b)(2)(B).

[33] 17 CFR 200.30–3(a)(12), (59).

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35):

SSS Forms 2, 3A, 3B, and 3C

Title: Selective Service System Change of Information, Correction/Change Form, and Registration Status Forms.

Purpose: To ensure the accuracy and completeness of the Selective Service System registration data.

Respondents: Registrants are required to report changes or corrections in data submitted on the SSS Form 1.

Frequency: When changes in a registrant's name or address occur.

Burden: A burden of two minutes or less on the individual respondent.

Change: None.

Copies of the above-identified forms can be obtained upon written request to the Selective Service System, Public & Intergovernmental Affairs Directorate, 1501 Wilson Boulevard, Arlington, Virginia 22209.

Written comments and recommendations for the proposed extension of clearance of the forms should be sent within 60 days of the publication of this notice to: Selective Service System, Public & Intergovernmental Affairs Directorate, 1501 Wilson Boulevard, Arlington, Virginia 22209.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Daniel A. Lauretano, Sr.,

General Counsel.

[FR Doc. 2024–04190 Filed 2–28–24; 8:45 am]

BILLING CODE 8015–01–P

DEPARTMENT OF STATE

[Public Notice: 12347]

Advisory Committee on Historical Diplomatic Documentation—Notice of Closed and Open Meetings for June 2024

SUMMARY: The Advisory Committee on Historical Diplomatic Documentation will meet in person in open and closed sessions to discuss matters concerning declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series.

DATES: June 10–11, 2024. RSVP and requests for reasonable accommodation for the meeting should be sent not later than June 3, 2024.

ADDRESSES: Open session for the meeting will take place from 10 a.m. until noon in SA–4D Conference Room 109, Department of State, 2300 E Street NW, Washington, DC 20372 (Potomac Navy Hill Annex), with a virtual option on June 10, 2024.

FOR FURTHER INFORMATION CONTACT: Questions concerning the meeting should be directed to Adam M. Howard, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20372, telephone (202) 955–0214, (email: *history@state.gov*).

SUPPLEMENTARY INFORMATION:

Closed Sessions. The Committee's sessions in the afternoon of Monday, June 10, 2024, and in the morning of Tuesday, June 11, 2024, will be closed in accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the Foreign Relations series and other declassification issues. These are matters properly classified and not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

RSVP Instructions. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. Government or military ID) are required for entrance into the Department of State building. Members of the public planning to attend the open meetings should RSVP, by the dates indicated above, to Julie Fort, Office of the Historian (202–955–0214). When responding, please provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. Government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the specified forms of ID, please consult with Julie Fort for acceptable alternative forms of picture identification.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State–36) at *https://www.state.gov/wp-content/uploads/2019/05/Security-Records-STATE-36.pdf,* for additional information.

Note that requests for reasonable accommodation received after the dates indicated in this notice will be considered but might not be possible to fulfill.

(Authority: 5 U.S.C. 1009, 22 U.S.C. 2651a, and 41 CFR 102–3.150)

Adam M. Howard,

Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State.

[FR Doc. 2024–04279 Filed 2–28–24; 8:45 am]

BILLING CODE 4710–34–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36744]

Canadian National Railway Company and Grand Trunk Corporation—Control—Iowa Northern Railway Company

AGENCY: Surface Transportation Board.

ACTION: Decision No. 1 in Docket No. FD 36744; notice of acceptance of application; notice of acceptance of related filings for consideration; issuance of procedural schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration an application (Application) filed on January 30, 2024, by Canadian National Railway Company (CNR) and Grand Trunk Corporation (GTC), together with the Iowa Northern Railway Company (Iowa Northern or IANR) (collectively, Applicants). The Application seeks Board approval for CNR and GTC to acquire control of Iowa Northern, a Class III rail carrier that operates a total of approximately 218 route miles in the state of Iowa. This proposal is referred to as the ''Proposed Transaction.'' The Board is also accepting for consideration two related filings. Those filings are verified notices of exemption seeking Board approval of transactions involving mutual trackage rights between Iowa Northern and the Chicago, Central & Pacific Railroad Company (CCP), an indirect rail carrier subsidiary of GTC (Related Transactions).

DATES: The effective date of this decision is February 29, 2024. Any person who wishes to participate in this proceeding as a Party of Record must file, no later than March 15, 2024, a notice of intent to participate. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the Application and related filings, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by April 1, 2024. Responses to comments, protests, requests for conditions, other opposition, and rebuttal in support of the Application or related filings must be filed by May 1, 2024. *See* Appendix (Procedural Schedule). A final decision in this matter will be served no later than July 26, 2024. Further procedural orders, if any, would be issued by the Board.

ADDRESSES: Any filing submitted in this proceeding should be filed with the Board via e-filing on the Board's website. In addition, one copy of each filing must be sent (and may be sent by email only if service by email is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) CNR's and GTC's representative, Matthew J. Warren, Sidley Austin LLP, 1501 K Street NW, Washington, DC 20005; (4) Iowa Northern's representative, Kevin M. Sheys, Law Office of Kevin M. Sheys LLC, 42 Brush Hill Road, Sherborn, MA 01770; and (5) any other person designated as a Party of Record on the service list.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher at (202) 245–0355. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: Applicants seek the Board's prior review and authorization pursuant to 49 U.S.C. 11323–25 and 49 CFR part 1180 for CNR and GTC to acquire control of Iowa Northern. (Appl. 1.) Applicant GTC is a non-carrier holding company through which CNR controls its U.S. rail carrier subsidiaries.[1] (*Id.* at 1 n.1.) Applicant Iowa Northern is a Class III rail carrier wholly owned by Cable & Ives, LLC (Cable & Ives). (*Id.* at 1–2, 11.) On December 6, 2023, GTC signed and closed an agreement to acquire 100% of the equity interest of Cable & Ives. (*Id.* at 1–2, 12.) According to Applicants, the shares of Cable & Ives were deposited into an independent voting trust pursuant to 49 CFR part 1013, pending review of the Proposed Transaction by the Board.[2] (Appl. 1–2, 11–12; *see also* CN Letter Filing of Voting Trust Agreement, FD 36744, Dec. 6, 2023.) Upon Board approval of the Proposed Transaction, Iowa Northern would become an indirect rail carrier subsidiary of GTC and would be indirectly controlled by CNR. (Appl. 3.)

[1] CNR and its U.S. rail operating subsidiaries are referred to collectively as ''CN.'' (Appl. 1 n.1.)

[2] Applicants state that, during the voting trust period, Iowa Northern continues to operate independently and is controlled by existing Iowa Northern management. (Appl. 12.)

Applicants state that Iowa Northern owns or leases approximately 175 route miles of rail line in Iowa and operates via trackage rights over an additional approximately 43 route miles of track, for a total distance of 218 route miles. (*Id.* at 1 & n.2.) Applicants explain that Iowa Northern's system is organized into four subdivisions. (*Id.,* Ex. 15, Operating Plan 3.) Applicants state that Iowa Northern's main line runs 116.7 miles extending northwest from Cedar Rapids through Waterloo (Cedar Rapids Subdivision) and Cedar Falls to Manly (Manly Subdivision). (*Id.* at 30; *id.,* Ex. 15, Operating Plan 3, Fig. 2.) Applicants further state that Iowa Northern owns the Cedar Rapids and Manly Subdivisions and connects those lines via overhead trackage rights on approximately 8.7 miles of track owned by CN. (*Id.,* Ex. 15, Operating Plan 3, 5, Fig. 4.) Applicants note that Iowa Northern also operates over a short portion of a Union Pacific Railroad Company (UP) line in Cedar Rapids, which Iowa Northern uses to access UP, CN, and the Cedar Rapids and Iowa City Railway (CRANDIC) in Cedar Rapids. (*Id.,* Ex. 15, Operating Plan 5, Fig. 5.) Regarding the Waterloo–Oelwein subdivision (Oelwein Subdivision), Applicants state that Iowa Northern owns the branch line extending from Dewar, near Waterloo, to Oelwein, and Iowa Northern accesses that line via an approximately seven-mile track known as the ''Waterloo Industrial Lead,'' extending from Waterloo to Dewar, and leased from UP. (*Id.,* Ex. 15, Operating Plan 3, Fig. 4.) Regarding the Forest City–Belmond subdivision (Garner Subdivision), Applicants state that Iowa Northern leases that line from North Central Iowa Rail Corridor, L.L.C., and accesses the line via approximately 30.2 miles of overhead trackage rights on a Canadian Pacific Kansas City Limited (CPKC) line from Nora Springs to Garner. (*Id.,* Ex. 15, Operating Plan 3, 5, Fig. 2.)

According to Applicants, CN's current network spans approximately 18,600 route miles in 13 U.S. states and eight Canadian provinces. (*Id.,* Ex. 15, Operating Plan 8.) With respect to CN's operations in Iowa, Applicants state that CCP is the CN rail operating subsidiary that primarily owns and operates CN's rail lines in Iowa. (*Id.*) Applicants note that CN currently has 226 craft employees in Iowa and operates 574 route miles in the state. (*Id.*) Specifically, CN operates main lines east from Sioux City and Council Bluffs that converge near Fort Dodge and run through Waterloo and Dubuque, Iowa, with several secondary lines in between. (*Id.*)

Financial Arrangements. According to Applicants, no new securities would be issued in connection with the Proposed Transaction. Applicants state that the only relevant financial arrangement is the payment of the purchase price by GTC, as provided in the Unit Purchase Agreement. (*Id.* at 17.)

Passenger Service Impacts. Applicants anticipate no impact on commuter or other passenger service. (*Id.* at 39.) According to Applicants, there is no commuter or other such service on Iowa Northern, and the Proposed Transaction is not expected to impact any passenger service operating on any CN lines. (*Id.,* Ex. 15 at 29.)

Discontinuances/Abandonments. Applicants state that there are no planned abandonments or discontinuances as a result of the Proposed Transaction. (*Id.* at 39, Ex. 15 at 30.) Applicants note, however, that Iowa Northern has been working with the City of Cedar Falls regarding removal of Iowa Northern's Cedar Falls Utility Spur, and that CN will cooperate with preexisting efforts by the City of Cedar Falls to abandon and remove this track after it assumes control of Iowa Northern, including obtaining any necessary Board authority. (*Id.* at 39, Ex. 15 at 30.)

Public Interest Considerations.[3] Applicants assert that the Proposed Transaction would not result in the lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation. (Appl. 17.) Indeed, Applicants state that the Proposed Transaction would have no negative competitive impacts as there would be no two-to-one rail customer stations—*i.e.,* no shipper has access exclusively to both CN and Iowa Northern. (*Id.* at 18; *id.,* App. B, V.S. Hunt 6 & Ex. 6–1.) Applicants further argue that ''while the Board's focus is generally on preserving competition between two rail carriers,'' there are only three potential three-to-two customer stations. (*Id.* at 18; *id.,* App. B, V.S. Hunt 6 & Ex. 6–1.) According to Applicants, those customer stations currently have access to CN, Iowa Northern, and UP. (*Id.* at 18.) Nevertheless, Applicants assert that CN has committed to ensuring continued access to UP. *(Id.*)

Applicants further note that CN will preserve existing access between Iowa Northern and other railroads—Iowa Northern currently interchanges with three Class I railroads (including CN) and one short line. (*Id.*) Applicants specifically state that CN has committed to providing Iowa Northern-served customers with commercially reasonable rates and service for interline traffic with rail carriers other than CN. (*Id.* at 7.) According to Applicants, this commitment encompasses interline traffic that is currently interchanged with CPKC or UP at the northwestern end of Iowa Northern; traffic that is interchanged with UP or CRANDIC in Cedar Rapids; and traffic Iowa Northern moves between UP and the UP Industrial Lead at Waterloo. (*Id.*) Further, Applicants note that this commitment would apply equally to traffic that originates and traffic that terminates on Iowa Northern's lines. (*Id.*) Additionally, Applicants assert that CN has committed to maintaining existing carrier access to locations in current CN and Iowa Northern voluntary reciprocal switch tariffs. (*Id.*)

Applicants claim that, through the Proposed Transaction, a combined CN-Iowa Northern would provide more efficient and economical service, providing customers with access to new market opportunities, while supporting reliable local service on Iowa Northern's lines. (*Id.* at 20.) According to Applicants, customers in a wide range of markets—including ethanol, fertilizer, and grain—would benefit from operational efficiencies and access to markets through new, more efficient single-line service on the combined CN-Iowa Northern system. (*Id.* at 8.) Applicants also state that the Proposed Transaction would provide a firm financial foundation to enable a combined CN-Iowa Northern to continue providing safe, reliable local service to customers in Iowa. (*Id.*) Moreover, Applicants assert that the Proposed Transaction would benefit the Iowa economy and local Iowa customers and communities by supporting the growth of local businesses via new, single-line service between points on Iowa Northern and locations throughout North America over CN's 18,600-mile rail network. (*Id.*)

Time Schedule for Consummation. As noted above, Applicants state that, on December 6, 2023, GTC signed and closed on an agreement to acquire from Sabin Group Holdings, L.L.C., and TCFII IANR SPE LLC, 100% of the equity interest of Cable & Ives, which wholly owns Iowa Northern. (*Id.* at 1.) Applicants state that the shares of Cable & Ives were deposited into an

[3] On January 17, 2024, the Butler County Board of Supervisors submitted a statement in support of the Proposed Transaction. Additionally, several letters raising concerns about the Proposed Transaction have been submitted by individuals. These filings will be discussed in more detail in a subsequent decision.

independent voting trust pursuant to 49 CFR part 1013, pending review of the Proposed Transaction by the Board. (*Id.* at 2, 11–12; *see also* CN Letter Filing of Voting Trust Agreement, FD 36744, Dec. 6, 2023.) According to Applicants, they expect to consummate the Proposed Transaction as soon as practicable after the Board's decision approving the Application becomes effective. (Appl. 13.)

Environmental Impacts. Applicants state that, pursuant to 49 CFR 1105.6(c)(1), no environmental reporting is required because the environmental impacts of the Proposed Transaction fall below the thresholds established in 49 CFR 1105.7(e)(4) and (5). (Appl. 2, 33.)

Historic Preservation Impacts. Applicants state that no historic report is required under 49 CFR 1105.8, as the Proposed Transaction is for the purpose of continued rail operations and Applicants have no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. (Appl. 2, 38.)

Labor Impacts. Applicants state that Iowa Northern currently employs 83 craft employees. (*Id.,* Ex. 15 at 31.) According to Applicants, while some positions may be relocated or modified to permit various efficiencies and service improvements, all Iowa Northern craft employees will be retained to maintain and expand operations. (*Id.*) Applicants further assert that the Board's standard labor protection conditions have been exceeded by employees being offered substantial retention bonuses, in addition to continuation of existing compensation and benefit levels. (*Id.*)

Notwithstanding the above, however, Applicants state that they agree to imposition of labor conditions in accordance with *New York Dock Railway—Control—Brooklyn Eastern District Terminal,* 360 I.C.C. 60 (1979), *aff'd sub nom. New York Dock Railway* v. *United States,* 609 F.2d 83 (2d Cir. 1979). (Appl., Ex. 15 at 31–32.)

Related Filings. Two verified notices of exemption were filed in connection with the Proposed Transaction.[4] Applicants state that the requests are for mutual trackage rights between Iowa Northern and CCP, and that the proposed trackage rights are intended to give the combined CN-Iowa Northern maximum operational flexibility by allowing those carriers to operate trains with their own crews over each other's track in Iowa. (Appl. 2.)

CCP Acquisition of Trackage Rights. In Docket No. FD 36744[5] (Sub-No. 1), CCP seeks overhead and limited local trackage rights from Iowa Northern, pursuant to 49 CFR 1180.2(d)(7), for a rail line extending between IANR milepost 157.5 at Cedar Falls Junction in Cedar Falls and IANR milepost 225.8 at Manly Yard in Manly, a distance of approximately 68.3 miles. CCP states that the proposed trackage rights arrangement would not be consummated until and unless CN acquires control of Iowa Northern pursuant to approval by the Board of the Proposed Transaction. CCP states that employees would be protected by the conditions set forth in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), *as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

Iowa Northern Acquisition of Trackage Rights. In Docket No. FD 36744 (Sub-No. 2), Iowa Northern seeks overhead and limited local trackage rights from CCP for: (1) rail extending from CCP milepost 275.8 at Waterloo east to CCP milepost 183.0 at Dubuque, a distance of approximately 92.8 miles; (2) rail extending from CCP milepost 275.8 at Waterloo west to CCP milepost 381.2 at Tara, Iowa, a distance of approximately 105.4 miles; and (3) an approximately 2.7-mile connecting track at Waterloo. In total, the lines consist of approximately 200.9 miles. Iowa Northern states that the proposed trackage rights arrangement would not be consummated until and unless CN acquires control of Iowa Northern pursuant to approval by the Board of the Proposed Transaction. Iowa Northern states that employees would be protected by the conditions set forth in *Norfolk & Western Railway—Trackage Rights,* 354 I.C.C. 605, *as modified in Mendocino Coast Railway—Lease & Operate,* 360 I.C.C. 653.

Primary Application and Related Filings Accepted. The Board finds that the Proposed Transaction would be a ''minor transaction'' under 49 CFR 1180.2(c), and the Board accepts the Application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. *See* 49 U.S.C. 11321–26; 49 CFR part 1180. Additionally, the Board is accepting for consideration the related verified notices of exemption filed in Docket Nos. FD 36744 (Sub-No. 1) and FD 36744 (Sub-No. 2), which are also in compliance with the applicable regulations. The Board reserves the right to require the filing of supplemental information as necessary to complete the record.

When a transaction does not involve the merger or control of two or more Class I railroads, the Board's treatment differs depending upon whether the transaction would have ''regional or national transportation significance.'' 49 U.S.C. 11325. Under 49 CFR 1180.2, a transaction that does not involve two or more Class I railroads is to be classified as ''minor''—and thus not having regional or national transportation significance—if a determination can be made that either: (1) the transaction clearly will not have any anticompetitive effects; or (2) any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs. A transaction not involving the control or merger of two or more Class I railroads is to be classified as ''significant'' if neither of these determinations can be made.

The Board finds the Proposed Transaction to be a ''minor transaction'' because it appears from the face of the Application that the efficiency and other public interest benefits would clearly outweigh whatever anticompetitive effects may exist. As discussed in the Application, Iowa Northern shippers could benefit from operational efficiencies and access to markets through single-line service on the combined CN-Iowa Northern system. (*See* Appl. 7, 14.) The Proposed Transaction, if approved and implemented, could also provide a firm financial foundation for a combined CN-Iowa Northern to provide safe, reliable local service to customers in Iowa. (*See id.* at 7, 15.) In addition, Iowa Northern customers could benefit from access to a broader range of railroad equipment and improved equipment utilization. (*See id.* at 15.)

Further, the Proposed Transaction does not appear to pose any significant anticompetitive effects. The Application indicates that the Proposed Transaction would not result in any two-to-one customer stations (although, as Applicants acknowledge, there are three potential three-to-two customer stations). (*Id.* at 4, 6, 18; *id.,* App. B, V.S. Hunt 6 & Ex. 6–1.) Additionally, CN has made a gateway commitment to ensure that Iowa Northern customers would

[4] Also, on January 30, 2024, Applicants filed a motion for protective order in Docket No. FD 36744, which was granted by decision served on February 8, 2024.

[5] This decision embraces the following dockets: *Chicago, Central & Pacific Railroad—Trackage Rights Exemption—Iowa Northern Railway,* Docket No. FD 36744 (Sub-No. 1), and *Iowa Northern Railway—Trackage Rights Exemption—Chicago, Central & Pacific Railroad,* Docket No. FD 36744 (Sub-No. 2).

continue to have access to interline options on commercially reasonable terms. (*Id.* at 7). *See also Canadian Nat'l Ry.—Control—EJ&E W. Co.,* FD 35087, slip op. at 10 (STB served Nov. 26, 2007) (designating transaction as minor where, among other things, Applicants committed to protecting interline options with other carriers through an open gateway commitment). Specifically, CN represents that it ''will commit to the Board and to Iowa Northern customers that, if the Proposed Transaction is approved, CN would provide Iowa Northern-served customers with commercially reasonable rates and service for interline traffic with rail carriers other than CN,'' and that such commitment would apply equally both to traffic that originates and terminates on Iowa Northern's lines. (Appl. 7.) CN has also committed to maintain existing carrier access to locations in current CN and Iowa Northern voluntary reciprocal switch tariffs. (*Id.*)

For these reasons, based on the information provided in the Application, the Board finds the Proposed Transaction to be a minor transaction under 49 CFR 1180.2(c). The Board emphasizes that this is not a final determination and may be rebutted by subsequent filings and evidence submitted into the record for this proceeding. Further, this determination should not be read to mean that the Proposed Transaction is insignificant or of little importance. Indeed, after the record is fully developed, the Board will conduct a careful review before making a final determination as to whether the Proposed Transaction would substantially lessen competition, create a monopoly, or restrain trade, and whether any anticompetitive effects would be outweighed by the public interest. *See* 49 U.S.C. 11324(d)(1)–(2). The Board may also consider imposing conditions on the Proposed Transaction.

Procedural Schedule. The Board has considered Applicants' motion for a procedural schedule, filed January 30, 2024. Any person who wishes to participate in this proceeding as a Party of Record must file a notice of intent to participate no later than March 15, 2024; all comments, protests, requests for conditions, and any other evidence and argument in opposition to the Application, including filings by DOJ and DOT, must be filed by April 1, 2024; and responses to comments, protests, requests for conditions, and other opposition on the transportation merits of the Transaction must be filed by May 1, 2024. The Board is required to issue ''a final decision by the 45th day after the date on which it concludes the evidentiary proceedings,'' 49 U.S.C. 11325(d)(2), and will do so here.[6] The adopted procedural schedule is in the Appendix to this decision.

Notice of Intent to Participate. Any person who wishes to participate in this proceeding as a Party of Record must file with the Board, no later than March 15, 2024, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, and Applicants' representatives.

If a request is made in the notice of intent to participate to have more than one name added to the service list as a Party of Record representing a particular entity, the extra name(s) will be added to the service list as a ''Non-Party.'' Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices but not copies of official filings. Persons seeking to change their status must accompany that request with a written certification that he or she has complied with the service requirements set forth at 49 CFR 1180.4 and any other requirements set forth in this decision.

Service on Parties of Record. Each Party of Record will be required to serve upon all other Parties of Record, within 10 days of the service date of this decision, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each Party of Record will also be required to file with the Board, within 10 days of the service date of this decision, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a Party of Record after the service date of this decision must have its own certificate of service indicating that all Parties of Record on the service list have been served with a copy of the filing. Members of the United States Congress and Governors are not Parties of Record and need not be served with copies of filings, unless any Member or Governor has requested to be, and is designated as, a Party of Record.

Service of Decisions, Orders, and Notices. The Board will serve copies of its decisions, orders, and notices on those persons who are designated on the official service list as a Party of Record or Non-Party. All other interested persons are encouraged to obtain copies of decisions, orders, and notices via the Board's website at *www.stb.gov.*

Access to Filings. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). The Application and other filings in this proceeding will be furnished to interested persons upon request and will also be available on the Board's website at *www.stb.gov.*[7] In addition, the Application may be obtained from Applicants' representatives at the addresses indicated above.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application filed in Docket No. FD 36744 is accepted for consideration and the related verified notices of exemption filed in Docket Nos. FD 36744 (Sub-No. 1) and FD 36744 (Sub-No. 2) are accepted for consideration.

2. The parties to this proceeding must comply with the procedural schedule shown in the Appendix to this decision and the procedural requirements described in this decision.

3. This decision is effective on February 29, 2024.

Decided: February 26, 2024.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Eden Besera,

Clearance Clerk.

Appendix

Procedural Schedule

January 30, 2024—Application filed.
February 29, 2024—Board notice of acceptance of Application served.
March 15, 2024—Notices of intent to participate in this proceeding due.
April 1, 2024—All comments, protests, requests for conditions, and any other evidence and argument in opposition to the Application, including filings of DOJ and DOT, due.
May 1, 2024—Responses to comments, protests, requests for conditions, and other opposition due. Rebuttal in support of the Application due.
June 13, 2024—Record closes.
July 26, 2024—Date by which a final decision will be served.

[6] This notice will be published in the **Federal Register** on February 29, 2024, and all subsequent deadlines will be calculated from this date. Deadlines for filings are calculated in accordance with 49 CFR 1104.7(a).

[7] Applicants have submitted a public version and highly confidential version of the Application. The public version is available on the Board's website. The highly confidential version may be obtained from the Applicants' representatives subject to the provisions of the protective order issued by the Board on February 8, 2024.

August 25, 2024 [8]—Board's decision becomes effective.

[FR Doc. 2024–04271 Filed 2–28–24; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0014]

Notice of Intent To Prepare an Environmental Impact Statement for the Cape Cod Bridges Program in Barnstable County, Massachusetts

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The FHWA in coordination with the Massachusetts Department of Transportation Highway Division (MassDOT) is issuing this Notice of Intent (NOI) to solicit comments and advise the public, agencies, and stakeholders that an Environmental Impact Statement (EIS) will be prepared in accordance with the National Environmental Policy Act (NEPA) to study the potential environmental and related social and economic effects of proposed transportation improvements through the Cape Cod Bridges Program in the town of Bourne, Barnstable County, Massachusetts. The Cape Cod Bridges Program proposes critical transportation infrastructure improvements including replacement of the Bourne and Sagamore highway bridges spanning Cape Cod Canal; reconfiguration of the highway approach networks north and south of Cape Cod Canal to align with the replacement highway bridges; and provision of separated pedestrian and bicycle accommodations along the replacement bridges with connections to the local roadway network. This NOI contains a summary of the information required in the Council on Environmental Quality (CEQ) NEPA regulations. This NOI should be reviewed together with the Supplementary NOI Document, which includes important details about the Cape Cod Bridges Program and complements the information in this NOI. Persons and agencies who may be interested in or affected by the Cape Cod Bridges Program are encouraged to comment on the information in this NOI and the Supplementary NOI Document. All comments received in response to this NOI will be considered and any information presented herein may be revised in consideration of the comments.

DATES: Publication of this NOI initiates a 30-day public comment period. Comments on the NOI or the Supplementary NOI Document are to be received by FHWA through the methods below by April 1, 2024.

ADDRESSES: This NOI and the Supplementary NOI Document are also available in the docket referenced above at *www.regulations.gov* and on the Program website located at *http://www.mass.gov/cape-bridges.* The Supplementary NOI Document will be mailed upon request. Interested parties are invited to submit comments by any of the following methods:

Website: For access to the documents, go to the Federal eRulemaking Portal located at *www.regulations.gov* or the Program website located at *https://www.mass.gov/cape-bridges.* Follow the online instructions for submitting comments.

Mailing address or for hand delivery or courier: Cassandra Ostrander, Program Development Team Leader, Federal Highway Administration, 220 Binney Street, 9th Floor, Cambridge, Massachusetts 02142. Office Hours: Monday through Friday (except Federal holidays) from 8 a.m. to 4:30 p.m.

All submissions should include the agency name and the docket number that appears in the heading of this Notice. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. A summary of the comments will be included in the Draft EIS (DEIS).

FOR FURTHER INFORMATION CONTACT:

FHWA: Cassandra Ostrander, Program Development Team Leader, Federal Highway Administration, 220 Binney Street,9th Floor, Cambridge, Massachusetts 02142; email: *cassandra.ostrander@dot.gov;* (617) 494–3113.

MassDOT: Bryan Cordeiro, Project Manager, Massachusetts Department of Transportation, 10 Park Plaza, Suite 6340, Boston, Massachusetts 02116; email: *bryan.j.cordeiro@dot.state.ma.us;* (774) 993–9632.

SUPPLEMENTARY INFORMATION: The FHWA and MassDOT are committed to public involvement for this study. The FHWA, as the Lead Federal Agency, and MassDOT, as sponsor and joint lead agency, are preparing an EIS for the Cape Cod Bridges Program to identify, analyze, and disclose the potential environmental and related social and economic effects of the Build and No Build alternatives. The EIS will be prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 United States Code [U.S.C.] 4321, *et seq.*); 23 U.S.C. 139; Council on Environmental Quality (CEQ) regulations implementing NEPA (40 Code of Federal Regulations [CFR] 1500–1508); FHWA regulations implementing NEPA (23 CFR 771.101–771.139); and applicable Federal, State, and local laws and regulations.

The Supplementary NOI Document provides additional information on the Purpose and Need for the proposed action, alternatives considered, and expected impacts on the human, natural and built environments. The FHWA requests comments and suggestions on the Purpose and Need, study alternatives and impacts, and the identification of any relevant information, studies or analyses of any kind concerning impacts to the quality of the human and natural environment. All public comments received in response to this NOI will be considered, and changes may be made to the study as appropriate.

Program Background

The Bourne and Sagamore Bridges, which were simultaneously built between 1933 and 1935, are two high level, fixed span highway bridges spanning Cape Cod Canal in the town of Bourne, Barnstable County, Massachusetts. The New England District of the U.S. Army Corps of Engineers (USACE) owns, operates, and maintains the Bourne and Sagamore Bridges (collectively referred to as the Cape Cod Canal highway bridges) as part of the Cape Cod Canal Federal Navigation Project. The Cape Cod Canal highway bridges provide the only roadway access for the more than 35 million vehicles that cross Cape Cod Canal each year and serve as the gateway to Cape Cod for more than 250,000 year-round residents of the Cape and Islands (Barnstable, Dukes, and Nantucket counties), and millions of annual visitors to the region during the height of the summer tourist season between Memorial Day and Labor Day. As the only roadway access points between mainland Massachusetts and Cape Cod, and by extension to the islands of Martha's Vineyard and Nantucket via Cape Cod based ferry services, the Cape Cod Canal highway bridges serve as essential routes for general transportation, commerce, tourism, and evacuations in case of emergency. The Cape Cod Canal highway bridges, particularly the Bourne Bridge, also provide the only vehicular access points from the

[8] The final decision will become effective 30 days after it is served.

mainland to major national defense facilities at Joint Base Cape Cod in the upper western portion of Cape Cod.

In accordance with 23 U.S.C. 139(f)(4)(E)(ii) and 40 CFR 1501.12, the Cape Cod Bridges Program builds upon and references prior, multi-year foundational studies, including:

(1) The USACE Cape Cod Canal Bridges Major Rehabilitation Evaluation (MRE), which was completed to evaluate the current condition of the bridges and determine whether standard operation and maintenance, major rehabilitation, or replacement of either or both bridges would provide the most reliable, fiscally responsible solution for providing long-term vehicular access across Cape Cod Canal (*https://www.nae.usace.army.mil/Missions/Projects-Topics/Cape-Cod-Canal-Bridges-Major-Rehabilitation-Study*); and

(2) The MassDOT Office of Transportation Planning (OTP) Cape Cod Canal Transportation Study, which was completed to identify and evaluate existing and future multimodal transportation deficiencies and needs of the existing roadway network around the Cape Cod Canal area (*https://www.mass.gov/lists/cape-cod-canal-study-documents*).

On December 19, 2022, MassDOT requested that FHWA serve as lead Federal Agency for the Cape Cod Bridges Program. On January 20, 2023, FHWA responded in agreement to MassDOT's request. On August 11, 2023, FHWA determined the Cape Cod Bridges Program would require the preparation of an EIS to ensure full and fair discussion of significant environmental impacts are disclosed to decision makers and the public. This NOI initiates the FHWA NEPA review process.

The following information provided in the NOI is supplemented with more detail in the Supplementary NOI Document.

(a) The Purpose and Need for the Proposed Action

The purpose of the Cape Cod Bridges Program is to improve cross-canal mobility and accessibility between Cape Cod and mainland Massachusetts for all road users and to address the increasing maintenance needs and functional obsolescence of the aging Cape Cod Canal highway bridges.

The needs for the Cape Cod Bridges Program are as follows: address the deteriorating structural condition and escalating maintenance demands of the Cape Cod Canal highway bridges; address the substandard design elements of the Cape Cod Canal highway bridges, the immediate mainline approaches, and their adjacent interchanges and intersections; improve vehicular traffic operations; and improve accommodations for pedestrians and bicyclists.

The Purpose and Need statement and supporting documentation, including data and public input summary, is included in the Supplementary NOI Document and will be available in the DEIS. The Purpose and Need may be revised based on consideration of public and agency comments received during the comment period for this NOI and during the Scoping process for the DEIS.

(b) Preliminary Description of the Proposed Action and Alternatives the Environmental Impact Statement Will Consider

Pursuant to 23 U.S.C. 139(f)(4)(E)(ii) and 40 CFR 1501.2, the FHWA and MassDOT's Cape Cod Bridges Program EIS builds upon and references the analyses and findings of MassDOT's Cape Cod Canal Transportation Study and the USACE's Cape Cod Canal Highway Bridges MRER/EA. The Cape Cod Bridges Program EIS incorporates the USACE's proposed action to replace the Bourne and Sagamore Bridges with new adjacent highway bridges, with each structure providing four through-travel lanes and two auxiliary acceleration/deceleration lanes, updated to comply with current Federal and state highway design standards.

Preliminary Description of the Proposed Action. The proposed action will replace the Bourne and Sagamore highway bridges with parallel, twin tied-arch bridge structures supported on Delta frames with an approximate 700-foot mainline span length. At both the Bourne and Sagamore crossings, the replacement bridge mainline alignment location will be fully offline (outside of the existing footprint) and inboard of the existing highway bridges, on the side of the canal between the existing Bourne Bridge and Sagamore Bridge. Additionally, at both canal crossings, the proposed action will reconfigure the highway interchange approach networks north and south of Cape Cod Canal to align with the replacement highway bridges. The FHWA and MassDOT have evaluated a range of highway interchange approach options at both the Sagamore and Bourne crossings; and it is FHWA's and MassDOT's intent to present an evaluation of the interchange options and identify a Preferred Option for the highway interchange approaches at both crossings in the DEIS. Refer to the Supplementary NOI Document for details of the analysis of design parameters that FHWA and MassDOT conducted to determine the recommended design elements of the replacement highway bridges.

Range of Alternatives the EIS will Consider. The range of alternatives includes one Build Alternative retained for detailed study, described above as the proposed action, and the No Build Alternative. The No Build Alternative, which assumes no improvements other than those implemented as part of routine maintenance and to keep the bridge safe and open to traffic in the near term, will be carried forward for study in the DEIS as a baseline for comparison to the Build Alternative.

The alternatives may be revised based on the consideration of public and agency comments. The range of reasonable alternatives to be carried forward and documented in the DEIS will be finalized after consideration of comments received during the comment period on this NOI and after conclusion of the Scoping outreach process. Refer to the Supplementary NOI Document for details of the analysis of design parameters that FHWA and MassDOT conducted to identify the recommended Alternatives Retained for Detailed Study in the DEIS.

(c) Summary of Expected Impacts

The FHWA and MassDOT have initiated data collection and agency coordination to identify the types of environmental, cultural, and socio-economic resources present in the Program Study Areas and those likely to be impacted. The following key resources and issues have been identified for evaluation in the EIS and supporting technical studies:

- *Historic Properties:* There are numerous historical and cultural resources within and adjacent to the Program Study Areas, including but not limited to the Bourne and Sagamore Bridges and the Cape Cod Canal Historic District, which are eligible for listing in the National Register of Historic Places. The EIS will provide a discussion of historical and cultural resources within and adjacent to the Program Study Areas.
- *Section 4(f) Properties:* The Build Alternative may affect publicly owned parks and recreational areas, and public and private historical sites listed or eligible for listing on the National Register of Historic Places that are subject to protection under Section 4(f) of the Department of Transportation Act of 1966 [Section 4(f)]. The Section 4(f) protected public parks and recreational areas within the Program Study Areas include local, State, and Federal resources. Historic sites within and near the Program Study Areas include the

Bourne and Sagamore Bridges, the Cape Cod Canal Historic District, and other public and private historic properties. Potential impacts to Section 4(f) properties will be evaluated, avoided, or minimized to the greatest extent possible as the Program design elements are refined during development of the EIS and the Section 4(f) evaluation.

• *Relocations:* The Build Alternative may require full and partial right-of-way acquisitions from residential and commercial properties within the Program Study Areas. Potential impacts to surrounding residential and commercial properties will be evaluated, avoided, or minimized to the greatest extent possible as the Program design elements are refined during development of the EIS. The FHWA and MassDOT will ensure that any necessary right-of-way is acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

The EIS will also evaluate potential impacts to the following: land use; social and community resources; local and regional economies; environmental justice; air quality and climate; transportation systems; threatened, endangered, and special status species; noise sensitive areas; wetlands and floodplains; coastal resources and navigation; stormwater and water quality; hazardous waste and contaminated materials; public utilities and services; and visual resources. The level of review of the identified resources for the EIS will be commensurate with the anticipated effects to each resource from the proposed action and will be governed by the statutory and regulatory requirements applicable to those resources.

The analyses and evaluations conducted for the EIS will identify the potential for construction-related (short-term) and operational (long-term) effects (direct, indirect, and cumulative); avoidance measures; whether anticipated effects would be adverse; and mitigation measures for any adverse effects. Additional information on the expected impacts is provided in the Supplementary NOI Document available for review in the docket established for this Program and on the Program website as noted in the **ADDRESSES** section. Comments on the expected impacts to be analyzed in the DEIS are welcomed during the NOI comment period. The identification of impacts for analysis in the DEIS may be revised due to consideration of public comments.

(d) Anticipated Permits and Other Authorizations

Anticipated Federal permits and authorizations for the Cape Cod Bridges Program include:

• USACE permits under Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act (33 U.S.C. 403);

• U.S. Coast Guard (USCG) Bridge Permits under Section 9 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. 403);

• National Marine Fisheries Service (NMFS) consultation under Section 7 of the Endangered Species Act (16 U.S.C. 1536) and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371);

• U.S. Fish and Wildlife Service (USFWS) consultation under Section 7 of the Endangered Species Act (16 U.S.C. 1536), the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703), the Bald and Golden Eagle Protection Act (16 U.S.C. 668), and the Fish and Wildlife Coordination Act (16 U.S.C. 661);

• NMFS Essential Fish Habitat Consultation/Assessment under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801–1891d);

• Evaluation under Section 4(f) of the U.S. Department of Transportation Act (49 U.S.C. 303(c));

• Evaluation under Section 106 of the National Historic Preservation Act (54 U.S.C. 306108);

• USACE Section 408 approval under Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408);

• United States Environmental Protection Agency (USEPA) National Pollutant Discharge Elimination System (NPDES) Construction General Permit;

• Federal Aviation Administration (FAA) review under 29 U.S.C. 44718;

• Federal Archaeologist Permit under 43 CFR 7.

Anticipated state and local permits and approvals for the Cape Cod Bridges Program include:

• Massachusetts Executive Office of Energy and Environmental Affairs (MA EEA) Secretary Certification under the Massachusetts Environmental Policy Act (MEPA) Regulations (301 CMR 11.00);

• Bourne Conservation Commission Order of Conditions (OOC) under the Massachusetts Wetlands Protection Act (310 CMR 10.00);

• Massachusetts Department of Environmental Protection (MassDEP) 401 Water Quality Certification (WQC) under the 401 Water Quality Certification Regulations (314 CMR 9.00);

• MassDEP Chapter 91 Licenses under the Massachusetts Public Waterfront Act (310 CMR 9.00);

• Massachusetts Office of Coastal Zone Management (MA CZM) Federal Consistency Review under the Massachusetts Coastal Zone Management Act (301 CMR 20.00);

• Massachusetts Historical Commission (MHC) State Archaeologist Permit (950 CMR 70.00);

• Potential Massachusetts Division of Fisheries and Wildlife (MA DFW) Conservation and Management Permit (CMP) under the Massachusetts Endangered Species Act (MESA) Regulations (321 CMR 10.00).

(e) Schedule for the Decision-Making Process

The schedule for the Cape Cod Bridges Program will be established as part of the requirements of the environmental review process under 23 U.S.C. 139 and will comply with 40 CFR 1501.10(a) and (b)(2) and 23 U.S.C. 23, which requires that environmental reviews and authorization decisions for major projects occur within two years from the date of publication of the NOI to the date of issuance of the Record of Decision (ROD), and all necessary authorizations be issued in 90 days from the ROD.

Following the issuance of this NOI, FHWA and MassDOT will coordinate with the Participating and Cooperating Agencies to develop study documentation and the DEIS.

• Continued Scoping outreach is anticipated in spring of 2024 following publication of this NOI.

• The Draft EIS is anticipated to be issued in spring of 2025.

• The combined Final EIS and ROD is anticipated to be issued in winter of 2026.

• All Federal permits and authorizations are anticipated to be received by spring of 2026.

Refer to the Supplementary NOI Document for additional schedule details.

(f) Scoping and Public Review

In accordance with 23 U.S.C. 139(f)(4)(E)(ii), FHWA and MassDOT have incorporated public and stakeholder comment obtained relative to the Cape Cod Bridges Program Environmental Notification Form (ENF) filing under the Massachusetts Environmental Policy Act (MEPA) (*https://eeaonline.eea.state.ma.us/EEA/MEPA-eMonitor/submittal/efe01f7d-41af-4e7d-84b6-1de46baa8818*). The MassDOT held five rounds of public information meetings between June 2021 and March 2023 and convened an

Advisory Group comprised of local interests and representation to provide feedback and share information throughout Program development.

The public and agency Scoping process is continuing with the publication of this NOI. Publication of this NOI initiates a 30-day Scoping period during which time the public, Tribal governments and other Federal, State, and local agencies are requested to review and comment on any element of the Cape Cod Bridges Program, including the Purpose and Need for the proposed action; the Alternatives Retained for Detailed Study; and identification of any potentially significant adverse environmental impacts to be evaluated in the EIS.

To ensure that the full range of issues related to the Cape Cod Bridges Program is addressed, and all significant issues are identified, comments and suggestions are invited from all interested parties during Scoping. The FHWA will hold at least one public Scoping meeting upon publication of this NOI as part of the Scoping process for the EIS. Advanced notice of the date, time and location of the public Scoping meeting will be provided to the public through the Program website, public notices, and press releases. Such comments or questions concerning this Notice and/or the scope of the EIS, including the Purpose and Need, Alternatives Retained for Detailed Study, and impacts to be evaluated, may be submitted via the Program website or in writing to FHWA or MassDOT at the addresses provided above. Public input received during the Scoping process will be considered in the development of the DEIS. Once complete, the DEIS will be available for agency review and comment prior to the DEIS Public Hearing and for public review at the DEIS Public Hearing. Advanced notice of the date, time and location of the Public Hearing will be provided to the public through the Program website, public notices, and press releases. All substantive public comments on the DEIS will be addressed in the Final EIS (FEIS).

The FHWA intends to issue a single document that consists of the FEIS and ROD pursuant to 49 U.S.C. 304a(b) [and 23 U.S.C. 139(n)(2)] unless FHWA determines that statutory criteria or practicability considerations preclude issuance of such a combined document.

(g) Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

To ensure that a full range of issues related to the Cape Cod Bridges Program is addressed and all potential issues are identified, FHWA invites comments and suggestions from all interested parties. The FHWA requests comments and suggestions on potential alternatives and impacts, and the identification of any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human and natural environment. Any information presented herein, including the Purpose and Need, Alternatives Retained for Detailed Study, and identification of impacts, may be revised after consideration of the comments. The purpose of this request is to bring relevant comments, information, and analyses to the attention of FHWA, as early in the process as possible, to enable FHWA to make maximum use of this information in decision making. Comments may be submitted according to the instructions in the **ADDRESSES** section of this Notice.

Joi B. Singh,

Division Administrator, Cambridge, MA.

[FR Doc. 2024–04160 Filed 2–28–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, that are final. The actions relate to a proposed highway project, State Route 49 and State Route 4, from post miles: 4–8.4–9.1, R20.8–21.4 within the City of Angels Camp in the County Calaveras County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 29, 2024. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Jonathan Coley-Branch Chief, California Department of Transportation, Northern San Joaquin Environmental Management Branch 1, 1976 Doctor Martin Luther King Junior Boulevard, Stockton, CA 95205. Office Hours 8 a.m.–5 p.m., Pacific standard time, (209) 479–4083 or email at *Jonathan.coley@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The Calaveras 49 Mobility Improvement Project will make intersection, roadway, pedestrian, and bicycle improvements along State Route 49 from post miles 8.4 to 9.1 and on State Route 4 from post miles R20.8 to R21.4 in the City of Angels Camp in Calaveras County. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for the project, approved on June 29, 2023, in the Notice of Decision (NOD) issued on July 5, 2023, and in other documents in the project records. The EA, NOD, and other project records are available by contacting Caltrans at the address provided above. The Caltrans EA and NOD can be viewed and downloaded from the project website at *https://dot.ca.gov/caltrans-near-me/district-10/district-10-current-projects/10-1h010.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act of 1969
2. Clean Air Act, 42 U.S.C. 7401–7671
3. Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531–1544
4. National Historic Preservation Act of 1966 (NHPA)
5. Clean Water Act, 33 U.S.C. 1251–1387 (sections 319, 401, and 404)
6. Executive Order 12989, Federal Actions to Address Environmental Justice and Low-Income Populations
7. Resource Conservation and Recovery Act of 1976
8. Comprehensive Environmental Response, Compensation and Liability of Act of 1980

Title VI of the Civil Rights Act of 1964, as amended

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Antonio Johnson,

Director of Planning, Environmental and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2024–04187 Filed 2–28–24; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, the State Route 46 Corridor Improvement Project Antelope Grade Section, approximately 10 miles northeast of the community of Shandon in the County of San Luis Obispo and 32 miles northwest of the census-designated town of Lost Hills in the County of Kern, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: With this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the federal agency's actions on the highway project will be barred unless the claim is filed on or before July 29, 2024. If the federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Lucas Marsalek, Environmental Branch Chief, Caltrans District 5, 50 Higuera Street, San Luis Obispo, CA 93401, (805) 458–5408, *lucas.marsalek@dot.ca.gov,* Monday–Friday, 8 a.m. to 5 p.m. PST.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The State Route 46 Corridor Improvement Project Antelope Grade Section will begin at post mile 57.3 in San Luis Obispo County and will continue to post mile 0.4 in Kern County. Caltrans proposes to convert a 3.6-mile portion of State Route 46 from a two-lane highway to a four-lane expressway with a 62-foot median on a new alignment that roughly parallels the existing highway corridor to the north (FHWA Project Number: 0518000075). The actions by the federal agencies and the laws under which such actions were taken are described in the Final Updated Environmental Assessment (FEA) with Finding of No Significant Impact (FONSI) for the project, approved on January 2, 2024, and in other documents in the project records. The FEA, FONSI, and other project records are available by contacting Caltrans at the address provided above. The Caltrans FEA and FONSI can be viewed and downloaded from the project website at *https://dot.ca.gov/caltrans-near-me/district-5/district-5-current-projects* or viewed at public libraries in the project area.

This notice applies to all federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act of 1969
2. Clean Air Act, 42 U.S.C. 7401–7671
3. Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531–1544
4. National Historic Preservation Act of 1966 (NHPA)
5. Clean Water Act, 33 U.S.C. 1251–1387 (sections 319, 401, and 404)
6. Surface Transportation Project Delivery Pilot Program (Pilot Program) [23 U.S.C. 327]
7. Interagency Cooperation, Endangered Species Act of 1973 [50 CFR 402]
8. Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]
9. Energy Policy and Conservation Act of 1975 [42 U.S.C. 6201]
10. Determining Conformity of Federal Actions to State or Federal Implementation Plans [40 CFR 93]
11. Guidelines for Specification of Disposal Sites for Dredged or Fill Material [40 CFR 230]
12. Procedures for abatement of highway traffic noise and construction noise [23 CFR 772]
13. Farmland Protection Policy Act [7 CFR 658]
14. Protection of Historic Properties [36 CFR 800]
15. Cumulative Impact [40 CFR 1508.7]
16. Protection of Wetlands Executive Order 11990
17. Clean Water Act [33 U.S.C. 1344]
18. Invasive Species Executive Order 13112
19. Federal Migratory Bird Treaty Act [16 U.S.C. 703–711]
20. The Bald and Golden Eagle Protection Act [16 U.S.C. 668]

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Antonio Johnson,

Director of Planning, Environmental, and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2024–04189 Filed 2–28–24; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0178]

Agency Information Collection Activities; Renewal of an Approved Information Collection Request: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The information collected will be used to help ensure that motor carriers of passengers and property maintain the statutorily mandated levels of financial responsibility to operate on public highways. On October 3, 2023, FMCSA published a notice in the **Federal Register** with a 60-day comment period to announce its intention to submit this ICR to OMB for renewal. FMCSA received no comments in response to the published notice.

DATES: Comments on this notice must be received on or before April 1, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Secrist, Office of Registration, Chief, Registration Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590; (202) 385–2367; *jeff.secrist@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property.

OMB Control Number: 2126–0008.

Type of Request: Renewal of a currently approved ICR.

Respondents: Insurance underwriters for insurance companies and financial specialists for surety companies of motor carriers of property (Forms MCS–90 and MCS–82) and passengers (Forms MCS–90B and MCS–82B), and motor carrier compliance officers employed by motor carriers to store and maintain insurance and/or surety bond documentation in motor carrier vehicles.

Estimated Number of Respondents: 413,948.

Estimated Time per Response: FMCSA estimates that it takes 2 minutes to complete the Endorsement for Motor Carrier Policies of Insurance for Public Liability (Forms MCS–90 for property carriers and MCS–90B for passenger carriers) or the Motor Carrier Public Liability Surety Bond (Forms MCS–82 for property carriers and MCS–82B for passenger carriers); 1 minute to store/maintain documents at the motor carrier's principal place of business (49 CFR 387.7(d); 49 CFR 387.31(d)); and 1 minute per vehicle to place the respective document on board the vehicle as required for non-U.S.-domiciled carriers (49 CFR 387.7(f); 49 CFR 387.31(f)).

Expiration Date: May 31, 2024.

Frequency of Response: Upon creation, change, or replacement of an insurance policy or surety bond. Approximately one time per year.

Estimated Total Annual Burden: 12,249.

Background

The Secretary of Transportation is responsible for implementing regulations which establish minimum levels of financial responsibility for: (1) for-hire motor carriers of property to cover public liability, property damage, and environmental restoration, and (2) for-hire motor carriers of passengers to cover public liability and property damage. The Endorsement for Motor Carrier Policies of Insurance for Public Liability (Forms MCS–90/90B) and the Motor Carrier Public Liability Surety Bond (Forms MCS–82/82B) contain the minimum amount of information necessary to document that a motor carrier of property or passengers has obtained, and has in effect, the minimum levels of financial responsibility as set forth in applicable regulations (49 CFR 387.9 (motor carriers of property) and 49 CFR 387.33T (motor carriers of passengers)). FMCSA and the public can verify that a motor carrier of property or passengers has obtained, and has in effect, the required minimum levels of financial responsibility by reviewing the information enclosed within these documents.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2024–04161 Filed 2–28–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0076]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From Convoy Technologies, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA requests public comment on an application for exemption submitted by Convoy Technologies, Inc. (Convoy) to allow motor carriers to operate commercial motor vehicles (CMV) equipped with Convoy's Electronic Rear View System (ERVS) installed as an alternative to the two rear-vision mirrors required by the Federal Motor Carrier Safety Regulations (FMCSRs).

DATES: Comments must be received on or before April 1, 2024.

ADDRESSES: You may submit comments identified by docket number FMCSA–2024–0076 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket/FMCSA-2024-0076/document.* Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. David Sutula, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–5541, *MCPSV@dot.gov.* If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2024–0076), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2024-0076/document,* click on

this notice, click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at *brian.g.dahlin@dot.gov.* At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2024-0076/document* and choose the document to review. To view comments, click this notice, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed under the ''Department Wide System of Records Notices'' at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are posted without edit and are searchable by the name of the submitter.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from the FMCSRs. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely maintain a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (§ 381.305(a)). The Agency must publish its decision in the **Federal Register** (§ 381.315(b)). If granted, the notice will identify the regulatory provision from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (§ 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (§ 381.315(c)(2)). The exemption may be renewed (§ 381.300(b)).

III. Convoy's Application for Exemption

Section 393.80(a) of the FMCSRs requires that each bus, truck, and truck tractor be equipped with two rear-vision mirrors, one at each side. The mirrors must be positioned to reflect to the driver a view of the highway to the rear and the area along both sides of the CMV. Section 393.80(a) cross-references the National Highway Traffic Safety Administration's standard for mirrors on motor vehicles (*i.e.,* 49 CFR 571.111, Federal Motor Vehicle Safety Standard (FMVSS) No. 111). Paragraph S7.1 of FMVSS No. 111 provides requirements for mirrors on multipurpose passenger vehicles and trucks with a gross vehicle weight rating (GVWR) greater than 4,536 kg and less than 11,340 kg and each bus, other than a school bus, with a GVWR of more than 4,536 kg. Paragraph S8.1 provides requirements for mirrors on multipurpose passenger vehicles and trucks with a GVWR of 11,340 kg or more. Convoy has applied for an exemption from § 393.80(a) to allow motor carriers to operate CMVs equipped with the company's ERVS installed as an alternative to the two rear-vision mirrors required by the FMCSRs. This technology is generally considered a camera-based rear visibility system, or Camera Monitor System (CMS). A copy of the application is included in the docket referenced at the beginning of this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on Convoy's application for an exemption to allow motor carriers to use its ERVS in lieu of the rear-vision mirrors required by 49 CFR 393.80(a). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–04220 Filed 2–28–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2024–0018]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on January 4, 2024, Nevada Northern Railway (NNRX) petitioned the Federal Railroad Administration

(FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 215 (Railroad Freight Car Safety Standards) and 224 (Reflectorization of Rail Freight Rolling Stock). FRA assigned the petition Docket Number FRA–2024–0018.

Specifically, NNRX requests a special approval pursuant to 49 CFR 215.203, *Restricted cars,* for 1 car (caboose NNRX 6) that is more than 50 years from the date of original construction. NNRX also seeks relief from § 215.303, *Stenciling of restricted cars,* and § 224.101, *General requirements,* to operate the car in tourist/excursion service. In support of its request, NNRX states that the car will also be used in occasional tourist photographic events. NNRX explains the relief will ''maintain the historic integrity of this [non-insular tourist] railroad'' and that ''the car always remains on [NNRX] track.'' Further, the car will be operated at speeds ''not exceeding 25 [miles per hour], with light tonnage (if any).''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by April 29, 2024 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2024–04240 Filed 2–28–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2004–17188]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on January 15, 2024, Strasburg Rail Road Company (SRC) petitioned the Federal Railroad Administration (FRA) to extend a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 215 (Railroad Freight Car Safety Standards). FRA assigned the petition Docket Number FRA–2004–17188.

Specifically, SRC requests to extend its existing special approval pursuant to 49 CFR 215.203, *Restricted cars,* for a total of 10 cars (SRC 12, PRC 476087, M&P 713, M&P 723, R 6081, R 9194, CV 40025, PRR 96451, PRR 194796, and TW 1367) that are more than 50 years from the date of original construction. SRC also seeks relief from § 215.303, *Stenciling of restricted cars,* to operate the cars in historic freight service. In support of its request, SRC states that the cars are not interchanged and are operated at restricted speed.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by April 29, 2024 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2024–04239 Filed 2–28–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Decommissioning and Disposition of the National Historic Landmark Nuclear Ship Savannah; Notice of Public Meeting

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) announces a public meeting of the Peer Review Group (PRG). The PRG was established pursuant to the requirements of the National Historic Preservation Act (NHPA) and its implementing regulations to plan for the decommissioning and disposition of the Nuclear Ship Savannah (NSS). PRG membership is comprised of officials from the U.S. Department of Transportation, MARAD, the U.S. Nuclear Regulatory Commission (NRC), the Advisory Council on Historic Preservation (ACHP), and the Maryland State Historic Preservation Officer (SHPO) and other consulting parties. The public meeting affords the public

an opportunity to participate in PRG activities, including reviewing and providing comments on draft deliverables. MARAD encourages public participation and provides the PRG meeting information below.

DATES: The meeting will be held on Tuesday, March 19, 2024, from 2:30 p.m. to 4:00 p.m. Eastern Daylight Time (EDT). Requests to attend the meeting must be received by 5:00 p.m. EDT one week before the meeting, Tuesday, March 12, 2024, to facilitate entry or to receive instructions to participate online. Requests for accommodations for a disability must also be received one week before the meeting, Tuesday, March 12, 2024.

ADDRESSES: The meeting will be held onboard the NSS, online, or by phone. The NSS is located at Pier 13 Canton Marine Terminal, 4601 Newgate Avenue, Baltimore, MD 21124.

FOR FURTHER INFORMATION CONTACT: Erhard W. Koehler, (202) 680–2066 or via email at *marad.history@dot.gov.* You may send mail to N.S. Savannah/Savannah Technical Staff, Pier 13 Canton Marine Terminal, 4601 Newgate Avenue, Baltimore, MD 21224, ATTN: Erhard Koehler.

SUPPLEMENTARY INFORMATION:

I. Background

The decommissioning and disposition of the NSS is an Undertaking under section 106 of the NHPA. Section 106 requires that Federal agencies consider views of the public regarding their Undertakings; therefore, in 2020, MARAD established a Federal docket at *https://www.regulations.gov/docket/MARAD-2020-0133* to provide public notice about the NSS Undertaking. The Federal docket was also used in 2021 to solicit public comments on the future uses of the NSS. MARAD is continuing to use this same docket to take in public comment, share information, and post agency actions.

The NHPA Programmatic Agreement (PA) for the Decommissioning and Disposition of the NSS is available on the MARAD docket located at *www.regulations.gov* under docket id ''MARAD–2020–0133.'' The PA stipulates a deliberative process by which MARAD will consider the disposition of the NSS. This process requires MARAD to make an affirmative, good-faith effort to preserve the NSS. The PA also establishes the PRG in Stipulation II. The PRG is the mechanism for continuing consultation during the effective period of the PA and its members consist of the signatories and concurring parties to the PA, as well as other consulting parties. The PRG members will provide individual input and guidance to MARAD regarding the implementation of stipulations in the PA. PRG members and members of the public are invited to provide input by attending bi-monthly meetings and reviewing and commenting on deliverables developed as part of the PA.

II. Agenda

The agenda will include (1) welcome and introductions; (2) program update; (3) status of PA stipulations; (4) other business; and (5) date of next meeting. The agenda topic titled PA stipulations involves deliverables identified in the PA. MARAD will provide status updates for the following items: the Disposition Alternatives Study; the Notice of Availability/Request for Information; and the License Termination Plan. The agenda will also be posted on MARAD's website at *https://www.maritime.dot.gov/outreach/history/maritime-administration-history-program* and on the MARAD docket located at *www.regulations.gov* under docket id ''MARAD–2020–0133.''

III. Public Participation

The meeting will be open to the public. Members of the public who wish to attend in person or online must RSVP to the person listed in the **FOR FURTHER INFORMATION CONTACT** section with your name and affiliation. Members of the public may also call-in using the following number: 312–600–3163 and conference ID: 930 866 814#.

Special services. The NSS is not compliant with the Americans with Disabilities Act (ADA). The ship has some capability to accommodate persons with impaired mobility. If you require accommodations to attend PRG meetings in-person, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The U.S. Department of Transportation is committed to providing all participants equal access to this meeting. If you need alternative formats or services such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

(Authority: 49 CFR 1.81 and 1.93; 36 CFR part 800; 5 U.S.C. 552b.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–04228 Filed 2–28–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

U.S. Maritime Transportation System National Advisory Committee; Notice of Public Meeting

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) announces a public meeting of the U.S. Maritime Transportation System National Advisory Committee (MTSNAC) to develop and discuss advice and recommendations for the U.S. Department of Transportation on issues related to the marine transportation system. In general, the meeting will cover ways to enhance the use of America's Marine Highways, the enhancement of U.S. port infrastructure and performance, how to strengthen U.S. Maritime capabilities essential to national security and economic prosperity, and finally, ways to enable maritime industry innovation in information, safety, environmental sustainability, and other areas.

DATES: The meeting will be held on Wednesday, March 20, 2024, from 9:00 a.m. to 4:30 p.m. and Thursday, March 21, 2024, from 9:00 a.m. to 4:30 p.m. Eastern Daylight Time (EDT). Requests to attend the meeting must be received by 5:00 p.m. EDT on the prior week, Friday, March 15, 2024, to facilitate entry. Requests for accommodations for a disability must be received by Monday, March 18, 2024. Those requesting to speak during the public comment period of the meeting must submit a written copy of their remarks to DOT no later than Friday, March 15, 2024. Requests to submit written materials for review during the meeting must be received by Friday, March 15, 2024.

ADDRESSES: The meeting will be held at the at the DOT Conference Center at 1200 New Jersey Ave. SE, Washington, DC 20590. Any Committee-related request should be sent to the person listed in the following section.

FOR FURTHER INFORMATION CONTACT: Capt. Jeffrey Flumignan, Designated Federal Officer, at *MTSNAC@dot.gov* or (347) 491–2349. Maritime Transportation System National Advisory Committee, 1200 New Jersey Avenue SE, W21–307, Washington, DC 20590. Please visit the MTSNAC website at *https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/maritime-transportation-system-national-advisory-0.*

SUPPLEMENTARY INFORMATION:

Background

The MTSNAC is a Federal advisory committee that advises the U.S. Secretary of Transportation through the Maritime Administrator on issues related to the maritime transportation system. The MTSNAC was established in 1999 and mandated in 2007 by the Energy Independence and Security Act of 2007 (Pub. L. 110–140). The MTSNAC is codified at 46 U.S.C. 50402 and operates in accordance with the provisions of the Federal Advisory Committee Act.

I. Agenda

The agenda will include (1) welcome, opening remarks, and introductions; (2) administrative items; (3) subcommittee break-out sessions; (4) updates to the Committee on the subcommittee work; (5) public comments; (6) discussions relevant to formulate recommendations; and (7) presentation of recommendations. A final agenda will be posted on the MTSNAC internet website at *https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/maritime-transportation-system-national-advisory-0* at least one week in advance of the meeting.

II. Public Participation

The meeting will be open to the public. Members of the public who wish to attend in person must RSVP to the person listed in the **FOR FURTHER INFORMATION CONTACT** section with your name and affiliation. Seating will be limited and available on a first-come-first-serve basis.

Services for Individuals with Disabilities: The public meeting is physically accessible to people with disabilities. The U.S. Department of Transportation is committed to providing all participants equal access to this meeting. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Public Comments: A public comment period will commence at approximately 11:45 a.m. EDT on March 20, 2024, and again on March 21, 2024, at the same time. To provide time for as many people to speak as possible, speaking time for everyone will be limited to three minutes. Members of the public who would like to speak are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting or preferably emailed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Additional written comments are welcome and must be filed as indicated below.

Written comments: Persons who wish to submit written comments for consideration by the Committee must send them to the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

(Authority: 49 CFR part 1.93(a); 5 U.S.C. 552b; 41 CFR parts 102–3; 5 U.S.C. app. Sections 1–16)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–04225 Filed 2–28–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Compliance, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On February 14, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals

1. KHADEMI, Mohammad Reza (a.k.a. KHADEMI, Mohammad; a.k.a. KHADEMI, Mohammad Rida Esfandiar (Arabic: محمد رضا اسفندیار خادمي)), Dubai, United Arab Emirates; DOB 05 Apr 1966; nationality Iran; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: INFORMATICS SERVICES CORPORATION).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (E.O. 13224), 3 CFR, 2019 Comp., p. 356., as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, INFORMATICS SERVICES CORPORATION, a person whose property and interests in property are proposed to be concurrently blocked pursuant to E.O. 13224, as amended.

2. MIRDAMADI, Pouria (a.k.a. ESFAHANI, Pouria Mir Damadi), Iran; DOB 20 Sep 1979; POB Tehran, Iran; nationality France; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 0703THR00011 (France) (individual) [SDGT] (Linked To: INFORMATICS SERVICES CORPORATION).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, INFORMATICS SERVICES CORPORATION, a person whose property and interests in property are proposed to be concurrently blocked pursuant to E.O. 13224, as amended.

3. NAJAFI, Seyed Abotaleb (Arabic: سید ابوطالب جفی) (a.k.a. NAJAFI, Aboutaleb; a.k.a. NAJAFI, Nasser), Iran; DOB 25 Sep 1956; POB Iran; nationality Iran; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 2063167788 (Iran) (individual) [SDGT] (Linked To: INFORMATICS SERVICES CORPORATION).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, INFORMATICS SERVICES CORPORATION, a person whose property and interests in property are proposed to be concurrently blocked pursuant to E.O. 13224, as amended.

Entities

1. ADVANCE BANKING SOLUTION TRADING DMCC (Arabic: آفاس بانكينغ سوليوشن تريدنغ م.س.) (a.k.a. ADVANCE BANKING SOLUTIONS DMCC; a.k.a. "ABS CORPORATION"), 804 Jumeirah Bay Tower X3, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; License DMCC-402070 (United Arab Emirates); alt. License JLT-66110 (United Arab Emirates); Economic Register Number (CBLS) 11459098 (United Arab Emirates); alt. Economic Register Number (CBLS) 11464855 (United Arab Emirates) [SDGT] (Linked To: INFORMATICS SERVICES CORPORATION).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, INFORMATICS SERVICES CORPORATION, a person whose property and interests in property are proposed to be concurrently blocked pursuant to E.O. 13224, as amended.

2. FREEDOM STAR GENERAL TRADING CO. L.L.C. (Arabic: شركة نجم الحرية للتجارة العامة ذات مسئولية محدودة) (a.k.a. FREEDOM STAR GENERAL TRADING; a.k.a. FREEDOM STAR GENERAL TRADING CO. LLC; a.k.a. STAR OF FREEDOM GENERAL TRADING COMPANY LIMITED LIABILITY), P.O. Box 33237, Dubai, United Arab Emirates; Shop No. 5, Al Ras, Dubai, United Arab Emirates; Deira Al Ras, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 09 Jan 1997; Chamber of Commerce Number 41962 (United Arab Emirates); License 244911 (United Arab Emirates); Economic Register Number (CBLS) 10795786 (United Arab Emirates) [SDGT] (Linked To: INFORMATICS SERVICES CORPORATION).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, INFORMATICS SERVICES CORPORATION, a person whose property and interests in property are proposed to be concurrently blocked pursuant to E.O. 13224, as amended.

3. INFORMATICS SERVICES CORPORATION (Arabic: شركت خدمات انفورماتيک) (a.k.a. INFORMATICS AND SERVICES CORPORATION; a.k.a. INFORMATICS SERVICES COMPANY), Marjan Building, No. 6, Madadkaran Street, Shahnazari Street, Mother Square, Mirdamad Boulevard, Tehran 1545654311, Iran; Website www.isc.co.ir; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 15 Dec 1993; National ID No. 10101455520 (Iran); Business Registration Number 101605 (Iran) [SDGT] [IFSR] (Linked To: BANK MARKAZI JOMHOURI ISLAMI IRAN).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, BANK MARKAZI JOMHOURI ISLAMI IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. TED TEKNOLOJI GELISTIRME HIZMETLERI SANAYI TICARET ANONIM SIRKETI (a.k.a. TED TEKNOLOJI; a.k.a. TEDTEKNOLOJI), Cobancesme Mah. Sanayi Cad. Nish Residence D Blok, Kapi No. 44, D Daire No. 173, Bahcelievler, Istanbul, Turkey; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 28 Aug 2019; National ID No. 833094273300001 (Turkey); Trade License No. 205413-5 (Turkey) [SDGT] (Linked To: INFORMATICS SERVICES CORPORATION).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, INFORMATICS SERVICES CORPORATION, a person whose property and interests in property are proposed to be concurrently blocked pursuant to E.O. 13224, as amended.

Dated: February 14, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–04241 Filed 2–28–24; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Departmental Offices Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before April 1, 2024 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

1. Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1505–0231.

Type of Review: Extension without change of a currently approved collection.

Description: This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs.

Form: None.

Affected Public: Individuals and households.

Estimated Number of Respondents: 14,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 14,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 3,500.

2. *Title:* Designation of Financial Market Utilities.

OMB Control Number: 1505–0239.

Type of Review: Extension without change of a currently approved collection.

Description: Section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the DFA) (Pub. L. 111–203, 124 Stat. 1376) provides the Financial Stability Oversight Council (Council) the authority to designate a financial market utility (FMU) as systemically important if the Council determines that the failure of or a disruption to the functioning of the FMU could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system. A designated FMU is subject to risk management standards prescribed by the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, or the Securities and Exchange Commission under section 805 of the DFA. The rules adopted by the Council in July 2011 (codified at 12 CFR part 1320) describe the criteria that will inform, and the processes and procedures established under the DFA for, the Council's designation of FMUs under the DFA.

Form: None.

Affected Public: Financial market utilities.

Estimated Number of Respondents: 11.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 11.

Estimated Time per Response: 40 hours.

Estimated Total Annual Burden Hours: 440.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2024–04252 Filed 2–28–24; 8:45 am]

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Part II

Securities and Exchange Commission

17 CFR Part 240

Further Definition of ''As a Part of a Regular Business'' in the Definition of Dealer and Government Securities Dealer in Connection With Certain Liquidity Providers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–99477; File No. S7–12–22]

RIN 3235–AN10

Further Definition of ''As a Part of a Regular Business'' in the Definition of Dealer and Government Securities Dealer in Connection With Certain Liquidity Providers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is adopting new rules to further define the phrase ''as a part of a regular business'' as used in the statutory definitions of ''dealer'' and ''government securities dealer'' under sections 3(a)(5) and 3(a)(44), respectively, of the Securities Exchange Act of 1934 (''Exchange Act'').

DATES:

Effective date: April 29, 2024.

Compliance date: The compliance date is discussed in section II.B of this release.

FOR FURTHER INFORMATION CONTACT: Emily Westerberg Russell, Chief Counsel; John Fahey, Deputy Chief Counsel; Joanne Rutkowski, Assistant Chief Counsel; Bonnie Gauch, Senior Special Counsel; Shauna Sappington Vlosich, Senior Special Counsel; Geeta Dhingra, Branch Chief; Katherine Lesker, Special Counsel; and Carl Emigholz, Special Counsel at 202–551–5550 in the Office of Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is adopting the following new rules under the Exchange Act: (1) 17 CFR 240.3a5–4 (''Rule 3a5–4''), and (2) 17 CFR 240.3a44–2 (''Rule 3a44–2'') (collectively, ''final rules'').

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I. Introduction

The dealer regulatory regime is a cornerstone of the U.S. Federal securities laws and helps to promote the Commission's longstanding mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.[1] Advancements in electronic trading across securities markets have led to the emergence of certain market participants that play an increasingly significant liquidity-providing role in overall trading and market activity—a role that has traditionally been performed by entities regulated as dealers.[2] However, some of these market participants—despite engaging in liquidity-providing activities similar to those traditionally performed by either ''dealers'' or ''government securities dealers'' as defined under sections 3(a)(5) and 3(a)(44) of the Exchange Act, respectively, and despite their significant share of market volume—are not registered with the Commission as either dealers or government securities dealers under sections 15 and 15C of the Exchange Act, respectively. The identification, registration, and regulation of these market participants as dealers will provide regulators with a more comprehensive view of the markets through regulatory oversight and will support market stability and resiliency and protect investors by promoting the financial responsibility and operational integrity of market participants that are acting as dealers.[3] Further, the final rules will promote competition among entities that regularly provide significant liquidity by applying consistent regulation to these entities, thus leveling the competitive playing field between liquidity provision conducted by entities that are currently registered as dealers and government securities dealers and by entities that are not.

The Federal securities laws provide a comprehensive system of regulation of securities activity, and the definition of ''dealer'' is one of the Exchange Act's most important definitions, as it sets forth certain activities that cause persons to fall within the Commission's regulatory ambit.[4] Section 3(a)(5) of the Exchange Act defines the term ''dealer'' to mean ''any person engaged in the

[1] *See, e.g., Eastside Church of Christ* v. *National Plan, Inc.,* 391 F.2d 357 (5th Cir. 1968) (''The requirement that brokers and dealers register is of the utmost importance in effecting the purposes of the Act. It is through the registration requirement that some discipline may be exercised over those who may engage in the securities business and by which necessary standards may be established with respect to training, experience, and records.''); *see also* section 2 of the Exchange Act, 15 U.S.C. 78b (stating that ''transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are effected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto'').

[2] *See* Further Definition of ''As a Part of a Regular Business'' in the Definition of Dealer and Government Securities Dealer, Exchange Act Release No. 94524 (Mar. 28, 2022), 87 FR 23054 (Apr. 18, 2022) (''Proposing Release'').

[3] *See* section III.

[4] *See supra* note 1; *see also Roth* v. *SEC,* 22 F.3d 1108, 1109 (D.C. Cir. 1994).

business of buying and selling securities . . . for such person's own account through a broker or otherwise,'' but excludes ''a person that buys or sells securities . . . for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.'' Similarly, section 3(a)(44) of the Exchange Act provides, in relevant part, that the term ''government securities dealer'' means ''any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise,'' but ''does not include any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.'' These statutory definitions of ''dealer'' and ''government securities dealer,'' and the accompanying registration requirements of the Exchange Act, were drawn broadly by Congress to encompass a wide range of activities involving the securities markets and their participants.[5] Market participants that meet these statutory definitions are required to register with the Commission and are subject to a panoply of regulatory obligations and supervisory oversight, unless an exemption or exception applies.[6]

Under the Exchange Act, the SEC has the authority to define the terms used in the statutory definitions of ''dealer'' and ''government securities dealer,'' and to oversee and regulate registered dealers.[7] The Commission is adopting new Rules 3a5–4 and 3a44–2 under the Exchange Act to further define what it means to be engaged in the business of buying and selling securities ''as a part of a regular business'' within the definitions of ''dealer'' and ''government securities dealer,'' respectively.[8] The final rules, which have been modified to narrow the scope of the proposed rules and carefully tailored in response to commenter concerns, will help to ensure that market participants that take on significant liquidity-providing roles are appropriately registered and regulated as dealers and government securities dealers. As discussed further below, the final rules are one way to establish that a person is a dealer or government securities dealer; otherwise applicable court precedent and Commission interpretations will continue to apply.[9]

Registration will enable more comprehensive regulatory oversight of securities markets and those participants that take on significant liquidity-providing roles. The final rules will support market stability and resiliency and protect investors by promoting the financial responsibility and operational integrity of significant liquidity providers that are acting as dealers in the securities markets.[10]

A. Background

The statutory definition of ''dealer'' in section 3(a)(5) and the accompanying registration requirements of the Exchange Act were drawn broadly by Congress in 1934 to encompass a wide range of activities involving the securities markets and their participants. Section 3(a)(5) of the Exchange Act defines the term ''dealer'' to mean ''any person engaged in the business of buying and selling securities . . . for such person's own account through a broker or otherwise,'' but excludes ''a person that buys or sells securities . . . for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.'' [11] This statutory exclusion from the definition of ''dealer'' is often referred to as the ''trader'' exception.[12] Absent an exception or an exemption, section 15(a)(1) of the Exchange Act makes it unlawful for a ''dealer'' to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security unless registered with the Commission in accordance with section 15(b) of the Exchange Act.[13] Similarly, section 3(a)(44) of the Exchange Act provides, in relevant part, that the term ''government securities dealer'' means ''any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise,'' but ''does not include any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as part of a

[5] Unless otherwise indicated, references to ''dealer'' activity apply both with respect to ''dealers'' and ''government securities dealers'' under sections 3(a)(5) and 3(a)(44) of the Exchange Act, respectively; and references to ''security'' apply both with respect to ''security'' and ''government security'' under sections 3(a)(10) and 3(a)(42) of the Exchange Act, respectively. *See* Proposing Release at 23057 (Congress defined ''dealer'' broadly ''to encompass a wide range of activities involving investors and securities markets.''); *Registration Requirements for Foreign Broker Dealers,* Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013, 30015 (July 18, 1989) (''Foreign Broker Dealer Adopting Release'').

[6] *See* Proposing Release at 23057; Foreign Broker Dealer Adopting Release at 30015.

[7] *See, e.g.,* Exchange Act section 3(b) (authorizes the SEC to define terms used in the Exchange Act, consistent with the provisions and purposes of the Exchange Act. 15 U.S.C. 78c(b)).

[8] On Mar. 28, 2022, the Commission voted to issue the proposed 17 CFR 240.3a5–4 (''proposed Rule 3a5–4'') and 240.3a44–2 (''proposed Rule 3a44–2'') (collectively, ''proposed rules'') to further define ''as a part of a regular business'' as that phrase is used in the statutory definitions of ''dealer'' and ''government securities dealer.'' *See* Proposing Release. The release was posted on the Commission website that day, and comment letters were received beginning that same date. The comment period closed on May 27, 2022. Comments are available here: *https://www.sec.gov/comments/s7-12-22/s71222.htm.* We have considered all comments received since Mar. 28, 2022.

[9] *See* 17 CFR 240.3a5–4(c) (''Rule 3a5–4(c)'') and 240.3a44–2(c) (''Rule 3a44–2(c)'') (providing that no presumption shall arise that a person is not a dealer or government securities dealer solely because that person does not satisfy the standards of the final rules). As discussed in the Proposing Release and below, the courts and the Commission look to an array of factors in determining whether someone is a ''dealer'' within the meaning of the statute. *See, e.g.,* Definition of Terms in and Specific Exemption for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Release No. 46745 (Oct. 30, 2002), 67 FR 67496, 67498–67500 (Nov. 5, 2002) (''2002 Release''); *see also* section II.A.5 (explaining that otherwise applicable interpretations and precedent continue to apply to determine whether a person is acting as a dealer, even when that person does not fall within the requirements of the new rules); section II.A.3 (explaining that the $50 million threshold is not an exclusion from the ''dealer'' definition for all purposes, but only for purposes of the new rules).

[10] Section III below describes the estimated benefits and costs associated with registering as a dealer or government securities dealer for those persons who meet the qualitative standard of the final rules.

[11] *See* sections 3(a)(5)(A) and (B) of the Exchange Act, 15 U.S.C. 78c(a)(5)(A) and (B). The definition of ''dealer'' in the Exchange Act is largely unchanged from its enactment in 1934. Until the Gramm-Leach-Bliley Act (''GLBA'') was enacted in 1999, banks were excluded from the definition of ''dealer.'' The GLBA added section 3(a)(5)(C) of the Exchange Act to create a series of functional exemptions from the statutory definition of dealer. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') further amended section 3(a)(5)(A) of the Exchange Act to exclude from the dealer definition persons engaged in the business of buying and selling security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants. The Dodd-Frank Act established a statutory framework for regulating security-based swaps that includes the registration and regulation of security-based swap dealers.

[12] *See* 2002 Release (explaining that ''a person that is buying securities for its own account may still not be a 'dealer' because it is not 'engaged in the business' of buying and selling securities for its own account as part of a regular business,'' and that ''[t]his exclusion is often referred to as the dealer/trader distinction'').

[13] A bank engaged in these activities with respect to government securities would not register with the Commission as a dealer. *See* Exchange Act section 3(a)(5)(C)(i)(II) (providing an exception from dealer status when a bank buys or sells exempted securities, which are defined in Exchange Act section 3(a)(12)(A) to include government securities); *see also* Exchange Act section 3(a)(6) (definition of ''bank''). A bank may nonetheless be a government securities dealer under section 3(a)(44). As such, it would not register with the Commission but instead would provide written notice of its government securities dealer status with the appropriate Federal banking regulator.

regular business.'' [14] Read together, these provisions identify a ''government securities dealer'' as a person engaged in the business of buying and selling government securities for its own account as part of a regular business. Section 15C of the Exchange Act makes it unlawful for a ''government securities dealer'' (other than a registered broker-dealer or financial institution) to induce or attempt to induce the purchase or sale of any government security unless such government securities dealer is registered in accordance with section 15C(a)(2).[15]

The Commission has long identified factors that would be informative for determining whether a person is a dealer. For example, the Commission's 2002 Release states that ''[a] person generally may satisfy the definition, and therefore, be acting as a dealer in the securities markets by conducting various activities: (1) underwriting; (2) acting as a market maker or specialist on an organized exchange or trading system; (3) acting as a *de facto* market maker whereby market professionals or the public look to the firm for liquidity; or (4) buying and selling directly to securities customers together with conducting any of an assortment of professional market activities such as providing investment advice, extending credit and lending securities in connection with transactions in securities, and carrying a securities account.[16] These principles demonstrate that the analysis of whether a person meets the definition of a dealer depends upon all of the relevant facts and circumstances.'' [17]

In recent years, market participants regularly engaging in significant liquidity provision have not registered, either as ''dealers'' under section 15 of the Exchange Act or ''government securities dealers'' under section 15C of the Exchange Act.[18] This is particularly true in the U.S. Treasury market where certain market participants, particularly those commonly known as proprietary or principal trading firms (''PTFs''), account for about half of the daily volume in the interdealer market and yet are not registered as dealers—despite performing critical market functions, in particular liquidity provision, that historically have been performed by dealers.[19] The Commission recognizes that, depending on their business models, PTFs may not engage in certain types of dealer activities. Some may not, for example, underwrite securities, solicit clients, provide investment advice, carry accounts for others, or extend credit, and so may not implicate principle (1), (2), or (4) as discussed in the 2002 Release. The Commission is concerned, however, that some PTFs act as *de facto* market makers but do so without registration.[20] Such a regulatory gap results in inconsistent oversight of market participants performing similar functions (whether in the same market or across asset classes). This limited regulatory oversight of significant liquidity providers increases the difficulty and complexity for regulators to investigate, understand, and address significant market events.[21] As a result,

[14] 15 U.S.C. 78c(a)(44). Congress added the definition of ''government securities dealer'' to the Exchange Act in the Government Securities Act of 1986 (''GSA''). Public Law 99–571, 100 Stat. 3208 (Oct. 28, 1986). In addition to otherwise applicable regulations, government securities dealers must comply with rules adopted by the Treasury. *See* regulations under section 15C of the Securities Exchange Act of 1934, 17 CFR 400.1(b), *available at https://www.govinfo.gov/content/pkg/CFR-2018-title17-vol4/pdf/CFR-2018-title17-vol4.pdf.* These regulations address financial responsibility, protection of customer securities and funds, recordkeeping, and financial reporting and audits. Also included are rules concerning custodial holdings of government securities by depository institutions. The Commission retains broad antifraud authority over banks that are government securities dealers. Soon after enactment of the GSA, the staff issued a series of no-action letters to persons seeking assurances that the staff would not recommend enforcement action if they did not register as government securities dealers. *See, e.g.,* Bankers Guarantee Title & Trust Co., SEC No-Action Letter (Jan. 22, 1991); Bank of America, Canada, SEC No-Action Letter (May 1, 1988); Citicorp Homeowners, Inc., SEC No-Action Letter (Oct. 7, 1987); Fairfield Trading Corp., SEC No-Action Letter (Dec. 10, 1987); Louis Dreyfus Corp., SEC No-Action Letter (July 23, 1987); United Savings Association of Texas, SEC No-Action Letter (Apr. 2, 1987); Continental Grain Co., SEC No-Action Letter (Nov. 28, 1987). Staff reports, Investor Bulletins, and other staff documents (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of these staff documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person. Staff in the Division of Trading and Markets is reviewing its no-action letters and other staff statements that address the Exchange Act's definition of ''dealer'' or ''government securities dealer'' to determine which letters and other staff statements, or portions thereof, should be withdrawn in connection with the adoption of the final rules. Some of these letters and staff statements, or portions thereof, may be moot, superseded, or otherwise inconsistent with the final rules, and, therefore, may be withdrawn by the staff. A list of the letters to be withdrawn will be available on the Commission's website.

[15] A government securities dealer that is a registered dealer or a financial institution must file notice with the appropriate regulatory agency that it is a government securities dealer. *See* 15 U.S.C. 78*o*–5(a). Exchange Act section 3(a)(46) defines the term ''financial institution'' to include: (i) a bank (as that term is defined in Exchange Act section 3(a)(6) (15 U.S.C. 38c(a)(6)); (ii) a foreign bank (as that term is used in the International Banking Act of 1978); and (iii) a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation). *See* 15 U.S.C. 78c(a)(46)(A) through (C).

[16] 2002 Release at 67498–67500.

[17] *See id.; see also* Proposing Release at 23058–59.

[18] *See* Proposing Release at 23081.

[19] Nellie Liang and Pat Parkinson, Hutchins Center Working Paper #72, Enhancing Liquidity of the U.S. Treasury Market Under Stress (Dec. 16, 2020), at 6. The term ''PTF'' is not defined in the securities laws. PTFs trade as principals, buying and selling for their own accounts, and often employ automated, algorithmic trading strategies (including passive market making, arbitrage, and structural and directional trading) that rely on speed, which allows them to quickly execute trades, or cancel or modify quotes in response to perceived market events. *See* Proposing Release at 23055. *See also* Joint Staff Report: The U.S. Treasury Market on Oct. 15, 2014 (July 13, 2015) (''2015 Joint Staff Report''), prepared by staff of the U.S. Department of the Treasury, Board of Governors of the Federal Reserve System, Federal Reserve Bank of New York, U.S. Securities and Exchange Commission, and U.S. Commodity Futures Trading Commission, *available at https://www.sec.gov/reportspubs/specialstudies/treasury-market-volatility-10-14-2014-joint-report.pdf.* The 2015 Joint Staff Report is a report of the Inter-Agency Working Group for Treasury Market Surveillance (''IAWG''). In contrast, many equity market participants may already be registered in order to take advantage of certain incentives offered only to exchange members. *See* Exchange Act section 6(c)(1) (requiring a national securities exchange to deny membership to any person that is not a registered broker or dealer or, if a natural person, associated with a registered broker or dealer).

[20] The significant role played by market participants not registered as dealers distinguishes the Treasury market from other markets where these types of participants are more typically registered as dealers. One commenter stated that it understood ''from its member firms that one of the effects of the Market Access Rule is that many previously unregistered PTFs operating in the equity and options markets became registered as broker-dealers due to their business need to submit their orders directly into the market without having to first run them through the risk controls of other broker-dealers,'' and that the Proposing Release did not address this market development. *See* Comment Letter of Securities Industry and Financial Markets Association (May 27, 2022) (''SIFMA Comment Letter I''); *see also* 17 CFR 240.15c3–5 (''Rule 15c3–5'' or ''Market Access Rule'') (requiring broker-dealers with market access to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage financial, regulatory, and other risks of this business activity). As explained in the Proposing Release, it is the Commission's understanding that in the equity markets, because PTF trading strategies typically depend on latency and cost advantages made possible by trading directly (via membership) on a national securities exchange, and the Exchange Act limits exchange membership to registered broker-dealers, there is incentive for many PTFs to register as broker-dealers to gain these advantages. In the U.S. Treasury market, however, where trading occurs on alternative trading systems (''ATSs'') and other non-exchange venues, PTFs lack this incentive to register. *See* Proposing Release at 23072–73. *See also* Exchange Act section 6(c)(1) (''A national securities exchange shall deny membership to (A) any person, other than a natural person, which is not a registered broker or dealer or (B) any natural person who is not, or is not associated with, a registered broker or dealer.'').

[21] *See, e.g.,* Inter-Agency Working Group for Treasury Market Surveillance Joint Staff Report, Recent Disruptions and Potential Reforms in the U.S. Treasury Market: A Staff Progress Report

investors and the markets currently lack important protections.

Courts have repeatedly recognized the requirement that dealers register as being ''of the utmost importance in effecting the purposes of the Exchange Act.'' [22] Dealers generally must register with the Commission and become members of a self-regulatory organization (''SRO''); [23] comply with Commission and SRO rules, including certain financial responsibility and risk management rules,[24] transaction and other reporting requirements,[25] operational integrity rules,[26] and books and records requirements,[27] all of which help to enhance market stability by giving regulators increased insight into firm-level and aggregate trading activity and so help regulators to evaluate, assess, and address market risks. In addition, registered dealers and government securities dealers are required to comply with all applicable securities laws, including not only section 17(a) of the Securities Act of 1933 (''Securities Act'') and section 10(b) of the Exchange Act but also specialized anti-manipulative and other antifraud rules promulgated pursuant to section 15(c) of the Exchange Act.[28] These regulatory requirements provide fundamental protections that contribute to fair and orderly markets. Firms that are government securities dealers (including registered broker-dealers trading government securities) must also comply with rules adopted by the U.S. Treasury, including rules relating to financial responsibility, recordkeeping, financial condition reporting, and risk oversight.[29] Importantly, dealers are

prepared by U.S. Department of the Treasury, Board of Governors of the Federal Reserve System, Federal Reserve Bank of New York, U.S. Securities and Exchange Commission, U.S. Commodity Futures Trading Commission (Nov. 8, 2021) (''2021 IAWG Joint Staff Report'') (describing Mar. 2020 COVID–19 and Oct. 15, 2014, flash rally disruptions to the Treasury market). *See also supra* note 18 and accompanying text.

[22] Proposing Release at 23060–61; *see also SEC* v. *Benger,* 697 F. Supp. 2d 932, 944 (N.D. Ill. 2010) (quoting *Celsion Corp.* v. *Stearns Mgmt. Corp.,* 157 F. Supp. 2d 942, 947 (N.D. Ill. 2001) (section 15(a)'s registration requirement is ''of the utmost importance in effecting the purposes of the Act'' because it enables the SEC ''to exercise discipline over those who may engage in the securities business and it establishes necessary standards with respect to training, experience, and records.''); *Roth* v. *SEC,* 22 F.3d 1108, 1109 (D.C. Cir. 1994) (''The broker-dealer registration requirement serves as the keystone of the entire system of broker-dealer regulation.''); *Regional Properties, Inc.* v. *Financial and Real Estate Consulting Co.,* 678 F.2d 552, 561 (5th Cir. June 3, 1982); *Eastside Church of Christ* v. *National Plan, Inc.,* 391 F.2d 357, 361 (5th Cir. Mar. 12, 1968).

[23] *See* sections 15(b)(8), 15C(e)(1), and 17(b) of the Exchange Act, 15 U.S.C. 78*o*(b)(8), 15 U.S.C. 78*o*–5(e)(1), and 15 U.S.C. 78q(b), respectively. Section 15(b)(8) of the Exchange Act makes it unlawful for any registered broker or dealer to effect any transaction in securities (with certain exceptions) unless the broker or dealer is a member of a registered securities association or effects transactions in securities solely on a national securities exchange of which it is a member. Section 15C(e)(1) of the Exchange Act requires that a registered government securities broker-dealer become a member of a registered national securities exchange or registered national securities association. Because government securities are not traded on registered national securities exchanges, a person that registers as a government securities dealer under section 15C to trade only government securities would generally need to become a member of a registered national securities association (FINRA is the only registered national securities association). The Commission recently adopted amendments to 17 CFR 240.15b9–1 (''Rule 15b9–1'') to replace rule provisions that provide an exemption for proprietary trading with narrower exemptions from national securities association membership for any registered broker or dealer that is a member of a national securities exchange, carries no customer accounts, and effects transactions in securities otherwise than on a national securities exchange of which it is a member. *See* 17 CFR 240.15b9–1; Exemption for Certain Exchange Members, Exchange Act Release No. 98202, Aug. 23, 2023), 88 FR 61850 (Sept. 7, 2023) (''Amended Rule 15b9–1 Adopting Release''). Section 17(b) of the Exchange Act provides, among other things, that all records of a broker-dealer are subject at any time, or from time to time, to such reasonable, periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency of the broker-dealer as the Commission or the appropriate regulatory agency deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

[24] *See, e.g.,* 17 CFR 240.15c3–1 (''Rule 15c3–1'' or ''Net Capital Rule''); Financial Responsibility Rules for Broker-Dealers, Exchange Act Release No. 70072 (July 30, 2013), 78 FR 51823 at 51849 (Aug. 21, 2013) (''The capital standard in Rule 15c3–1 is a net liquid assets test. This standard is designed to allow a broker-dealer the flexibility to engage in activities that are part of conducting a securities business (*e.g.,* taking securities into inventory) but in a manner that places the firm in the position of holding at all times more than one dollar of highly liquid assets for each dollar of unsubordinated liabilities (*e.g.,* money owed to customers, counterparties, and creditors)''). The rule imposes a ''moment to moment'' net capital requirement in that broker-dealers must maintain an amount of net capital that meets or exceeds their minimal net capital requirement at all times.

[25] *See, e.g.,* FINRA Rule 6730(a)(1) (requiring FINRA members to report transactions in TRACE-Eligible Securities, including Treasury securities, which promotes transparency to the securities markets, including the Treasury market, by providing market participants with comprehensive access to transaction data); FINRA Rule 7200 (Trade Reporting Facilities); FINRA Rule 4530 (Reporting Requirements) which requires FINRA members to report among other things when the member or an associated person of the member has violated certain specified regulatory requirements, is subject to written customer complaints, and is denied registration or is expelled, enjoined, directed to cease and desist, suspended or disciplined by a specified regulatory body. The provision at 17 CFR 240.17a–5(d)(1)(i)(A) (''Rule 17a–5(d)(1)(i)(A)'') requires broker-dealers, subject to limited exceptions, to file annual reports, including financial statements and supporting schedules that generally must be audited by a Public Company Accounting Oversight Board (''PCAOB'') registered independent public accountant in accordance with PCAOB standards. *See also* Consolidated Audit Trail, Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010); Joint Industry Plan; Order Approving the National Market System Plan Governing the Consolidated Audit Trail, Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT Approval Order''); Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data, Exchange Act Release No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016) (''CAT Notice'').

[26] *See, e.g.,* Market Access Rule (promotes market integrity by reducing risks associated with market access by requiring financial and regulatory risk management controls reasonably designed to limit financial exposures and ensure compliance with applicable regulatory requirements).

[27] *See, e.g.,* section 17(a) of the Exchange Act and 17 CFR 240.17a–3 (''Rule 17a–3'') and 240.17a–4 (''Rule 17a–4''); *see also, e.g.,* FINRA Rules 2268, 4510, 4511, 4512, 4513, 4514, 4515, 5340, and 7440(a)(4) (requiring member firms to make and preserve certain books and records to show compliance with applicable securities laws, rules, and regulations and enable Commission and FINRA staffs to conduct effective examinations); NYSE Rule 440 (Books and Records); CBOE Exchange Rule 7.1 (Maintenance, Retention and Furnishing of Books, Records and Other Information). Among other things, Commission and SRO books and records rules help to ensure that regulators can access information to evaluate the financial and operational condition of the firm, including examining compliance with financial responsibility rules, among other rules, as well as assess whether and how a firm's participation in the securities markets impacted a major market event. *See* Staff Study on Investment Advisers and Broker-Dealers As Required by section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Jan. 2011) at 72. *See also* Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swaps Dealers, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194, 25199 (May 2, 2014) (''The requirements are an integral part of the investor protection function of the Commission, and other securities regulators, in that the preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards.'').

[28] *See, e.g.,* sections 15(c)(1) and (2) of the Exchange Act, 15 U.S.C. 78*o*(c)(1) and (2), and rules promulgated thereunder. Section 15(c) of the Exchange Act prohibits broker-dealers from effecting any transaction in securities by means of any manipulative, deceptive, or other fraudulent device or contrivance.

[29] Under Title I of the GSA, all government securities brokers and government securities dealers are required to comply with the requirements in Treasury's GSA regulations that are set out in 17 CFR parts 400 through 449, as well as all other applicable requirements. For the most part, Treasury's GSA regulations incorporate with some modifications: (1) Commission rules for non-financial institution government securities brokers and government securities dealers; and (2) the appropriate regulatory agency rules for financial institutions that are required to file notice as government securities brokers and government securities dealers. *See, e.g.,* 17 CFR part 400, Rules of general application; 17 CFR part 401, Exemptions; 17 CFR part 402, Financial responsibility; 17 CFR part 403, Protection of customer securities and balances; 17 CFR part 404, Recordkeeping and preservation of records; 17 CFR part 405, Reports and audit; and 17 CFR part 449, Forms, section 15C of the Exchange Act. The GSA regulations also include requirements for custodial holdings by depository institutions at 17 CFR part 450, which were issued under Title II of the GSA. The Treasury GSA regulations provide in many

Continued

subject to Commission and SRO examination and enforcement for compliance with applicable Federal securities laws and SRO rules.[30]

On March 28, 2022, the Commission proposed Rules 3a5–4 and 3a44–2 to identify certain activities that would constitute a ''regular business'' requiring a person engaged in certain liquidity-providing activities to register as a ''dealer'' or a ''government securities dealer,'' absent an exception or exemption.[31] Proposed Rules 3a5–4 and 3a44–2 were designed to define the types of activities that would cause a person to be regarded as a *de facto* market maker and therefore subject to registration as a dealer under sections 15 and 15C of the Exchange Act. Specifically, the proposed rules would have established three qualitative factors, as well as a quantitative standard applicable only with respect to government securities. The proposed rules also further defined the types of entities that would be included in and excluded from the ambit of the rules. The proposed rules focused only on the *de facto* market maker test, as emphasized through the inclusion of the ''no presumption'' language, which provided that the further definition of ''regular business,'' if adopted, would not seek to address all persons that may be acting as dealers under otherwise applicable interpretations and precedent.

The Commission received comment letters from a variety of commenters including investment advisers, PTFs, private fund advisers, crypto asset related entities and industry groups, insurance industry groups, industry associations, advisory groups, retail investors, and other market participants.[32] The comments addressed all aspects of the proposal.

Commenters in support of the proposal shared the Commission's concerns regarding the significant role of unregistered entities that act as liquidity providers and emphasized the benefits of registration and regulation.[33] These commenters discussed specific benefits, in particular transparency, market integrity and investor protection, as well as appropriate Commission and SRO oversight of entities registered as dealers and government securities dealers.[34]

Some commenters stated that they supported the Commission's policy goals but expressed concerns regarding whether the proposed rules would achieve those goals.[35] As discussed more fully below, these and other commenters raised certain common themes, which generally reflected concerns regarding the breadth of the proposed rules and that the proposed rules would inappropriately apply to persons not engaging in dealer activity. Specifically, many commenters stated that some of the terms used in the proposed qualitative factors were vague and overly broad.[36] As discussed below, some commenters thought that the proposed first qualitative factor was overinclusive and would capture activity that was not dealing.[37] Commenters also raised concerns about certain terms used in the proposed first qualitative factor, the manner in which they would be interpreted, and the compliance challenges that they might present.[38] While the Commission is generally retaining the overall structure of the proposed rules, the Commission is making certain modifications to the text of the rules and also is providing guidance to address concerns raised during the public comment process.

Many commenters also questioned whether the quantitative standard exceeds the Commission's authority under the Exchange Act and is consistent with historical Commission interpretations and guidance and Federal case law.[39] As discussed above, the SEC has the authority to define the terms used in the statutory definition of ''dealer'' and oversee and regulate registered dealers. Further, the statutory definitions of ''dealer'' in section 3(a)(5) and ''government securities dealer'' in section 3(a)(44), and the accompanying registration requirements of the Exchange Act, were drawn broadly by Congress to encompass a wide range of activities involving the securities markets and their participants. PTFs and other market participants that engage in dealer activity in the U.S. Treasury market should be subject to the same regulatory requirements as other dealers.

In addition, commenters, many of which were in the asset management industry, stated that the proposed definition of ''own account'' would

instances that a registered dealer can comply with a Commission rule to establish compliance with the comparable Treasury requirement. *See, e.g.,* 17 CFR 402.1(b) (''This part does not apply to a registered broker or dealer . . . that is subject to [Rule 15c3–1].''); 17 CFR 403.1 (regarding application to registered brokers or dealers); 17 CFR 404.1 and 17 CFR 405.1(a) (same).

[30] *See* Exchange Act section 15(b) (regarding Commission authority to sanction brokers and dealers); section 15C(c) (regarding Commission authority to sanction government securities dealers that are registered with it); section 15C(d) (authorizing the Commission to examine books and records of government securities dealers registered with it); and section 17(b) (broker-dealer recordkeeping and examination). *See also* section 15C(g) (restricting the authority of the Commission with respect to government securities dealers that are not registered with the Commission).

[31] *See* Proposing Release; *see also* Exchange Act section 15 (regarding registration of dealers) and section 15C (regarding registration of government securities dealers).

[32] Comments received in response to the Proposing Release are available at: *https://www.sec.gov/comments/s7-12-22/s71222.htm.*

[33] *See, e.g.,* Comment Letter of The Financial Industry Regulatory Authority, Inc. (June 23, 2022) (''FINRA Comment Letter''); Comment Letter of Better Markets (May 27, 2022) (''Better Markets Comment Letter'').

[34] *Id.*

[35] *See, e.g.,* SIFMA Comment Letter I (''We support the policy goal of proposed Rule 3a44–2 to require PTFs in the government securities market to register as government securities dealers, but believe that the Commission can adequately capture trading activity by unregistered PTFs by adopting solely the qualitative standards set forth Rule 3a44–2(a)(1)(ii) and (iii), without the need to adopt the standard in Rule 3a44–2(a)(1)(i).''); Comment Letter of Modern Markets Initiative (May 27, 2022) (''MMI Comment Letter'') (''MMI appreciates the SEC's intent in the Proposal to further support transparency, market integrity, and resiliency across the U.S. Treasury market and other securities markets, as it relates to ensuring that proprietary (or principal) trading firms and other market participants who are acting as dealers be, in fact, registered as 'dealers.' MMI agrees it is important that dealers or those who engage in buying and selling of government securities as registered dealers should become members of a self-regulatory organization, and receive the benefits and obligations under the existing framework of Federal securities laws.''); Comment Letter of Asset Management Group of Securities Industry and Financial Markets Association (May 27, 2022) (''SIFMA AMG Comment Letter'') (''While SIFMA AMG can appreciate the Commission's efforts to protect investors and further the public interest, we do not believe that the Proposal will achieve those goals with respect to money managers.''); Comment Letter of FIA Principal Traders Group (Dec. 12, 2023) (''FIA PTG Comment Letter II'').

[36] *See, e.g.,* Comment Letter of Association of Digital Asset Markets (May 27, 2022) (''ADAM Comment Letter''); Comment Letter of Citadel (June 7, 2022) (''Citadel Comment Letter''); Comment Letter of Morgan, Lewis & Bockius LLP (June 8, 2022) (''Morgan Lewis Comment Letter''); Comment Letter of T. Rowe Price (June 8, 2022) (''T. Rowe Price Comment Letter''); Comment Letter of Investment Company Institute (May 27, 2022) (''ICI Comment Letter''); SIFMA Comment Letter I; SIFMA AMG Comment Letter; Comment Letter of Alternative Investment Management Association (May 27, 2022) (''AIMA Comment Letter II''); Comment Letter of Managed Funds Association (May 27, 2022) (''MFA Comment Letter I''); Comment Letter of McIntyre & Lemon, PLLC (May 31, 2022) (''McIntyre Comment Letter II''); Comment Letter of FIA Principal Traders Group (May 27, 2022) (''FIA PTG Comment Letter I''); Comment Letter of Managed Funds Association (Dec. 19, 2023) (''MFA Comment Letter V''). *See also* section II.A.1.

[37] *See, e.g.,* AIMA Comment Letter II; MFA Comment Letter I; Comment Letter of Element Capital Management LLC (May 27, 2022) (''Element Comment Letter''); SIFMA Comment Letter II; MFA Comment Letter V.

[38] *See, e.g.,* MFA Comment Letter I; SIFMA AMG Comment Letter; T. Rowe Price Comment Letter.

[39] *See, e.g.,* SIFMA AMG Comment Letter; Comment Letter of Two Sigma (May 27, 2022) (''Two Sigma Comment Letter I'').

inappropriately apply the dealer regime to private funds and registered investment advisers, and that the proposed exclusion for registered investment companies should be expanded to registered investment advisers and to private funds managed by registered investment advisers.[40] Commenters in the crypto asset industry also opposed the proposal, stating that the dealer framework should not apply to entities that transact in crypto assets that are securities.[41]

Further, many commenters believed that the economic analysis did not adequately address economic implications of the proposed rules.[42] Commenters also stated that the proposed rules were largely unnecessary because of existing regulatory obligations, stating that the Commission has other tools to accomplish its stated goals of improving transparency including, for example, the Consolidated Audit Trail (''CAT''), the Trade Reporting and Compliance Engine (''TRACE'') and large trader reporting,[43] and that the proposed rules could have a negative effect on liquidity.[44]

B. Overview of the Final Rules and Modifications to the Proposal

After careful review of comments received and upon further consideration, the Commission is adopting Rules 3a5–4 and 3a44–2 as revised. As discussed below, while the Commission is generally retaining the overall structure of the proposed rules, we are making certain modifications to the text of the rules and also are providing guidance to address concerns raised during the comment process. In particular, the modifications we have made to more appropriately tailor the scope of the final rules will address various concerns raised by commenters and appropriately require only entities engaging in *de facto* market making activity to register as dealers.[45] Overall, the final rules will achieve the Commission's important goals of protecting investors and supporting fair, orderly, and efficient markets.

An overview of the changes from the proposal follows:

Modification and Streamlining of the Qualitative Standard—The Commission has modified the proposed qualitative factors to: (1) eliminate the proposed qualitative factor that would have captured persons engaging in liquidity provision by routinely making roughly comparable purchases and sales of the same or substantially similar securities in a day (''proposed first qualitative factor''); (2) more closely track the statutory language of the Exchange Act by referring to ''regular'' rather than the proposed ''routine'' patterns of behavior that have the effect of providing liquidity to other market participants; and (3) add the phrase ''for the same security'' to the factor relating to the expression of trading interests to clarify that it will apply only when a person is on both sides of the market for the same security. While the proposed first qualitative factor was intended to capture persons whose pattern of trading indicates that their liquidity provision forms a part of a regular business and to distinguish them from persons engaging in isolated or sporadic securities transactions (and therefore not engaging in such a regularity of participation), commenters raised a number of concerns with this factor, in particular that it was overinclusive and would capture activity that was not dealing, but rather investing in the ordinary course. After consideration of comments, the Commission has decided to eliminate this factor from the final rules. As discussed below, the qualitative factors as modified, together with the statutory definition and related precedent and interpretations, appropriately describe the circumstances in which a person would be deemed to engage in a ''regular'' pattern of buying and selling securities that has the effect of providing liquidity to other market participants, including in the U.S. Treasury market.

Deletion of the Quantitative Standard—The Commission proposed a bright line test under which persons engaged in certain levels of activity in the U.S. Treasury market would be defined to be buying and selling securities ''as part of a regular business,'' regardless of whether they meet any of the qualitative factors. The quantitative standard was intended as a backstop to the qualitative factors to capture the most significant Treasury market participants.[46] While the proposed trading volume threshold was intended to provide an easily measurable and non-discretionary standard, commenters raised concerns regarding the application of this standard, in particular with respect to investment activities that might trigger the quantitative threshold. After consideration of these comments, the Commission has decided to eliminate

[40] *See, e.g.,* Comment Letter of National Association of Private Fund Managers (May 27, 2022) (''NAPFM Comment Letter''); MFA Comment Letter I; AIMA Comment Letter II. *See also* section II.A.3.

[41] The Proposing Release used the phrase ''digital asset that is a security.'' *See* Proposing Release at 23057 n.36. For purposes of this Adopting Release, the Commission does not distinguish between the terms ''digital asset securities'' and ''crypto asset securities.''

[42] *See, e.g.,* Comment Letter of Andreessen Horowitz (May 27, 2022) (''Andreessen Horowitz Comment Letter''); AIMA Comment Letter II; ADAM Comment Letter; MFA Comment Letter I; Comment Letter of Blockchain Association (May 27, 2022) (''Blockchain Association Comment Letter''); Comment letter of U.S. Representatives Patrick McHenry and Bill Huizenga (Apr. 18, 2022) (''U.S. Reps Comment Letter''); Comment Letter of Virtu Financial (May 27, 2022) (''Virtu Comment Letter''); Comment Letter of Alphaworks Capital Management (May 27, 2022) (''Alphaworks Comment Letter''); Two Sigma Comment Letter I; FIA PTG Comment Letter I; Comment Letter of Independent Dealer and Trader Association (May 27, 2022) (''IDTA Comment Letter''); NAPFM Comment Letter; Comment Letter of Schulte Roth & Zabel LLP (May 27, 2022) (''Schulte Roth Comment Letter''); SIFMA Comment Letter I; Comment Letter of James Overdahl (May 27, 2022) (''Overdahl Comment Letter''); Comment Letter of Fried, Frank, Harris, Shriver, & Jacobson LLP (May 27, 2022) (''Fried Frank Comment Letter''); Element Comment Letter; Comment Letter of Chamber of Digital Commerce (June 13, 2022) (Chamber of Digital Commerce Comment Letter''); Morgan Lewis Comment Letter; Comment Letter of DeFi Education Fund (May 27, 2022) (''DeFi Fund Comment Letter''); Comment Letter of Ranking Member, Tim Scott, U.S. Senator (Dec. 14, 2023) (''Scott Comment Letter'').

[43] *See, e.g.,* MMI Comment Letter; Virtu Comment Letter; AIMA Comment Letter II; ADAM Comment Letter; SIFMA AMG Comment Letter; SIFMA Comment Letter I; Fried Frank Comment Letter; Element Comment Letter; T. Rowe Price Comment Letter.

[44] *See, e.g.,* AIMA Comment Letter II; FIA PTG Comment Letter I; Virtu Comment Letter; McIntyre Comment Letter II; Alphaworks Comment Letter; MMI Comment Letter; Schulte Roth Comment Letter; IDTA Comment Letter; NAPFM Comment Letter; Comment Letter of Federal Regulation of Securities Committee of the Business Law Section of the American Bar Association (May 27, 2022) (''ABA Comment Letter''); Fried Frank Comment Letter; MFA Comment Letter I; Element Comment Letter; Citadel Comment Letter; Morgan Lewis Comment Letter; DeFi Fund Comment Letter; Scott Comment Letter.

[45] With respect to the Commission's authority to adopt the final rules, some commenters asserted that the major questions doctrine is implicated. *See, e.g.,* Comment Letter of Consensys Software Inc. (May 26, 2022) (''Consensys Comment Letter''); Comment Letter of American Investment Council (Aug. 8, 2023) (''AIC Comment Letter''). In further defining what it means to be engaged in the business of buying and selling securities ''as a part of a regular business'' within the definitions of ''dealer'' and ''government securities dealer'' under the Exchange Act, the Commission did not claim an ''[e]xtraordinary grant[ ] of regulatory authority'' based on ''vague,'' ''cryptic,'' ''ancillary,'' or ''modest'' statutory language. *West Virginia* v. *EPA,* 142 S. Ct. 2587, 2608–10 (2022) (quotation omitted). Nor did it assert authority that falls outside its ''particular domain.'' *Alabama Ass'n of Realtors* v. *HHS,* 141 S. Ct. 2485, 2489 (2021) (per curiam). Congress granted the SEC authority to oversee and regulate dealers, and the Exchange Act empowers the SEC with authority to define statutory terms.

[46] *See* Proposing Release at 23072 (stating that the quantitative standard was ''designed to make clear the Commission's view that a person engaged in this regular volume of buying and selling activity is engaged in the buying and selling of government securities for its own account as part of a regular business, and therefore, should be subject to the same regulatory requirements as other dealers'').

the quantitative standard from the final rules. As discussed below, the qualitative factors as modified, and otherwise applicable court precedent and Commission interpretations, appropriately describe the circumstances in which a person would be deemed to engage in a ''regular'' pattern of buying and selling securities that has the effect of providing liquidity to other market participants, including in the U.S. Treasury market.

As a result of these modifications, the final rules establish two non-exclusive ways in which a person will be determined to be engaged in a regular pattern of providing liquidity to other market participants ''as part of a regular business'':

- Regularly expressing trading interest that is at or near the best available prices on both sides of the market for the same security, and that is communicated and represented in a way that makes it accessible to other market participants (''expressing trading interest factor'');[47] or
- Earning revenue primarily from capturing bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interest (''primary revenue factor'').[48]

Revision of ''Own Account'' Definition and Addition of Anti-Evasion Provision—The Commission had proposed to define ''own account'' to include accounts ''held in the name of a person over whom that person exercises control or with whom that person is under common control'' (''the aggregation provision'').[49] Upon consideration of the comments, the Commission has revised the definition so that the final rules define ''own account'' to mean an account: (i) held in the name of that person; or (ii) held for the benefit of that person. The rules as adopted thus are consistent with the Commission's historical ''entity'' approach to broker-dealer regulation.[50]

However, with a view to deterring the establishment of multiple legal entities or accounts to evade appropriate regulation, the final rules include an anti-evasion provision that prohibits persons from evading the registration requirements by: (1) engaging in activities indirectly that would satisfy the qualitative factors; or (2) disaggregating accounts. The changes from the proposed rules address concerns about the scope of the proposed rules as raised by commenters while enhancing the Commission's current ability to prevent and address potentially evasive behavior.[51]

Exclusions—The Commission is providing an exclusion for ''central banks,'' ''sovereign entities,'' and ''international financial institutions,'' all as defined in the final rules. The exclusion is appropriate in view of the unique roles played by these entities. The Commission also is adopting as proposed the exclusions from the final rules for registered investment companies and persons that have or control less than $50 million in total assets.[52]

The Commission is not adopting certain commenters' suggestions for additional exclusions. Among other things, as discussed more fully below, the Commission is not excluding private funds or registered investment advisers from the final rules because an investment adviser or private fund could be acting as a dealer depending upon the particular activities in which it is engaged. The final rules do, however, include several modifications and clarifications to address many of the compliance and other concerns raised by certain commenters, including those raised by private funds and registered investment advisers.[53]

In addition, as discussed in more detail below, the Commission is not excluding certain types of securities, specifically crypto asset securities, from the application of the final rules.[54] As stated in the Proposing Release, the proposed rules would apply to any ''security'' as defined in section 3(a)(10) or ''government security'' as defined in section 3(a)(44) of the Exchange Act. The dealer framework is a functional analysis based on the securities trading activities undertaken by a person, not the type of security being traded. Accordingly, the final rules will apply with respect to any crypto asset that is a ''security'' or ''government security'' within the meaning of the Exchange Act.

Further, the Commission disagrees with the argument that certain market participants, including PTFs, are not dealers because they do not have customers.[55] There is no requirement in the statutory text of either section 3(a)(5) or section 3(a)(44) that dealers have customers. In comparison, the Exchange Act's definition of ''broker'' is ''any person in the business of effecting transactions in securities for the account of others,'' which includes (but is not limited to) customers.[56] The dealer definition includes no such limiting language and, since its enactment, the dealer definition was understood to cover ''the operations of a trader . . . *who has no customers* but merely trades for his own account through a broker'' so long as those operations ''are sufficiently extensive to be regarded as a regular business . . . .'' [57] Likewise, many of the factors that the Commission identified in its 2002 Release do not presume a dealer is acting for a customer.[58] Indeed, a number of Exchange Act rules applicable to dealers presuppose that there are dealers without customers and are tailored for that business model.[59]

Further, a helpful analogy can be drawn to the Commission's rulemaking further defining who is a ''security-based swap dealer''—a definition that closely parallels the statutory definition of ''dealer,'' particularly with respect to the exclusion of activities that are not part of a regular business.[60] In that

[47] The proposed second qualitative factor has been modified to change the term ''trading interests'' to ''trading interest'' and the words ''are'' to ''is'' and ''they'' to ''it.'' This is a non-substantive modification to align the term with common usage.

[48] The proposed third qualitative factor has been modified to change the term ''trading interests'' to ''trading interest.'' This is a non-substantive modification to align the term with common usage.

[49] *See infra* note 297 and accompanying text. Further, the Commission is removing the definitions of ''control'' and ''parallel account structure.''

[50] *See, e.g.,* Foreign Broker-Dealer Adopting Release at 30017 (''the Commission uses an entity approach with respect to registered broker-dealers''). *See infra* note 326 and accompanying text.

[51] *See* section II.A.4.

[52] *See* section II.A.3. As discussed further below, the less than $50 million exclusion is not an exclusion from the ''dealer'' definition for all purposes, but only for purposes of the final rules that focus on *de facto* market making. Outside of this context, the question of whether any person, including a person that has or controls less than $50 million in total assets, is acting as a dealer, as opposed to a trader, will remain a facts and circumstances determination.

[53] *See* section II.A.3.b.

[54] Comments requesting that the proposed rules not apply specifically to crypto asset securities are discussed further in section II.A.3.

[55] *See Eastside Church of Christ* v. *National Plan, Inc.,* 391 F.2d 357 (5th Cir. 1968).

[56] 15 U.S.C. 78c(a)(4)(A).

[57] Charles H. Meyer, Securities Exchange Act of 1934 Analyzed and Explained 33–34 (1934) (emphasis added).

[58] *See* 2002 Release at 67498–67500.

[59] *See, e.g.,* 17 CFR 240.15c3–1(a)(6) (''Rule 15c3–1(a)(6)'') (requiring firms relying on this provision to transact only with other brokers and dealers and prohibiting such firms from carrying customer accounts); Rule 15b9–1 (exempting brokers-dealers from becoming members of a national securities association if they are a member of an exchange, do not carry customer accounts, and any securities transactions that they effect elsewhere than an exchange of which they are a member meet certain exceptions).

[60] *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596, (May 23, 2012) (''Entities Release'')

matter, in comparing ''counterparties'' with ''customers,'' the Commission stated that ''any interpretation of the 'security-based swap dealer' definition that is predicated on the existence of a customer relationship may lead to an overly narrow construction of the definition.'' [61] Accordingly, in this regard, these commenters have read a limitation into the statute where none exists.

As stated above, some commenters suggested that the final rules are unnecessary because the SEC has other tools to accomplish the goals of the rulemaking, including large trader reporting, TRACE, and CAT. Certain commenters urged the Commission to take additional or different regulatory actions for entities covered by the Investment Advisers Act of 1940 (''Advisers Act'') than the approach we have adopted, including leveraging existing data from Form PF filings or making amendments to the existing regulatory regime under the Advisers Act. However, as discussed below, dealer registration is tailored to provide specific protections to address potential risks associated with dealer activity, and the aforementioned tools do not provide sufficient regulatory oversight and transparency into the trading activity of entities that are not otherwise registered as dealers.

Commenters expressed the view that the proposed rules could have a negative impact on liquidity or may cause many market participants to cease, modify, or curtail their trading activity to avoid being required to register as a dealer.[62] However, as discussed further below, we have made various modifications to appropriately tailor the scope of the final rules to address concerns raised by commenters about effects on liquidity. The Commission has crafted the final rules to draw upon established concepts and to expand upon prior Commission statements to identify more specifically the activities of certain market participants who act as dealers by ''providing liquidity'' to other market participants, and to establish a more level regulatory playing field for these types of significant liquidity providers. The test established in the Exchange Act to determine if a person is a dealer is whether the person is engaged in the business of buying and selling securities for its own account ''as part of a regular business.'' [63] The final rules are thus intended to reflect the longstanding distinction between so-called ''traders''—whose liquidity provision is only incidental to their trading activities—and persons who are ''in the business'' of providing liquidity as part of a ''regular business,'' and so are ''dealers'' and ''government securities dealers'' under the Exchange Act. Under the final rules, a person is deemed to be engaged in buying and selling securities for its own account as part of a regular business—and therefore within the definition of ''dealer'' or ''government securities dealer''—if that person is engaged in a ''regular pattern of buying and selling securities that has the effect of providing liquidity to other market participants.''

The final rules are not the exclusive means of establishing that a person is a dealer or government securities dealer; otherwise applicable Commission interpretations and precedent will continue to apply.[64] In other words, these rules address one way in which a person can be engaged in the regular business of buying and selling securities for its own account, but these rules do not displace, modify, or substitute for otherwise applicable Commission interpretations and court precedent. A person engaging in other activities that satisfy the definition of dealer under otherwise applicable interpretations and precedent, such as underwriting, will still be a dealer even though those activities are not addressed by the two qualitative factors.[65]

The final rules, as modified, appropriately balance the concerns of the various commenters in a way that will best achieve the Commission's important goals to protect investors and support fair, orderly, and resilient markets through the complete and consistent application of dealer regulations. Further, the modifications we have made to tailor the scope of the final rules, including the persons scoped into the final rules, will address various concerns raised by commenters and appropriately require only entities engaging in dealing activity to register as dealers.

II. Discussion of Final Rules

A. Component Parts

1. Qualitative Standard

The qualitative standard in the proposed rules was intended to build on existing statements by the Commission and the courts regarding ''dealer'' activity to further define certain factors for determining when a person is engaged in buying and selling securities for its own account ''as part of a regular business'' as that phrase is used in sections 3(a)(5) and 3(a)(44) of the Exchange Act. Under paragraph (a)(1) of the proposed rules, a person would be engaged in buying and selling securities for its own account ''as a part of a regular business'' and so would be a dealer or a government securities dealer, if that person engages in a routine pattern of buying and selling securities (or government securities) that has the effect of providing liquidity to other market participants. Under this standard, as supplemented by the qualitative factors, when the frequency and nature of a person's securities trading is such that the person assumes a role—whether described as market-making, *de facto* market-making, or liquidity-providing—similar to the role that historically has been performed by a registered dealer, that person would be deemed to be a dealer or government securities dealer.[66] The proposed rules would have further defined three types of activities that would be considered to have the effect of providing liquidity to other market participants: (i) routinely making roughly comparable purchases and sales of the same or substantially similar securities (or government securities) in a day; or (ii) routinely expressing trading interests that are at or near the best available prices on both sides of the market and that are communicated and represented in a way that makes them accessible to other market participants; or (iii) earning

(''Although commenters have expressed the view that a person that engaged in security-based swap activities on an organized market should not be deemed to be a dealer unless it engaged in those activities with customers, we do not agree.'').

[61] *Id.* at n.282.

[62] *See* ABA Comment Letter at 9–12; ADAM Comment Letter at 16; AIMA Comment Letter II at 11–13; Comment Letter of Alternative Investment Management Association (Nov. 17, 2022) (''AIMA Comment Letter III'') at 3 and 8; Alphaworks Comment Letter at 6; Andreessen Horowitz Comment Letter at 10 and 13; Blockchain Association Comment Letter at 7; Citadel Comment Letter at 7–8; Comment Letter of Committee on Capital Markets (Oct. 19, 2022) (''Committee on Capital Markets Comment Letter'') at 3; DeFi Fund Comment Letter at 14; Element Comment Letter at 5; FIA PTG Comment Letter I at 2–10; Fried Frank Comment Letter at 8–11; Comment Letter of Gretz Consilium LLC (May 26, 2022) (''Gretz Comment Letter'') at 18; ICI Comment Letter at 7–8; McIntyre Comment Letter II at 2; MFA Comment Letter I at 12; Comment Letter of Managed Funds Association (Dec. 5, 2022) (''Lewis Study'') at 2; Morgan Lewis Comment Letter at 2 and 14; NAPFM Comment Letter at 5; Overdahl Comment Letter at 16–23; Schulte Roth Comment Letter at 2; SIFMA Comment Letter I at 8; SIFMA AMG Comment Letter at 16–17; Two Sigma Comment Letter at 2 and 9; Virtu Comment Letter at 3–4.

[63] *See* sections 3(a)(5)(A) and (B) of the Exchange Act, 15 U.S.C. 78c(a)(5)(A) and (B); section 3(a)(44) of the Exchange Act, 15 U.S.C. 78c(a)(44).

[64] *See* Rules 3a5–4(c) and 3a44–2(c) (providing that no presumption shall arise that a person is not a dealer or government securities dealer solely because that person does not satisfy the standards of the final rules). *See also* section II.A.5.

[65] *See supra* note 16.

[66] *See, e.g.,* 2002 Release at 67499.

revenue primarily from capturing bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interests.

Commenters stated that the terms ''routine'' and ''routinely'' in the proposed rules were unclear and would lead to inconsistent interpretations.[67] In response to the comments and upon further consideration, the Commission has replaced the term ''routine'' with ''regular'' in 17 CFR 240.3a5–4(a)(1) and 240.3a44–2(a)(1) so that a person will be engaged in buying and selling securities for its own account ''as a part of a regular business''—and so be a dealer or a government securities dealer—if that person engages in a regular pattern of buying and selling securities (or government securities) that has the effect of providing liquidity to other market participants. As discussed more fully below, ''regular'' participation in the securities markets is part of the statutory definition of ''dealer'' in the Exchange Act and therefore is a concept that should be familiar to market participants.[68]

In addition, as discussed below, after further consideration, the Commission has revised the qualitative standard by eliminating the proposed first qualitative factor and modifying the remaining two qualitative factors. These changes are designed to more appropriately tailor the rule to the nature of dealing in today's securities markets.[69] As a result of these modifications, the final rules establish two non-exclusive ways in which a person will be deemed to be engaged in providing liquidity as part of a regular business:

- Regularly expressing trading interest that is at or near the best available prices on both sides of the market for the same security, and that is communicated and represented in a way that makes it accessible to other market participants; or
- Earning revenue primarily from capturing bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interest.

a. Elimination of the Proposed First Qualitative Factor

As discussed in the Proposing Release, the proposed first qualitative factor was intended to capture a person's pattern of trading, the consistency and regularity of which indicate that its liquidity provision forms a part of a regular business.[70] Specifically, under proposed 17 CFR 240.3a5–1(a)(1)(i) and 240.3a44–2(a)(1)(i), a person that, trading for its own account, ''routinely mak[es] roughly comparable purchases and sales of the same or substantially similar securities in a day'' would be engaged in a pattern of trading that ''has the effect of providing liquidity to other market participants,'' and therefore engaged in buying and selling securities or government securities ''as part of a regular business'' as a dealer or government securities dealer.[71] The proposed first qualitative factor was intended to separate persons engaging in isolated or sporadic securities transactions from persons whose regularity of participation in securities transactions demonstrates that they are acting as dealers.

Commenters raised a number of concerns about the proposed first qualitative factor.[72] As a general matter, commenters contended that the proposed first qualitative factor would capture activity that was not dealing, but rather investing in the ordinary course.[73] One commenter recommended that certain specific activities be explicitly excluded from the rule, including asset liability management, liquidity and collateral management, and activities ancillary to exempt dealer activity.[74] As discussed further below, commenters also expressed concerns about certain terms used in the proposed first qualitative factor, the manner in which they would be interpreted, and the compliance challenges that they might present, focusing in particular on the use of the terms ''routinely,'' ''substantially similar,'' ''roughly comparable,'' and ''in a day.'' [75] As a result of these concerns, some commenters stated that the Commission should remove the first proposed qualitative factor.[76]

After further consideration and in light of commenters' concerns, the Commission has decided to eliminate the proposed first qualitative factor. The Commission agrees with commenters that the proposed first qualitative factor could capture more than dealing activity intended to be captured by the rule. Accordingly, the Commission is not adopting the first factor.

The Commission emphasizes that the elimination of this factor does not mean that the conduct that would have been captured by the proposed factor is not dealing activity. This conduct may be *de facto* market making under the other two qualitative factors or dealer activity under otherwise applicable precedent. In this regard, as discussed in section II.A.5, no presumption shall arise that a person is not a dealer or government securities dealer as defined by the Exchange Act solely because that person does not satisfy the standard set forth in the final rules.

b. Expressing Trading Interest Factor

The Commission proposed a second qualitative factor to identify activity that ''has the effect of providing liquidity to other market participants'' focused on the expression of trading interests. Specifically, under proposed 17 CFR 240.3a5–4(a)(1)(ii) and 240.3a44–2(a)(1)(ii), a person that, trading for its own account, ''routinely express[es] trading interests that are at or near the best available prices on both sides of the market and that are communicated and represented in a way that makes them

[67] *See, e.g.,* ADAM Comment Letter; Element Comment Letter; Morgan Lewis Comment Letter; Consensys Comment Letter; MFA Comment Letter I; NAPFM Comment Letter; SIFMA AMG Comment Letter.

[68] *See* 15 U.S.C. 78c(a)(5) and 78c(a)(44).

[69] As discussed below, the Commission is adding the phrase ''for the same security'' so that the proposed second qualitative factor applies to expressing trading interest on both sides of the market for the same security. The Commission has also modified, as appropriate, the remaining qualitative factors to replace the term ''routinely'' with ''regularly.''

[70] *See* Proposing Release at 23066.

[71] *See id.*

[72] *See also supra* notes 37–38 and accompanying text.

[73] *See, e.g.,* AIMA Comment Letter II; MFA Comment Letter I; Element Comment Letter; SIFMA Comment Letter II; FIA PTG Comment Letter II; MFA Comment Letter V. For example, one commenter stated that ''[w]ithout revision to, and clarification of, these vague terms, this Qualitative Standard will clearly capture many short-term investment strategies engaged in by traders that are not indicative of dealer functions.'' Element Comment Letter. Another stated that ''Qualitative Standard 1 would capture many common hedge fund strategies that have never been, and should not now be, considered dealing, including fixed-income arbitrage, convertible bond arbitrage and capital structure arbitrage, as well as a number of relative value or quantitative strategies.'' AIMA Comment Letter II.

[74] SIFMA Comment Letter II.

[75] *See, e.g.,* MFA Comment Letter I; SIFMA AMG Comment Letter; T. Rowe Price Comment Letter; MFA Comment Letter V.

[76] MFA Comment Letter I (''We have considered this proposed test and strongly believe that it will be unworkable for market participants—as described in detail below—and we therefore urge the Commission not to include Qualitative Test 1 in any final rule.''). *See also* AIMA Comment Letter II (''We believe the Commission should limit its qualitative standards to only Qualitative Standard 3.''). In addition, one commenter suggested that the Commission replace the first and second proposed qualitative factors with a test defining a person acting as a *bona fide* market maker under Regulation SHO as a dealer. *See* MFA Comment Letter I. As discussed below, the Commission is removing the proposed first qualitative standard and declines to replace the proposed second qualitative factor with a test defining a person acting as a *bona fide* market maker under Regulation SHO. *See* section II.A.1.b.

accessible to other market participants'' would be engaging in a routine pattern of trading that has the effect of providing liquidity to other market participants, and as a result, would be a dealer under the proposed rules.[77] As the Commission stated in the Proposing Release, this factor ''would update the longstanding understanding that regular or continuous quotation is a hallmark of market making or *de facto* market making (and, hence, dealer) activity, to reflect technological changes to the ways in which buyers and sellers of securities are brought together.'' [78]

The Commission explained in the Proposing Release the meanings of certain key terms used in the proposed second qualitative factor.[79] Specifically, as discussed in more detail below, the Commission explained the terms ''routinely,'' ''trading interests'' and ''best available prices on both sides of the market.'' [80]

The Commission received a range of comments on the proposed second qualitative factor. One commenter explicitly supported the proposed second qualitative factor, voicing support for the policy goal of requiring PTFs in the government securities market to register as government securities dealers.[81] The commenter stated that it believed that the second qualitative factor would achieve this goal.[82] As discussed below, a number of commenters opposed the proposed second qualitative factor, contending that the factor would capture activity that was not dealing,[83] and expressing concerns about certain terms used in this factor (*i.e.,* ''routinely,'' ''trading interests,'' ''both sides of the market,'' ''accessible to other market participants''), as well as addressing other issues.[84]

Advancements in the securities markets have altered the way in which market participants interact with the markets. Certain market participants continue to perform important dealer functions as providers of liquidity to other market participants by expressing trading interest on both sides of the market for a security to other market participants. The expressing trading interest factor takes these changes into account, while also allowing for flexibility in its application in the markets for different securities, based on the wide variance in liquidity, depth, or other traits.

In adopting the proposed second qualitative factor as the expressing trading interest factor, the Commission is replacing the term ''routinely'' with ''regularly.'' The Commission is also revising the rule text to explicitly provide that the test applies with respect to the expression of trading interest in the ''same'' security. Other than these changes, and certain non-substantive changes, for the reasons set forth below, the Commission is adopting this factor as proposed. Accordingly, under the expressing trading interest factor, a person ''regularly expressing trading interest that is at or near the best available prices on both sides of the market for the same security and that is communicated and represented in a way that makes it accessible to other market participants'' is engaged in buying and selling securities for its own account ''as a part of a regular business'' as the phrase is used in sections 3(a)(5)(B) and 3(a)(44)(A) of the Exchange Act. The expressing trading interest factor will appropriately capture those market participants who are engaging in liquidity-providing activities similar to those traditionally performed by dealers or government securities dealers as defined under sections 3(a)(5) and 3(a)(44) of the Exchange Act.[85]

Regularly

The Proposing Release stated that the term ''routinely'' as used in the proposed second qualitative factor meant that a person must express trading interests more frequently than occasionally, but not necessarily continuously, both intraday and across time.[86] The use of the term ''routinely'' in the proposed second qualitative factor was thus intended to capture significant liquidity providers who express trading interests at a high enough frequency to play a significant role in price discovery and the provision of market liquidity, even if their liquidity provision may not be continuous like that of some traditional dealers.[87] The Proposing Release stated that the liquidity providers that would be covered by the proposed second qualitative factor are very active in the markets—their participation is very routine—as demonstrated by the ''key role'' they play ''in price discovery and the provision of market liquidity'' in both the interdealer U.S. Treasury market and the equity markets.[88]

A number of commenters expressed concerns related to the use of the term ''routinely.'' [89] Several commenters stated that the term ''routinely'' was unclear, which would make it difficult or impossible for market participants to determine whether their activities would be captured by the proposed second qualitative factor.[90] For example, one commenter stated that the term ''routinely'' is ''unclear, defined with reference to another undefined concept ('occasional') and distinguished from a concept ('continuous') that market participants actually understand and have experience applying.'' [91] As a result, the commenter stated this factor ''would ultimately be unworkable for market participants who will have to make subjective determinations, on at least a daily basis, about whether they are 'routinely' engaging in the activity described in [the proposed rules].'' [92] Another commenter asserted that use of the term ''routinely'' ''will lead to inconsistent application across market participants.'' [93] Commenters also raised questions about the Proposing Release's analogy to the approach in the Commission's joint rulemaking with the Commodity Futures Trading Commission regarding, among other things, the definitions of ''swap dealer'' and ''security-based swap dealer.'' [94] In particular, commenters stated that the reference was inappropriate because of the different nature of the markets for

[77] As discussed below, the Commission is adding the phrase ''for the same security'' to the expressing trading interest factor to specify that this factor applies to expressing trading interest on both sides of the market for the same security.

[78] Proposing Release at 23068.

[79] *Id.*

[80] *Id.*

[81] SIFMA Comment Letter I.

[82] *Id.*

[83] *See, e.g.,* MFA Comment Letter I; SIFMA AMG Comment Letter; AIMA Comment Letter II.

[84] *See, e.g.,* MFA Comment Letter I; McIntyre Comment Letter II; Consensys Comment Letter; Gretz Comment Letter; FIA PTG Comment Letter I; Blockchain Comment Letter; NAPFM Comment Letter; ADAM Comment Letter; SIFMA AMG Comment Letter; Comment Letter of Managed Funds Association (July 21, 2023) (''MFA Comment Letter II''); Element Comment Letter; Morgan Lewis Comment Letter; ABA Comment Letter.

[85] *See* 15 U.S.C. 78c(a)(5) and 78c(a)(44).

[86] Proposing Release at 23068.

[87] *Id.*

[88] *Id.*

[89] *See, e.g.,* MFA Comment Letter I; McIntyre Comment Letter II; Consensys Comment Letter; Gretz Comment Letter; FIA PTG Comment Letter I; Blockchain Comment Letter; NAPFM Comment Letter; ADAM Comment Letter; SIFMA AMG Comment Letter; MFA Comment Letter II; Element Comment Letter; Morgan Lewis Comment Letter; ABA Comment Letter.

[90] *See, e.g.,* MFA Comment Letter I; Element Comment Letter; ADAM Comment Letter; Morgan Lewis Comment Letter; SIFMA AMG Comment Letter.

[91] MFA Comment Letter I.

[92] *Id. See also* Element Comment Letter ('''routine' trading can indicate market making, which implies a dealer function, but can also indicate the day-to-day activity of a private fund's trading desk.'').

[93] ADAM Comment Letter. *See also* SIFMA AMG Comment Letter.

[94] *See, e.g.,* ADAM Comment Letter; Morgan Lewis Comment Letter; SIFMA AMG Comment Letter; *see also* Proposing Release at n.132.

cash securities and security-based swaps.[95]

As an alternative to ''routinely,'' some commenters suggested using a different term, with most such commenters suggesting ''continuous.'' [96] Some commenters asked whether the Commission had considered using ''regularly,'' stating that the statute uses the term ''regular.'' [97]

After further consideration, the Commission has replaced the term ''routinely'' with ''regularly.'' As with the term ''routinely'' in the Proposing Release, the term ''regularly'' in the final rules will apply to a person's expression of trading interest both within a trading day and over time.[98] This requirement distinguishes persons engaging in isolated or sporadic expressions of trading interest from persons whose regularity of expression of trading interest demonstrates that they are acting as dealers. As some commenters expressly stated,[99] the term ''regular'' is part of the statutory definition of ''dealer'' in the Exchange Act.[100] The term ''regular'' captures persons operating as dealers through their expression of trading interest on both sides of the market for the same security in a manner consistent with this statutory text.

A market participant does not need to be continuously expressing trading interest to be engaging in a ''regular'' business. The Exchange Act's definitions of ''dealer'' and ''government securities dealer'' do not include a requirement of continuous participation. The ordinary meaning of ''continuous'' is ''characterized by continuity; extending in space without interruption of substance; having not interstices or breaks; having its parts in immediate connection; connected, unbroken'' and ''marked by uninterrupted extension in space, time, or sequence,'' as defined by the Oxford English and the Merriam-Webster dictionaries, respectively.[101] While such ''continuous'' expression of trading interest would be indicative of dealer activity, a continuous standard would not be appropriate because it would be too limited in markets for securities that exhibit varying degrees of depth and liquidity.[102]

Whether a person's activity is ''regular'' will depend on the liquidity and depth of the relevant market for the security. For example, in markets that have significant liquidity and market depth, and have experienced advancements in technology and electronic trading, like the U.S. Treasury market,[103] expressing trading interest on both sides of the market for the same security as part of an investment strategy on a one-off basis would not be sufficiently regular to be caught by the expressing trading interest factor. Rather, ''regular'' in the most liquid markets would mean more frequent periods of expressing trading interest on both sides of the market both intraday and across days given the efficiency in which securities can be bought and sold and the market's ability to absorb orders without significantly impacting the price of the security.[104] In contrast, if the market for a security is less liquid, and it is difficult to execute orders in that security or large orders can dramatically affect the price of the security, the term ''regular'' would account for the possibility of more interruptions or wider spreads for the best available prices.

The expressing trading interest factor captures the hallmark *de facto* market making activity in which dealers make a market in a security, standing ready to trade on both sides of the market on the same security on a regular ongoing basis.[105] Those market participants that have established themselves as significant market intermediaries—and critical sources of liquidity—in a market by employing automated, algorithmic trading strategies that rely on high frequency trading strategies to generate a large volume of orders and transactions would be captured by the expressing trading interest factor.[106] This would include market participants that, for example, employ passive market making strategies involving the submission of non-marketable resting orders (bids and offers) that provide liquidity to the marketplace at specified prices.[107] Accordingly, the term ''regularly'' will capture those market participants that engage in the activity described in the expressing trading interest factor on a frequent enough basis (both within a trading day and over time) that they do so as part of a regular business.

Trading Interest

The proposed second qualitative factor in the proposed rules would have applied to ''trading interests.'' The Proposing Release stated that the use of the broader term ''trading interests'' in the proposed second qualitative factor, rather than the term ''quotations,'' would reflect the prevalence of non-firm trading interest offered by marketplaces today, and account for the varied ways in which developing technologies permit market participants to hold themselves out as willing to buy or sell securities, or otherwise communicate their willingness to trade, and to effectively make markets.[108] As explained in the Proposing Release, the broader term was intended to capture the traditional quoting engaged in by dealer liquidity providers, new and developing quoting equivalents, and the orders that actually result in the provision of liquidity.[109] In other words,

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[95] *See, e.g.,* ADAM Comment Letter; Morgan Lewis Comment Letter; SIFMA AMG Comment Letter.

[96] SIFMA AMG Comment Letter; Comment Letter of BlackRock (Mar. 16, 2023) (''BlackRock Comment Letter'').

[97] MFA Comment Letter I (''. . .but query, was 'nearly continuous' considered? Or 'regular'?''); McIntyre Comment Letter II (stating that the Proposed Rule ''replaces the statutory text of ''regular'' and ''continuous'' with an amorphous notion of ''routine'' patterns of providing liquidity.'').

[98] As proposed, the term ''routinely'' would have meant both repeatedly within a day and repeatedly over time. *See* Proposing Release at 23068.

[99] *See supra* note 97.

[100] 15 U.S.C. 78c(a)(5).

[101] *See, e.g., Iqbal* v. *United States Citizenship & Immigr. Servs.,* 397 F. Supp. 3d 273, 283 (W.D.N.Y. 2019) (quoting Merriam-Webster, *https://www.merriam-webster.com/dictionary/continuous* (Aug. 22, 2019)); *see also Axia Inc.* v. *Jarke Corp.,* No. 87 C 8024, 1989 WL 39722, at *3 (N.D. Ill. Apr. 20, 1989) (explaining that ''continuous'' is commonly understood as ''uninterrupted'' in the context of an interpretation of a patent claim).

[102] *See* Remarks of Lorie K. Logan, Executive Vice President of the Federal Reserve Bank of New York, at the Brookings-Chicago Booth Task Force on Financial Stability, *available at https://www.newyorkfed.org/newsevents/speeches/2020/log201023;* Remarks of Deputy Secretary Justin Muzinich at the 2020 U.S. Treasury Market Conference | U.S. Department of the Treasury; *see also* Treasury Market Liquidity during the COVID–19 Crisis—Liberty Street Economics (newyorkfed.org). *See also* 2015 IAWG Report (when conducting an algorithm-level analysis from the event window on Oct. 15, 2014, the IAWG found ''the analysis suggests that multiple types of trading strategies were deployed by PTFs during the event window. Some PTF algorithms appear to explain the considerable amount of net passive market making activity that was witnessed across cash and futures over the event window and likely was an important contributing factor to the absence of price gapping despite the unprecedented large price swings. Another, and equally significant, group of PTF strategies appears to have aggressively traded in the direction of price moves during the event window, accounting for the bulk of the overall aggressive trading imbalance observed.'').

[103] *See* Proposing Release at 23055.

[104] *See* Proposing Release at 23058 (stating ''[t]he 'regularity' of participation in securities transactions necessary to find that a person is a 'dealer''' has not been quantified, but involves engaging in 'more than a few isolated' securities transactions.'') (citing *SEC* v. *Am. Inst. Counselors, Inc.,* Fed. Sec. L. Rep. (CCH) ¶ 95388 (D.D.C. 1975)); *see also supra* note 98.

[105] *See* Concept Release on Equity Market Structure, Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (''2010 Equity Market Structure Concept Release'') at 3607–08.

[106] *See* Amended Rule 15b9–1 Adopting Release at n.8.

[107] 2010 Equity Market Structure Concept Release at 3607–08.

[108] Proposing Release at 23068.

[109] *Id.*

the proposed use of the term ''trading interests'' was intended to update the Commission's longstanding understanding that regular or continuous ''quotation'' is a hallmark of market making or *de facto* market making (and, hence, dealer) activity, to reflect the various and evolving ways in which buyers and sellers of securities are brought together.[110] Using the term ''trading interests,'' rather than ''quotations,'' the Commission stated, would also allow for clear and consistent application of the definition of ''dealer'' and ''government securities dealer.'' [111]

A number of commenters objected to the use of the term ''trading interests'' on various grounds including, among others, the difficulty in applying the term and the breadth of the term purportedly causing non-dealing trading activity to be captured.[112] One commenter explained that it would be challenging for firms to assess whether non-firm trading interest actually is at or near the best available price because non-firm trading interest often is not executed given that firms are not required to execute non-firm trading interest, even if matched.[113] The commenter also stated that nearly any active investor or trader might express trading interests on both sides of the market to get best execution, and suggested limiting the factor instead to ''firm two-sided quotations'' expressed on a ''continuous or near continuous basis.'' [114] Another commenter similarly requested that the term ''trading interest'' be replaced with a quotation and order-based standard.[115]

Two commenters stated that applying the proposed second qualitative factor to investment advisers would inappropriately subject them to potential dealer status simply for exercising their fiduciary duties.[116] For example, one commenter stated that an investment adviser may have to submit trading interests throughout a trading day in order to obtain best execution and meet other fiduciary obligations acting for their clients, or to use specific trading protocols available in the market, such as the order book.[117]

Similarly, other commenters stated that the proposed second qualitative factor could require firms, including unregistered funds excluded from the Investment Company Act and registered investment advisers, to register as dealers for engaging in activity that has not historically been considered to be dealer activity.[118] One commenter, for example, questioned whether portfolio managers, by taking long/short positions or seeking arbitrage opportunities, would be required to register as dealers under the proposed second qualitative factor.[119] Another commenter stated that some asset managers have funds with active fixed-income trading strategies involving indications of interest to trade bonds, as well as swaps, on similar or even identical underlying issuers in order to take advantage of mispricing or to create a unique non-directional risk profile in a trade.[120] According to this commenter, although this activity entails communicating and indicating interest on such trades to a number of counterparties, it has never been considered dealing.[121] Yet another commenter stated that firms that, as a primary element of their trading strategy, simultaneously and continuously post bids and offers in a specific instrument at or near the national best bid and offer, have not historically been treated as having engaged in dealer activity where the firm posting quotes did not hold itself out to customers.[122] One commenter asked for clarity on how the proposed second qualitative factor would apply in the digital assets space, and in particular whether participants in a digital asset liquidity pool, by leaving their assets in the pool and thereby exposing those assets to sale at the pool's prevailing exchange rate, are expressing a ''trading interest.'' [123]

After consideration of the comments, the Commission has determined to adopt the proposed second qualitative factor with minor, non-substantive modifications to the term ''trading interest.'' The term ''trading interest'' means: (i) an ''order'' as the term is defined under 17 CFR 240.3b–16(c) (''Rule 3b–16(c)''); [124] or (ii) any non-firm indication of a willingness to buy or sell a security that identifies the security and at least one of the following: quantity, direction (buy or sell), or price. A standard of ''firm two-sided quotations'' expressed on a ''continuous or near continuous basis,'' while captured by the existing understanding of ''dealer'' under Exchange Act section 3(a)(5), does not account for the full range of liquidity-providing dealer activity undertaken in today's security markets.[125] The term ''trading interest'' accounts for the varied mechanisms that permit market participants to effectively make markets. These include, but are not limited to, the use of streaming quotes, request for quotes (''RFQs''), or order books. To be captured by the expressing trading interest factor depends less on the method used to communicate trading interest, and more on whether the person is expressing trading interest on both sides of the market for the same security that has the effect of providing liquidity in the same security to other market participants.

At the same time, expressing trading interest is not, standing alone, enough to demonstrate engaging in a ''regular pattern of buying and selling securities that has the effect of providing liquidity to other market participants'' under the final rules. Specifically, under the final rules, a person will be engaged in activity as part of a regular business if that person ''[e]ngages in a regular pattern of *buying and selling securities* that has the effect of providing liquidity to other market participants by . . . [r]egularly expressing trading interest that is at or near the best available prices on both sides of the market for

[110] *Id.* The Commission has stated previously that a market maker engaged in bona-fide market making is a ''broker-dealer that deals on a regular basis with other broker-dealers, actively buying and selling the subject security as well as regularly and continuously placing quotations in a quotation medium on both the bid and ask side of the market.'' *See, e.g.,* Exchange Act Release No. 32632 (July 14, 1993), 58 FR 39072, 39074 (July 21, 1993).

[111] Proposing Release at 23068.

[112] *See, e.g.,* MFA Comment Letter I; SIFMA AMG Comment Letter; AIMA Comment Letter II. A number of other commenters objected to the Proposing Release's use of the term ''trading interests'' on the grounds that the term is the subject of another proposed rule. *See, e.g.,* ABA Comment Letter; SIFMA AMG Comment Letter; SIFMA Comment Letter I; MFA Comment Letter I. As discussed below, it is appropriate for the final rules to use the term ''trading interest.'' The Commission is adopting the term ''trading interest'' as explained herein for purposes of the final rules.

[113] MFA Comment Letter I.

[114] MFA Comment Letter II; *see also* MFA Comment Letter I.

[115] SIFMA AMG Comment Letter.

[116] *Id.;* MFA Comment Letter I.

[117] SIFMA AMG Comment Letter.

[118] *Id.;* AIMA Comment Letter II.

[119] McIntyre Comment Letter II.

[120] *See* AIMA Comment Letter II (explaining, for example, that some asset managers may have funds with active fixed-income strategies that may be captured by the proposed second qualitative factor).

[121] AIMA Comment Letter II.

[122] Fried Frank Comment Letter. As discussed below, whether a person meets the definition of ''dealer'' is not contingent upon whether that person has customers.

[123] DeFi Fund Comment Letter.

[124] Rule 3b–16(c) states that ''the term order means any firm indication of a willingness to buy or sell a security, as either principal or agent, including any bid or offer quotation, market order, limit order, or other priced order.'' The Proposing Release previously referenced the definition of ''order'' under 17 CFR 242.300. Proposing Release at 23068. This release refers to Rule 3b–16(c), which defines the term ''order'' identically and is further discussed in the release adopting 17 CFR 242.300 through 242.304 (''Regulation ATS''). *See* Regulation of Exchanges and Alternative Trading Systems, Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998).

[125] *See* Proposing Release at 23068.

the same security and that is communicated and represented in a way that makes it accessible to other market participants (emphasis added).'' [126] A market participant seeking price information by requesting quotes on a security, without including prices, on both sides of the market would generally not satisfy this qualitative factor because that trading interest, absent more, would not be ''at or near the best available price.'' With respect to the commenter's statement that investment advisers' fiduciary duties may require them to submit ''trading interests'' throughout a trading day, the final rules have been modified so that the definition of ''own account'' applies to accounts in which the person holds the account in its name or the account is held for the benefit of that person.[127] As such, the trading interest expressed by investment advisers for purposes of their fiduciary duty to their clients and their clients' accounts, such as when investment advisers place orders or request quotations on behalf of their clients, would not be activity captured by the expressing trading interest factor, unless the investment adviser itself is the account holder or the account is held for the benefit of the investment adviser.[128] Moreover, as discussed above, persons engaging in the activity described in the qualitative standard are acting as dealers regardless of whether the person engaging in such dealer activity has or holds itself out to customers.[129] The statutory definitions of ''dealer'' and ''government securities dealer'' distinguish between a dealer and a trader on the basis of whether a person is in the ''regular business'' of buying and selling securities for one's own account—not whether the person is doing so to effectuate customer orders.[130]

One commenter questioned how to apply the term ''trading interest'' to certain types of products, structures, or activities in the so-called decentralized finance (''DeFi'') market to provide crypto asset securities liquidity.[131] Whether a particular activity in the crypto asset securities market, including in the so-called DeFi market, gives rise to dealer activity requires an analysis of the totality of the particular circumstances against all elements of the expressing trading interest factor.[132] Commenters argued that crypto assets should not be covered by the final rules.[133] However, the Commission is not excluding any particular type of securities, including crypto asset securities, from the application of the final rules. The dealer framework is a functional analysis based on the securities trading activities undertaken by a person, not the type of security being traded. Persons, including persons using so-called ''automated market makers,'' that are engaged in buying and selling securities for their own account must consider whether they are dealers under the final rules, and thus subject to dealer registration requirements.[134]

As discussed below, the final rules build off existing legal standards and, as discussed throughout this release, are designed to address where market participants are engaging in *de facto* market making and required to register as dealers or government securities dealers, regardless of which such technology is used.[135] As explained throughout this release, the application of the dealer regulatory regime to such persons will promote the Commission's longstanding mission.

Both Sides of the Market

Under the proposed rules, in order to come within the proposed second qualitative factor, the expression of trading interests would need to be ''at or near the best available prices on both sides of the market.'' [136] As discussed in the Proposing Release, the phrase ''at or near the best available prices on both sides of the market'' describes ''the activity of liquidity-providing dealers, which help determine the spread between the best available bid price and the best available ask price for *a given security*.'' [137] The Proposing Release further explained that, by competing to both buy and sell at the best available prices, liquidity providers help to narrow bid-ask spreads.[138] The Commission also stated that the proposed second qualitative factor helped to emphasize that a liquidity

[126] *See* Rules 3a5–4(a)(1)(ii) and 3a44–2(a)(1)(ii).

[127] *See* SIFMA AMG Comment Letter. *See also* section II.A.4.

[128] Furthermore, as discussed in section II.A.3, the Commission declines to include an exclusion from the final rules for registered investment advisers and private funds and continues to believe that when engaged in dealer activity, including by expressing trading interest as set forth in the factor, registered investment advisers and private funds should be subject to the dealer regulatory regime, which includes not only registration obligations, but also comprehensive regulatory requirements and oversight that broadly focus on market functionality—that is, the impact of dealing activity on the market as a whole.

[129] *See supra* notes 55–59 and accompanying text.

[130] *See id.;* 15 U.S.C. 78c(a)(5); 15 U.S.C. 78c(a)(44)(A). In fact, the definition of ''broker'' presumes that a person is effectuating securities transactions on behalf of customers. *See* 15 U.S.C. 78c(a)(4) (stating that a broker means ''any person engaged in the business of effecting transactions in securities *for the account of others*'') (emphasis added).

[131] DeFi Fund Comment Letter.

[132] A threshold question in determining the applicability of the final rules is whether a person engaging with products, structures, or activities in the so-called DeFi market has or controls total assets of less than $50 million. *See* 17 CFR 240.3a5–4(a)(2)(i) (''Rule 3a5–4(a)(2)(i)''); 17 CFR 240.3a44–2(a)(2)(i) (''Rule 3a44–2(a)(2)(i)''); section II.A.3. If so, that person would not be captured by the final rules. *See also* 17 CFR 240.3a5–4(d); 17 CFR 240.3a44–2(d) (providing that a person not meeting the conditions set forth in the final rules may nonetheless be a dealer if it otherwise engages in a regular business of buying and selling securities for its own account); *infra* note 284 and accompanying text (citing examples where persons engaging in crypto asset securities transactions are operating as dealers as defined under section 3(a)(5)). If this exclusion cannot be relied upon, then the expressing trading interest factor could apply. Furthermore, as discussed in section II.A.3.a, the exclusion for persons having or controlling less than $50 million in total assets applies to the final rules and does not modify existing applicable court precedent and Commission interpretations.

[133] *See, e.g.,* ADAM Comment Letter (stating ''the blanket application of the dealer and government securities dealer regulatory framework to digital assets would be premature and imprudent.''); *see also* Consensys Comment Letter; DeFi Fund Comment Letter; Chamber of Digital Commerce Comment Letter; Blockchain Association Comment Letter.

[134] The application of the final rules turns on whether a particular crypto asset is a security, as defined under the U.S. Federal securities laws. The term ''security'' includes an ''investment contract,'' as well as other instruments. To the extent there is a question as to whether a particular crypto asset is an investment contract that is a security, the analysis is governed by the test first articulated by the Supreme Court in *SEC* v. *W.J. Howey Co.,* 328 U.S. 293, 301 (1946). *See, e.g., SEC* v. *Terraform Labs PTE, Ltd.,* No. 23–cv–1346, 2023 WL 8944860 (S.D.N.Y. Dec. 28, 2023 (stating that *Howey* was and remains a binding statement of law and that there was no genuine dispute that the elements of the *Howey* test had been met)); *SEC* v. *Kik Interactive Inc.,* 492 F. Supp. 3d 169, 177–180 (S.D.N.Y. 2020) (applying *Howey* in granting the Commission's motion for summary judgment finding Kik's sale of Kin tokens to the public was a sale of a security and required a registration statement); *SEC* v. *LBRY,* No. 21–CV–260–PB, 2022 WL 16744741 (D.N.H. Nov. 7, 2022) (applying *Howey* in granting the Commission's motion for summary judgment finding ''no reasonable trier of fact could reject the SEC's contention that LBRY offered LBC [a crypto asset] as a security.''); Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO, Exchange Act Release No. 81207 (July 25, 2017) (''DAO 21(a) Report'') (describing how DAO tokens were securities under *Howey*).

[135] *See* sections II.A.3, III.D.6; *see also* Policy Recommendations for Crypto and Digital Asset Markets Final Report, Board of the International Organization of Securities Commissions (Nov. 2023) (stating that ''the regulatory frameworks (existing or new) should seek to achieve regulatory outcomes for investor protection and market integrity that are the same as, or consistent with, those required in traditional financial markets in order to facilitate a level-playing field between crypto-assets and traditional financial markets and help reduce the risk of regulatory arbitrage''), *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD747.pdf;* Final Report with Policy Recommendations for Decentralized Finance (DeFi), Board of the International Organization of Securities Commissions (Dec. 2023), *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD754.pdf.*

[136] Proposing Release at 23068.

[137] *Id.* (emphasis added).

[138] *Id.*

provider, to come within the rules, must both buy and sell securities.[139]

Several commenters requested clarification as to how to apply the phrase ''on both sides of the market,'' particularly, with regard to what period of time to use when evaluating orders placed on both sides of the market, and as to whether the phrase applies to the market for a single security or related instruments.[140] Some commenters asserted that the absence of a time limitation could prevent market participants from using all available trading strategies in a market, including active trading strategies where a person would post resting offers and bids on a central limit order book (''CLOB''), without registering as a dealer.[141] Two of these commenters urged the Commission to modify the proposed second qualitative factor to clarify that the trading interest must be expressed on both sides of the market simultaneously.[142] According to one commenter, if the proposed second qualitative factor does not require that the trading interest be expressed on both sides of the market simultaneously, it ''would result in this test capturing trading that is not consistent with dealer activity.'' [143] Commenters also urged the Commission to clarify that the phrase ''both sides of the market'' applied to the same security.[144] One commenter suggested that the Commission modify the proposed second qualitative factor to add the phrase ''for the same security.'' [145]

Consistent with the Proposing Release which explained that the proposed second qualitative factor applies to persons expressing trading interests on both sides of the market in a given security, the Commission is modifying the rule text to add the phrase ''for the same security'' to the second qualitative factor.[146]

The Commission is not adopting a requirement that the trading interest be expressed simultaneously on both sides of the market. Limiting the expressing trading interest factor to the simultaneous expression of trading interests could exclude other regular expressions of trading interest that constitute dealer activity by providing liquidity to other market participants. While simultaneously expressing trading interest on both sides of the market in the same security is indicative of dealer activity, market participants also can be acting as dealers by regularly providing liquidity even where the expressions of trading interest on both sides of the market for the same security are not simultaneous, particularly because the markets for different securities have varying structures, trading volume, and liquidity.[147] Further, adding a simultaneity condition could lead to behavior where a dealer might, for example, express trading interest to buy and sell in alternate moments in time to evade the requirement to register. Accordingly, the Commission is not conditioning the application of the expressing trading interest factor on trading interests being expressed simultaneously. Due to the differences between markets, participants will need to assess the totality of their trading activity to determine if they are expressing trading interests on both sides of the market for the same security sufficiently close in time to have the effect of providing liquidity in the same security to other market participants.

The Commission recognizes that non-firm trading interest (and firm quotations for that matter) need not be executed, even if matched. Nonetheless, it will be possible to assess whether a non-firm trading interest is actually ''at or near the best available price,'' using the similar information that market participants use to make bids and offers, including recently completed purchases and sales and the totality of indications of willingness to buy or sell at specified prices.[148] For example, market participants can use similar information to that used by registered broker-dealers to assess whether a customer order was executed at the best available price.[149]

Finally, as discussed above in connection with the term ''trading interest,'' to come within this factor, a person expressing trading interest (including through a CLOB) must be buying and selling securities, and it must engage in such activity ''regularly.''

Accessible to Other Market Participants

Under the proposed rules, market participants would have had to routinely express trading interests accessible to other market participants to be considered to have engaged in a routine pattern of trading that has the effect of providing liquidity to other market participants.[150] In the Proposing Release, the Commission explained that the proposed second qualitative factor would apply only when the expressed trading interests that are at or near the best available prices on both sides of the market are ''communicated and represented in a way that makes them accessible to other market participants.'' [151]

One commenter objected to the proposed second qualitative factor's phrase ''communicated and represented in a way that makes them accessible to other market participants,'' stating that the Proposing Release does not make clear whether trading interests made available to a limited group of participants via a RFQ would trigger the factor, versus trading interests published on a broadly accessible order book. The commenter stated further that the vagueness of the standard would prevent market participants from applying it with confidence and might encourage market participants to choose execution venues and order types that are not transparent or accessible.[152] This commenter recommended adopting a test defining a person acting as a *bona fide* market maker under 17 CFR 242.200 through 242.204 (''Regulation SHO'') as a dealer, in lieu of the first and second proposed qualitative factors.[153]

The phrase ''accessible to other market participants'' reflects the plain

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[139] *Id.*

[140] *See, e.g.,* SIFMA AMG Comment Letter; AIMA Comment Letter II; MFA Comment Letter I; Citadel Comment Letter.

[141] *Id.* For instance, according to one commenter, there are examples of where market participants using a CLOB routinely express trading interests on both sides of the market in various instruments over the course of a trading day, and CLOBs can benefit both market liquidity and competition. *See* Citadel Comment Letter.

[142] *See* MFA Comment Letter I; Citadel Comment Letter.

[143] MFA Comment Letter I.

[144] *See, e.g.,* Citadel Comment Letter; Lewis Study; MFA Comment Letter I; MFA Comment Letter II.

[145] MFA Comment Letter II.

[146] Proposing Release at 23068 (stating ''[t]he phrase 'best available prices on both sides of the market' more specifically and clearly describes the activity of liquidity-providing dealers, which help determine the spread between the best available bid price and the best available ask price for a *given* security'') (emphasis added). The phrase ''same security'' is to be interpreted as that phrase is used in the Proposing Release. *See* Proposing Release at 23067 (stating '' 'the same' securities means that the securities bought and sold are securities of the same class and having the same terms, conditions, and rights [, and] securities bearing the same Committee on Uniform Securities Identification Procedures ('CUSIP') number, for example, would be considered 'the same.' '').

[147] *See* 2010 Equity Market Structure Concept Release at 3608 (stating that ''proprietary traders are analogous to OTC [over-the-counter] market makers in that they have considerable flexibility in trading without significant negative or affirmative obligations for overall market quality'').

[148] *See, e.g.,* Disclosure of Order Execution and Routing Practices, Exchange Act Release No. 43590 (Nov. 17, 2000), 65 FR 75414, 75418 (Dec. 1, 2000) (stating that quotation information contained in the public quotation system must be considered in seeking best execution of customer orders).

[149] *Id.*

[150] Proposing Release at 23068.

[151] *Id.*

[152] MFA Comment Letter I.

[153] *Id.*

meaning that a person expresses trading interests to more than one market participant. For example, where a person makes a trading interest available (such as streaming two-way indicative quotes) to more than one market participant, even if the person made that trading interest available through individual communications, that person would be expressing trading interest accessible to other market participants.[154] Again, the expressing trading interest factor does not hinge on any particular method of communication and representation (*e.g.,* RFQ, indications of interest, or streaming quotes); it depends on the totality of the trading activity to determine if the person is expressing trading interests on both sides of the market for the same security to have the effect of providing liquidity in the same security to other market participants.

The Commission is not adopting the suggestion to replace this factor with a test defining a dealer as a person engaging in *bona fide* market making activities under Regulation SHO. The *bona fide* market making exception under Regulation SHO applies to a specific subset of dealer activity. As the Commission previously stated when proposing Regulation SHO, ''a narrow exception for market makers and specialists engaged in bona fide market making activities is necessary because they may need to facilitate customer orders in a fast moving market without possible delays associated with complying with the proposed 'locate' rule.'' [155] For example, a broker-dealer must claim the *bona fide* market making exception from the locate requirement of Regulation SHO at the time of the short sale in a particular security.[156] Accordingly, limiting the applicability of the final rules to those persons eligible for Regulation SHO's bona-fide market-making exception would exclude persons engaged in other liquidity-providing dealer activity.

One commenter stated that the proposed second qualitative factor would impact the Commission's Order Competition Rule proposal.[157] On December 14, 2022, the Commission proposed a rule that would require certain orders of individual investors to be exposed to competition in fair and open auctions before such orders could be executed internally by any trading center that restricts order-by-order competition.[158] As discussed below, the Commission has considered the current regulatory landscape in presenting the baseline. To the extent the proposed Order Competition Rule is adopted, the baseline in that rulemaking will reflect the regulatory landscape that is current at that time.[159]

In sum, the Commission has determined to replace the term ''routinely'' with ''regularly,'' add the phrase ''for the same security,'' and make non-substantive modifications to this factor, but otherwise is adopting this factor as proposed.

c. Primary Revenue Factor

Finally, the Commission proposed a third qualitative factor encompassing activity that ''has the effect of providing liquidity to other market participants.'' Specifically, under proposed 17 CFR 240.3a5–4(a)(1)(iii) and 240.3a44–2(a)(1)(iii), a person that, trading for its own account, ''earn[ed] revenue primarily from capturing bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interests,'' would have been engaging in a routine pattern of trading that has the effect of providing liquidity to other market participants, and as a result, would have been a dealer under the proposed rules.

The Commission explained in the Proposing Release that one fundamental characteristic typical of market makers and liquidity providers—and one that has historically been viewed as dealer activity—is trading in a manner designed to profit from bid-ask spreads or liquidity incentives rather than with a view toward appreciation in value.[160] We stated that persons engaged in such activity are ''in the business'' of providing liquidity because (1) they routinely supply it and (2) the revenue they earn through bid-ask spreads or liquidity incentives is their primary source of revenue.[161]

The proposed third qualitative factor accounted for both forms of revenue. As to the first—capturing bid-ask spreads—the Commission stated that when a liquidity provider routinely buys and sells securities in a manner designed to capture a spread with such frequency and consistency that its revenue is made up primarily of this form of compensation, it would be considered to be engaged in a routine pattern of providing liquidity as a service and would fall within the scope of the rules.[162] As to the second, the Commission stated that when a liquidity provider, as a result of its routine purchases and sales of securities, captures ''incentives offered by trading venues to liquidity-supplying trading interests'' with such frequency and consistency that its revenue is made up primarily of this form of compensation, it would be considered to be engaged in a routine pattern of providing liquidity as a service and generally standing ready to buy or sell securities, and so would fall within the scope of the proposed rules.[163]

In the Proposing Release, the Commission explained the meaning of certain key terms in the proposed third qualitative factor. The Commission stated that the factor used the phrase ''earn revenue''—rather than, for example, ''profit from''—to make clear that a person's trading strategies would not need to be profitable to bring them within the rule.[164] Dealer activity is dealer activity regardless of whether it is profitable. With respect to the term ''primarily,'' the Commission further stated that, generally speaking, although the Commission has not established a bright-line test, if a person derives the majority of its revenue from either of the sources described in the proposed third qualitative standard, it would likely be in a regular business of buying and selling securities or government securities for its own account.[165]

Finally, with respect to the term ''trading venues,'' the Commission stated that market evolution has given rise to a variety of venues in which liquidity providers can express trading interests, and the term ''trading venues'' is designed to capture the breadth of these different venues.[166] In explaining

[154] On the other hand, when an investor seeking liquidity sends a single, one-sided RFQ to a number of potential liquidity providers, this action by itself does not generally trigger the expressing trading interest factor because it is on one side of the market in an isolated instance.

[155] Short Sales, Exchange Act Release No. 48709 (Oct. 28, 2003), 68 FR 62972, 62977 (Nov. 6, 2003); *see also* Short Position and Short Activity Reporting by Institutional Investment Managers, Exchange Act Release No. 98738 (Oct. 13, 2023), 88 FR 75100, 75136 (Nov. 1, 2023) (stating ''a market maker must also be a market maker in the security being sold, and must be engaged in bona-fide market making in that security at the time of the short sale.'').

[156] The determination of eligibility for the bona-fide market-making exceptions in Regulation SHO is distinct from the determination of whether the effect of a person's trading activity indicates that such person is acting as a dealer. Proposing Release at n.131.

[157] Comment Letter of Two Sigma (Mar. 31, 2023) (''Two Sigma Comment Letter II'').

[158] Order Competition Rule, Exchange Act Release No. 96495 (Dec. 14, 2022), 88 FR 128 (Jan. 3, 2023).

[159] *See* section III.B.

[160] Proposing Release at 23069.

[161] *Id.*

[162] *Id.*

[163] *Id.*

[164] *Id.*

[165] *Id.*

[166] *Id.* at 23069–70. As discussed in the Proposing Release, the term ''trading venue'' was designed to capture the variety and breadth of different venues resulting from market evolution. *Id.* To the extent

the term ''trading venue'' the Proposing Release referenced a definition of ''trading venue'' that described it to mean ''a national securities exchange or national securities association that operates an SRO trading facility, an ATS, an exchange market maker, an OTC market maker, a futures or options market, or any other broker- or dealer-operated platform for executing trading interest internally by trading as principal or crossing orders as agent.'' [167] The Commission further stated that the third proposed qualitative standard was designed to capture dealer activity wherever that activity occurs, ''whether on a national securities exchange, an ATS . . . *or another form of trading venue.*'' [168] The Commission also stated that for purposes of the proposed rules, the particular venue mattered less than the fact that a market participant provides liquidity on it.[169]

Of the three proposed qualitative factors, this factor received the fewest comments. Two commenters supported the third qualitative factor as proposed.[170] According to one of the commenters, capturing bid-ask spreads or earning revenue from liquidity incentives have traditionally been indicative of dealing activity and the proposed third qualitative standard would be less likely to capture certain funds, advisers, and trading strategies that the commenter believed would be inappropriately captured by the first and second qualitative factors.[171]

Another commenter stated the proposed third qualitative factor was ''workable,'' assuming two modifications.[172] First, the commenter stated that the proposed third qualitative factor should turn on ''profit,'' rather than ''revenue.'' [173] In the commenter's view, because dealers are in the business of profiting from their market-making activities, they are unlikely to be (or stay) engaged in markets if they are not profiting from their dealer activities.[174] As a result, the commenter believed that a person otherwise meeting the factor but failing to earn profits in doing so is better viewed as a trader than a dealer.[175] Second, the commenter stated that the proposed third qualitative factor should be limited to ''national securities exchanges and ATSs,'' rather than ''trading venues.'' [176] In the commenter's view, to reduce the compliance burdens on market participants while capturing the most significant trading activity, the rule should be limited to the most liquid trading venues, including those where liquidity incentives are most likely to be offered and where trading to profit from the spread occurs most often.[177] The commenter stated that this change would avoid difficult and unworkable line-drawing questions, such as when pricing offered by an OTC market maker to its customer would constitute an ''incentive'' captured by the rule.[178]

Some commenters objected to the proposed third qualitative factor,[179] expressing concerns about the lack of clarity as to, and breadth of, its application.[180] One of these commenters stated that the term ''primarily'' is potentially vague because a person might earn more revenue from appreciation in the value of its inventory of securities than from capturing bid-ask spreads or trading incentives.[181] Another commenter explained that certain portfolio management and trading strategies, like hedging and arbitrage strategies, among other things, seek to derive value, positive fund performance, and portfolio-trading revenues by taking advantage of pricing differentials in bid-ask spreads.[182] The commenter stated that such strategies have not traditionally been viewed as dealer activity and questioned whether they would be captured by the proposed third qualitative factor.[183] Another commenter stated that trading incentives are often organized in a manner that allows traders or their investment advisers to reduce overall commissions and fees paid by directing liquidity-providing trades to specific venues.[184] In the commenter's view, the ''optimization of commission costs by an investment adviser on behalf of investors, or by a trader acting on his or her own behalf, should not by itself require registration as a dealer for a person who is otherwise a trader.'' [185] Finally, some commenters objected that the proposed third qualitative factor's application in the crypto asset securities market may not be clear, including how the factor applies to so-called DeFi market products, structures, and activities such as so-called decentralized exchange (''DEX'') and ''automated market maker'' activities, as well as activities related to blockchain consensus and validation.[186]

new systems develop as a result of technological advancements that offer market participants the ability to provide liquidity in a security for other market participants, the term ''trading venue'' would apply to such systems. *Id.*

[167] *Id.* Whether an entity is or is not registered with the Commission does not affect the determination of whether that entity is a trading venue for purposes of the final rules. For example, a person operating a platform for executing trading interest internally would likely be operating as a broker or dealer, regardless of whether that person is registered as such, and the receipt of incentives from that person could be captured by the factor. *See* 15 U.S.C. 78*o*(a)(1) (absent an exemption, persons meeting the definition of broker or dealer must register with the Commission).

[168] Proposing Release at 23070 (emphasis added).

[169] *Id.*

[170] SIFMA Comment Letter I (stating that ''[s]ubject to our additional comments on the application of the proposed rules to bank holding companies, we believe that the qualitative standard in proposed . . . Rule 3a44–2(iii) [is] generally a good step forward to address this long-standing asymmetric regulatory treatment for similar [dealing] activities.''); *see also* AIMA Comment Letter II (requesting the Commission to limit the qualitative standard to the third factor alone).

[171] AIMA Comment Letter II.

[172] *See* MFA Comment Letter I; *see also* MFA Comment Letter II. Another commenter stated it shared many of the comments raised by MFA with respect to the proposed third qualitative test. *See* BlackRock Comment Letter. *See also* ICI Comment Letter (stating ''[t]o avoid unintentionally capturing ordinary investment and trading strategies, the Commission should limit the qualitative test to capture persons trading only in the same securities—where this purpose is clear—rather than trading in merely similar securities.'').

[173] *See* MFA Comment Letter I.

[174] *See id.*

[175] *See id.*

[176] *Id. See also* ABA Comment Letter (''the proposed tests for the definition of ''dealer'' requires interpreting terms that are not yet settled because they are concurrently being commented on in a proposed form.''); DeFi Fund Comment Letter (stating ''whether a DeFi protocol constitutes a 'trading venue' is likely to turn on the outcome of the Commission's pending proposal to expand its 'exchange' definition, which we strongly oppose.''). As discussed below, the Commission believes it is appropriate for the final rules to use the term ''trading venues.'' The Commission has proposed an amendment to Form ATS–N to change the term ''Trading Centers'' to ''trading venue'' and has proposed the term to mean a national securities exchange or national securities association that operates an SRO trading facility, an ATS, an exchange market maker, an OTC market maker, a futures or options market, or any other broker- or dealer-operated platform for executing trading interest internally by trading as principal or crossing orders as agent. *See* Amendments regarding the Definition of ''Exchange'' and Alternative Trading Systems (ATSs) that Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities, Exchange Act Release No. 94062 (Jan. 26, 2022), 87 FR 15496, 15539–40 (Mar. 18, 2022). Although the term ''trading venue'' is used in the final rules and the proposed amendment to Form ATS–N, the adoption of the term as discussed above is appropriate for the final rules.

[177] MFA Comment Letter I.

[178] *Id.*

[179] *See, e.g.,* FIA PTG Comment Letter II.

[180] *See, e.g.,* Gretz Comment Letter; McIntyre Comment Letter II; Element Comment Letter; SIFMA AMG Comment Letter; ICI Comment Letter; MFA Comment Letter I.

[181] Gretz Comment Letter.

[182] McIntyre Comment Letter II.

[183] *Id.*

[184] Element Comment Letter.

[185] *Id.*

[186] *See, e.g.,* ADAM Comment Letter (stating that ''the third qualitative factor does not account for 'staking' and the way in which some blockchains use the proof-of-stake consensus mechanism to

Continued

After consideration of the comments, the Commission has determined to adopt, as the primary revenue factor, the third qualitative factor as proposed, with a non-substantive change. The final rules continue to use the phrase ''earn revenue'' rather than ''earn profit.'' While the Commission acknowledges the possibility that persons whose liquidity provision fails to turn a profit may ultimately seek out more profitable lines of business, dealer status requires only that a person be ''in the business,'' not that that business be profitable.[187]

The term ''trading venues'' is intended to accommodate the variety of venues in which market participants today engage in liquidity-providing dealer activity. In addition, the use of this term is intended to capture venues as they evolve, wherever that activity occurs, whether on a national securities exchange, an ATS, any other broker- or dealer-operated platform for executing trading interest internally by trading as principal or crossing orders as agent, or any other platform performing a similar function.[188] The particular venue matters less than the fact that a market participant provides liquidity on it.[189] As discussed in the Proposing Release, there have been notable technological enhancements affecting securities trading across markets and asset classes.[190] Accordingly, the term ''trading venues'' is designed to capture current trading venues that use a variety of technologies, as well as trading venues that use technologies and venues that may develop over time. The term ''trading venues'' is designed to help ensure that, as innovation and technology used by such venues evolve, the final rules remain effective at supporting market stability and resiliency, protecting investors, and promoting competition across the U.S. Treasury and other securities markets. For these reasons, the Commission declines to limit the scope of this factor to trading venues that are national securities exchanges or ATSs.

Regarding the term ''primarily'' as used in the primary revenue factor, the Proposing Release stated that if a person derives the majority of its revenue from the sources described in paragraph (a)(3)(iii), it would likely be in a regular business of buying and selling securities or government securities for its own account.[191] Further, in response to one commenter's example,[192] while the analysis of this specific scenario would depend on the totality of circumstances, as a general matter, it is unlikely that a person who regularly earns more revenue from an appreciation in the value of its inventory of securities than from capturing bid-ask spreads or incentive payment for liquidity provision, would be considered to earn revenue ''primarily'' from capturing bid-ask spreads or trading incentives.

A commenter stated that the Proposing Release did not account for how the primary revenue factor would apply to market participants transacting in the crypto asset securities market; as commenters have pointed out, the crypto asset securities market has structures, products and activities that may implicate dealer registration.[193] Whether a particular activity in the crypto asset securities market, including in the so-called DeFi market, gives rise to dealer activity will require an analysis of the totality of the particular facts and circumstances. As discussed above, any person engaged in buying and selling securities for its own account must consider whether it is a dealer, including under the final rules, and so subject to dealer registration requirements.[194] Accordingly, the primary revenue factor will capture market participants that are primarily earning revenue from capturing spreads or liquidity incentives offered by trading venues, including trading venues that support transacting in crypto asset securities.[195]

With respect to portfolio management and trading strategies that for varying reasons may seek to take advantage of pricing differentials in bid-ask spreads, as stated above, persons who engage in a pattern of trading for their own account having the effect of providing liquidity to other market participants should be subject to the dealer regulatory regime, even if they are also registered investment advisers or private funds. As discussed below, the important protections provided by the dealer regulatory framework differ from those under the private fund and private fund advisers regulatory scheme established by the Advisers Act.[196] The primary revenue factor, as with the expressing trading interest standard, focuses on activity rather than label or status. Market participants will need to determine, based on their trading activities, whether their portfolio management and trading strategies meet this standard.

To summarize, one fundamental and historically recognized view of dealer activity is trading in a manner designed to profit from spreads or liquidity incentives.[197] Under the final rules, persons providing liquidity because they regularly supply it and the revenue they earn as a result through bid-ask spreads or liquidity incentives as their primary source of revenue are ''in the business'' of dealing, and such persons regularly undertaking this liquidity-providing role for their own account in overall trading and market activity must register as dealers and be subject to the dealer regulatory regime.

2. Quantitative Standard

The Commission proposed a quantitative standard that would establish a bright-line test under which persons engaging in certain specified levels of activity in the U.S. Treasury market would be defined to be buying and selling government securities ''as a part of a regular business,'' regardless of whether they meet any of the qualitative factors.[198] Specifically, proposed 17 CFR 240.3a44–2(a)(2) (proposed ''Rule 3a44–2(a)(2)'') provided that a person engaged in buying and selling government securities for its own account would be engaged in such activity ''as a part of a regular business'' if that person in each of four out of the last six calendar months, engaged in buying and selling more than $25 billion of trading volume in government

validate transactions, leaving unclear whether certain 'validators' might be captured by the third qualitative factor.''); DeFi Fund Comment Letter (questioning if the ''liquidity provider tokens'' participants in digital asset liquidity pools receive in proportion to the amount of liquidity they contribute to the pool constitute an ''incentive . . . for liquidity-supplying trading interests'').

[187] *See* Proposing Release at 23069.

[188] Whether a particular structure or activity in the crypto asset securities market, including the so-called DeFi market, involves a trading venue is a facts and circumstances determination.

[189] *See* Proposing Release at 23069.

[190] *See* Proposing Release at 23055.

[191] Proposing Release at 23069.

[192] *See* Gretz Comment Letter (stating '' 'Primarily' might be a bit vague. Technically, an entity could earn more revenues by price increases on the securities being held in stock for trading than by catching bid-ask spreads.'').

[193] *See* DeFi Fund Comment Letter; ADAM Comment Letter. A commenter explained that ''a blockchain utilizing proof-of-stake validation lets users participate in verifying the blockchain by staking the native token, providing a reward if they propose and approve valid smart contracts.'' ADAM Comment Letter.

[194] *See* section II.A.1.b.

[195] As discussed above, a threshold question is whether the person has or controls total assets of less than $50 million, and if so, the person would not be captured by the final rules. *See supra* note 132 and accompanying text.

[196] *See* section II.A.3.

[197] Proposing Release at 23069. The Commission has previously identified a person's seeking, through its presence in the market, compensation through spreads or fees, or other compensation not attributable to changes in the value of the security traded, as a factor indicating dealer activity. *See* Entities Release at 30609.

[198] *See* Proposing Release at 23071, n.165.

securities as defined in section 3(a)(42)(A) of the Exchange Act.[199]

Some commenters generally supported inclusion of the quantitative standard.[200] One commenter stated that ''quantitative standard[ ] build[s] upon and [is] consistent with past Commission regulations and case law for defining a dealer.'' [201] The majority of commenters, however, urged that the Commission remove the quantitative standard, raising various issues and concerns with establishing a test based solely on trading volume.[202]

Many commenters maintained that the quantitative standard was arbitrary and overly broad, and opined that a volume standard alone could not distinguish between a dealer and a trader.[203] Several commenters stated that the quantitative standard would capture persons engaging in non-dealing trading activity.[204] Some commenters also stated that the trading volume threshold was too low in light of the size of the U.S. Treasury market and that the Proposing Release failed to provide sufficient detail on how the proposed trading volume would be measured and implemented.[205]

After consideration of the comments, the Commission has decided to eliminate the quantitative standard from the final rules. While a trading volume threshold could provide a bright-line test under which persons engaging in certain specified levels of activity in the U.S. Treasury market would be defined to be buying and selling securities ''as a part of a regular business,'' the Commission has concluded such a bright-line test is unnecessary. The modified qualitative factors and otherwise applicable court precedent and Commission interpretations will appropriately address when market participants are acting as government securities dealers in the U.S. Treasury market by engaging in a ''regular'' pattern of buying and selling securities that has the effect of providing liquidity to other market participants. Therefore, the Commission has decided to delete the quantitative standard from the final rules.

In addition, as discussed in section II.A.5, no presumption shall arise that a person is not a government securities dealer as defined by the Exchange Act solely because that person does not satisfy Rule 3a44–2(a).[206] Thus, market participants acting similarly to traditional dealers that are buying and selling U.S. Treasuries as part of a regular business may still meet the definition of government securities dealer even absent the activity identified in the qualitative standard.

3. Exclusions

The proposed rules provided exclusions for certain market participants that the Commission determined do not provide liquidity to the markets in a manner requiring dealer registration or are subject to a comparable regulatory structure which addresses the types of concerns that the proposed rules were intended to address. The Commission is adopting these exclusions as proposed. In addition, the Commission is adding exclusions for central banks, sovereign entities, and international financial institutions, as defined in the final rules. Each of these exclusions is discussed in more detail below.[207]

a. Person That Has or Controls Assets of Less Than $50 Million

In the Proposing Release, the Commission proposed to exclude from the proposed rules ''[a] person [208] that has or controls total assets of less than $50 million.'' The Commission stated that providing an exception was appropriate because, even though a person that has or controls less than $50 million in assets may be engaged in the activities identified in the qualitative standard, the frequency and nature of such a person's securities trading are less likely to pose the types of financial and operational risks to the market that may be associated with the significant dealer activity that the rules were designed to address.[209]

Commenters that addressed this exclusion raised a number of concerns.[210] Some commenters stated that it was arbitrary or inconsistent with the plain reading of the ''dealer'' definition.[211] A few commenters stated that the threshold was too low.[212] However, one of those commenters also said that the threshold could be too high for some securities.[213]

After consideration of comments, the Commission is adopting this exclusion as proposed. While we appreciate commenters' concerns, as indicated in the Proposing Release, the final rules are intended to capture market participants not registered as dealers that serve a critical dealer role in the securities and government securities markets through their liquidity provision or significant and regular trading activity in the market. These smaller market participants are unlikely to engage in the significant liquidity provision that is

[199] Proposed Rule 3a44–2(a)(2); Proposing Release at 23071.

[200] *See* Better Markets Comment Letter (stating that the ''quantitative standards for government securities markets, coupled with the proposed qualitative standards, will help to capture the high-frequency trading firms trading in significant volumes of U.S. Treasury bonds that are not currently registered with the Commission.''); *see also* FINRA Comment Letter.

[201] Better Markets Comment Letter.

[202] *See, e.g.,* Element Comment Letter; MMI Comment Letter; Two Sigma Comment Letter I; FIA PTG Comment Letter I; NAPFM Comment Letter; AIMA Comment Letter II; ADAM Comment Letter; SIFMA AMG Comment Letter; McIntyre Comment Letter II; SIFMA Comment Letter I; Overdahl Comment Letter; Fried Frank Comment Letter; MFA Comment Letter I; ICI Comment Letter; Morgan Lewis Comment Letter; T. Rowe Price Comment Letter; Citadel Comment Letter; DeFi Fund Comment Letter; Comment Letter of Investment Advisers Association (June 6, 2022) (''IAA Comment Letter I''); BlackRock Comment Letter; FIA PTG Comment Letter II; Comment Letter of Darrell Duffie (Jan. 10, 2024) (''Duffie Comment Letter'').

[203] *See, e.g.,* AIMA Comment Letter II; ICI Comment Letter; T. Rowe Price Comment Letter.

[204] *See, e.g.,* FIA PTG Comment Letter I; SIFMA AMG Comment Letter; Morgan Lewis Comment Letter; MMI Comment Letter; Two Sigma Comment Letter I; NAPFM Comment Letter; AIMA Comment Letter II; MFA Comment Letter I; McIntyre Comment Letter II; Element Comment Letter; ICI Comment Letter; Citadel Comment Letter; T. Rowe Price Comment Letter; Fried Frank Comment Letter; Consensys Comment Letter; ADAM Comment Letter; SIFMA Comment Letter I; Overdahl Comment Letter.

[205] *See, e.g.,* Two Sigma Comment Letter I; FIA PTG Comment Letter I; Element Comment Letter; MFA Comment Letter II. One commenter agreed that repurchase and reverse repurchase transactions should be excluded from counting towards the quantitative standard threshold. *See* ACLI Comment Letter.

[206] *See* section II.A.5.

[207] The Commission has determined to create bright-line exclusions for certain persons from the scope of the final rules for policy reasons specific to these types of persons as further defined below. This is in contrast to various exclusions requested by commenters related to, among other things, specific securities activities that market participants may engage in (such as certain trading strategies or asset classes). Because these specific securities activities and specific types of securities cannot be viewed in isolation, and could constitute in whole or in part liquidity-providing activity that these rules are designed to address, the Commission is not adding these categorical exclusions. Rather, as with any other securities activities, whether these specific securities activities result in triggering the provisions of the final rules requires a facts and circumstances analysis of the totality of a person's activities. The Commission, however, has significantly refined its proposal (including, notably, the aggregation provision) so that persons whose securities activities may have been captured may no longer be within the scope of the rules as adopted.

[208] As noted below, the term ''person'' has the same meaning as prescribed in section 3(a)(9) of the Exchange Act: ''a natural person, company, government, or political subdivision, agency, or instrumentality of a government.''

[209] Proposing Release at 23062.

[210] One commenter also raised practical issues about how the exclusion would operate in connection with the proposed aggregation provision; however, these concerns have been mooted with the removal of the aggregation provision. *See* ICI Comment Letter.

[211] *See, e.g.,* MMI Comment Letter; SIFMA AMG Comment Letter; Consensys Comment Letter.

[212] *See* Defi Fund Comment Letter; Element Comment Letter; Gretz Comment Letter; Consensys Comment Letter. *See also* section III.B.2.

[213] *See* Gretz Comment Letter.

the focus of the final rules.[214] Importantly, we disagree that the $50 million threshold is arbitrary or too low or too high because, as stated in the Proposing Release, this exception parallels an established and well understood standard for distinguishing between ''retail'' and ''institutional'' accounts for purposes of broker-dealer regulation.[215] In the context of the final rules, persons that have or control assets of $50 million or more—so-called ''institutional'' accounts—are more likely to have a significant impact on the market as opposed to ''retail'' accounts of smaller market participants who are less likely to pose financial and operational risks to the markets. Further, in response to the commenter who raised practical issues about how the exclusion would operate in connection with investment advisers' separately managed accounts, as discussed in more detail below, the Commission has removed the aggregation provision, which should address those concerns.[216] Finally, we reiterate that this is not an exclusion from the ''dealer'' definition for all purposes, but only for purposes of the final rules, which focus on *de facto* market making. Outside of the context of these rules, the question of whether any person, including a person that has or controls less than $50 million in total assets, is acting as a dealer, as opposed to a trader, will remain a facts and circumstances determination. For example, an underwriter with assets below $50 million could still be required to register as a dealer.

[214] *See* Proposing Release at 23062.

[215] Under FINRA rules, a ''retail'' account is distinguished from an ''institutional'' account that is defined, in part, as belonging to ''a person (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.'' FINRA Rule 4512(c)(3); *see also* Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29959, 29995 n.462 (May 13, 2016) (adopting a similar threshold in connection with security-based swap dealers, for purposes of 17 CFR 240.15Fh–3(f)(4). The Commission considered but is not using the definition of ''retail customer'' adopted as part of Regulation Best Interest, as the policy considerations behind that definition are different than those presented here: the focus of Regulation Best Interest is the regulatory protections provided to customers who receive recommendations from broker-dealers, whereas the focus of this rulemaking is the regulation of persons engaging in certain dealer-like activities. *See* Regulation Best Interest: The Broker-Dealer Standard of Conduct, Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318 (July 12, 2019).

[216] *See supra* note 254 and accompanying text.

b. Registered Investment Companies, Private Funds, and Registered Investment Advisers

The Commission also proposed to exclude registered investment companies registered under the Investment Company Act from the application of the rules.[217] In proposing the exclusion, the Commission cited to the comprehensive regulatory framework under the Investment Company Act and its extensive oversight and broad insight into the operations and activities of registered investment companies.[218] In contrast, the proposed rules did not exclude private funds, instead discussing differences between the regulatory regime that applies to registered advisers to private funds, and the one that applies to dealers, including leverage constraints and reporting.[219] As explained in the Proposing Release, private funds are not subject to the extensive regulatory framework of the Investment Company Act.[220] Further, the Commission did not propose to create a blanket exclusion for registered investment advisers because a registered investment adviser trading for its ''own account'' could nevertheless meet the definition of a ''dealer'' and therefore should be required to register.[221]

Many commenters agreed with the proposed exclusion for registered investment companies.[222] However, most of these commenters also stated that the exclusion should be expanded to registered investment advisers [223] and private funds managed by registered investment advisers.[224] Commenters cited to the regulatory regime under the Advisers Act.[225] Some commenters stated that some of the reasons supporting an exclusion for registered investment companies also would support an exclusion for registered advisers,[226] or an exclusion for private funds.[227]

In addition, many commenters stated that imposing dealer requirements—and in particular net capital requirements [228]—on private funds would be inappropriate and untenable,[229] and could in turn significantly and negatively affect liquidity if private funds were to modify or cease their trading activity.[230] As support for an exclusion for private funds, many commenters cited to Form PF, which requires certain registered advisers that have at least $150 million in private fund assets under

[217] *See* proposed 17 CFR 240.3a5–4(a)(2)(ii) and 240.3a44–2(a)(3)(ii).

[218] Registered investment companies are subject to a regulatory framework under the Investment Company Act and rules thereunder, which imposes requirements regarding capital structure, custody of assets, investment activities, transactions with affiliates and other conflicts of interest, and the duties and independence of boards of directors, among other things. Moreover, registered investment companies are subject to statutory limits on indebtedness and rules that limit leverage risk. In addition, registered investment companies must adopt, implement, and review at least annually written policies and procedures reasonably designed to prevent violations of the Federal securities laws by the fund. Proposing Release at 23063.

[219] Proposing Release at 23083.

[220] *Id.*

[221] Proposing Release at 23073–74.

[222] *See, e.g.,* ICI Comment Letter; MFA Comment Letter II; Element Comment Letter; McIntyre Comment Letter II; IAA Comment Letter I.

[223] *See, e.g.,* SIFMA Comment Letter I; SIFMA AMG Comment Letter; IAA Comment Letter I; Comment Letter of Investment Adviser Association (Oct. 17, 2023) (''IAA Comment Letter II'').

[224] *See, e.g.,* MFA Comment Letter I (recommending that the exclusion for registered investment companies be expanded ''to cover any person registered as an investment adviser (or exempt or excluded from registration other than as a family office), as well as any private fund client of such adviser (and any affiliated general partner, managing member, or similar control person of the private fund client), with respect to trading done by the person with or through a registered broker-dealer''); Element Comment Letter; McIntyre Comment Letter II; IAA Comment Letter I; T. Rowe Price Comment Letter; IAA Comment Letter II.

[225] *See, e.g.,* MFA Comment Letter I (''Advisers and the private funds they manage are already subject, directly or indirectly, to comprehensive regulation, which is sufficient to address the objectives of the Proposal without subjecting them to dealer registration.'').

[226] *See, e.g.,* T. Rowe Price Comment Letter (''It appears the SEC's rationale for excluding registered investment companies is that they are subject to various requirements, including those related to custody, conflicts of interest, books and records, policies and procedures, and designation of a chief compliance officer. RIAs should also be excluded as they are subject to similar requirements, as well as a robust registration regime, and must act in accordance with their fiduciary duties.''); McIntyre Comment Letter II (''[T]he Commission notes that the 'regulatory framework' to which registered investment companies are subject justifies the exclusion of these entities. However, [we believe] that the current regulatory environment and framework for registered investment advisers is also very robust. . .''). *See also* Scott Comment Letter.

[227] *See, e.g.,* Citadel Comment Letter (''The disparate treatment of private funds and mutual funds . . . further highlights the lack of justification for requiring private funds to register as dealers . . . Moreover, the Commission's logic for exempting RICs equally applies to private funds.'').

[228] *See, e.g.,* MFA Comment Letter I (stating that the Net Capital Rule functions more like a restriction on the types of investments and trading a firm can engage in than a restriction on leverage and that the requirements would impede investors' highly negotiated liquidity rights); Citadel Comment Letter (stating that the Net Capital Rules would impose substantial costs and finding ''the absurdity of applying these rules to private funds, which do not hold customer securities''). *See also* AIMA Comment Letter II; Morgan Lewis Comment Letter; Fried Frank Comment Letter; T. Rowe Price Comment Letter; IAA Comment Letter I; Element Comment Letter.

[229] *See, e.g.,* Two Sigma Comment Letter I; MFA Comment Letter I; NAPFM Comment Letter; AIMA Comment Letter II.

[230] *See, e.g.,* Schulte Roth Comment Letter.

management to report certain confidential information about their private funds.[231]

Some commenters described potential practical difficulties with applying the dealer regulatory framework to private fund advisers and private funds [232] and with having a managed account register as a dealer.[233] One comment letter suggested that if a fund or separately managed account was required to register as a dealer, a conflict could arise between the fund's or separately managed account's adviser's fiduciary duty to achieve best execution and a best execution obligation to a counterparty ''when participating in all-to-all trading protocols where they may match with another end-user.'' [234] We do not believe that such a conflict would arise in this scenario.[235]

As support for such potential practical difficulties, some commenters stated that private funds are merely pools of assets that rely on fund managers for all functions and therefore do not have personnel or infrastructure to meet the dealer regulatory requirements.[236] A few commenters questioned the Commission's concern [237] that exempting private funds and private fund advisers from the proposed rules would produce negative outcomes with respect to PTFs,[238] with one of these commenters citing to ''leverage constraints and reporting'' as the ''only two differences'' between the private funds and dealer regulatory framework as noted in the Proposing Release.[239] Another commenter identified possible exceptions from the application of certain SEC and FINRA rules that may be necessary if registered investment advisers and/or the private funds they advise were required to register as dealers.[240] Some commenters identified issues with imposing a dealer regulatory framework on investment advisers,[241] with one commenter stating that the ''unsuitability of the dealer regime for advisers is highlighted by the inconsistency of an adviser needing to stand ready as a dealer to provide liquidity to, *i.e.,* trade as principal with, the market, potentially through its clients' accounts, while being prohibited from acting in that capacity with its clients.'' [242]

After consideration of the comments and for the reasons stated here and in the Proposing Release,[243] the Commission is adopting the exclusion for registered investment companies as proposed. As stated above, many commenters generally supported the exclusion and did not suggest specific changes for registered investment companies but instead requested that the Commission expand the scope of the exclusions to include registered investment advisers and private funds.

The Commission, however, is not including an express exclusion for private funds or registered investment advisers. Depending on the totality of the facts, a private fund may be engaged in the business of buying and selling securities for its own account.[244] Similarly, a registered investment adviser that is trading for its ''own account'' could implicate dealer registration requirements. Further, as stated in the Proposing Release, market actors that are engaged in dealing activity should be subject to the dealer regulatory regime, which includes not only registration obligations, but also regulatory requirements specific to dealer activity and oversight that broadly focus on the dealer market functionality—that is, the impact of dealing activity on the market as a whole.[245]

Entities engaging in dealing activity that meet the qualitative standard are required to register as dealers and comply with regulatory requirements that are applicable to dealer activity. Dealer regulatory requirements address related but distinct concerns from investment adviser regulation. In addition, dealer registration enhances regulatory oversight [246] of market participants' trading activities and interactions with the market overall. In this regard, dealer regulatory requirements focus broadly on market functionality (along with protecting investors under principles of fair dealing between parties).[247]

However, the Commission is mindful of concerns raised by commenters regarding the application of the dealer regime to registered investment advisers and private funds and as such has made significant changes to the definition of ''own account'' to remove the

[231] *See, e.g.,* MFA Comment Letter I; T. Rowe Price Comment Letter; AIMA Comment Letter II; *see also* 17 CFR 279.9.

[232] *See, e.g.,* AIMA Comment Letter II; *see also* ABA Comment Letter.

[233] *See, e.g.,* ICI Comment Letter; SIFMA AMG Comment Letter (''In addition, the Proposal fails to consider how the principal trading prohibitions in the Advisers Act would impact an investment adviser that comes within the meaning of the term dealer solely because of its managed accounts.'').

[234] *See* BlackRock Comment Letter.

[235] Rather than ''counterparty,'' FINRA Rule 5310 applies to ''any transaction for or with a *customer* or a *customer of another broker-dealer*'' (emphases added). The commenter did not specify what would constitute an ''all-to-all trading protocol.'' However, a dealer simply posting an order on a fully anonymous platform or providing a price in response to a bid request or bid list presented to the dealer or other competitive bidding process would likely not be subject to a best execution obligation since the dealer has not accepted a customer order for the purpose of facilitating the handling and execution of such order; this situation is analogous to Supplementary Material .04 to FINRA Rule 5310 which draws a distinction between those situations in which a firm acts solely as the buyer or seller in connection with an order presented against the firm's quote as opposed to accepting an order for handling and execution. *See* FINRA Regulatory Notice 15–46. *See also infra* notes 599–601 and accompanying text.

[236] *See, e.g.,* ABA Comment Letter; MFA Comment Letter I; AIMA Comment Letter II.

[237] Proposing Release at 23096 (''Excluding these funds would guarantee that the dealer regime would fail to capture this type of securities dealing activity. Furthermore, a blanket exclusion for hedge funds may provide an opportunity for regulatory arbitrage. For example, PTFs may seek to restructure themselves as private funds, thus preempting the intended benefits of the proposed rules.'').

[238] *See* AIMA Comment Letter II; MFA Comment Letter I; IAA Comment Letter I; *see also* T. Rowe Price Comment Letter.

[239] *See* AIMA Comment Letter II (''Indeed, the Commission's view expressed in the Proposal is that the only differences between the regulatory regime for private fund advisers and securities dealers are leverage constraints and reporting, yet the Commission has chosen to include both private funds and their advisers within the scope of the Proposal.'').

[240] *See* Element Comment Letter (identifying, in part, licensing of personnel who structure private placements on behalf of Required Registrants with the Series 79 license; application of Reg NMS Rule 611 to cross-trades effected on behalf of a Required Registrant by its investment adviser; application of the Net Capital Rule to Required Registrants; and application of the possession and control requirements of the customer protection rule, 17 CFR 240.15c3–3 (''Rule 15c3–3''), in situations where hypothecation of securities may be in the best interests of an investment advisory client).

[241] *See, e.g.,* IAA Comment Letter I (''Unlike brokers or dealers, advisers are prohibited from holding client assets or from taking client assets onto their balance sheets. To the extent that advisers trade securities, they do so through a broker or dealer intermediary, generally on behalf of and for the benefit of their clients''); *see also* T. Rowe Price Comment Letter (''We also are concerned that the SEC has not adequately assessed the feasibility and impact of an RIA being regulated as a dealer while also being subject to the [Advisers Act] for the same activities, nor does the Proposal detail how an entity could practically comply with both regimes.'').

[242] *See* IAA Comment Letter I.

[243] *See supra* note 218 and accompanying text.

[244] *See, e.g., In the Matter of Murchinson Ltd., Marc Bistricer, and Paul Zogala,* Exchange Act Release No. 92684 (Aug. 17, 2021) (settled matter). In *Murchinson,* the Commission charged the principals of a hedge fund with causing dealer violations under section 15(a).

[245] Proposing Release at 23078–79.

[246] Dealers and government securities dealers are subject to extensive regulation and oversight and generally must: (i) register with the Commission and become members of an SRO; and (ii) comply with Commission and SRO rules, including certain financial responsibility and risk management rules, transaction and other reporting requirements, operational integrity rules, and books and records requirements, all of which help to enhance market stability by giving regulators increased insight into firm-level and aggregate trading activity. *See* section I.A.

[247] Proposing Release at 23056. *See also id.* at 23078–79 (describing the regulatory requirements of registered dealers and government securities dealers).

aggregation standard in order to appropriately tailor the scope of persons captured by the final rules.

Further, there are material differences between the private fund and dealer regulatory frameworks, and dealer registration offers important benefits and regulatory protections to address the risks related to dealing activities.[248] As explained in the Proposing Release, registered private fund advisers are regulated under the Advisers Act and information on private fund activities is reported by registered private fund advisers on Form PF. The information the Commission obtains on certain private funds through its regulation of registered investment advisers, however, differs from that the Commission collects for the purposes of dealer regulation.[249] Private funds also do not have the same level of reporting of their securities transactions. For example, fixed income transactions between private funds are not directly reported in TRACE. If their fixed-income trade is with a broker-dealer and reported by the broker-dealer, private funds appear anonymously in TRACE.[250]

Although, as commenters noted, the Commission collects some information about certain private funds through Form PF, this reporting alone is not a sufficient substitute for the comprehensive dealer requirements because the dealer requirements are specific to dealer activity. For example, Form PF only requires reporting related to a subset of the private fund industry and does not include individual trade reporting details, which would give regulators greater insight into securities trading patterns, including the ability to more efficiently match trades to market participants.[251]

In response to commenters who stated that private funds are merely pools of assets that rely on fund managers for all functions and therefore do not have personnel or infrastructure to meet the dealer regulatory requirements, to the extent that a private fund engages in activities that trigger dealer registration under the final rules, such private funds would need similarly to establish means, whether by contract or otherwise, of complying with the obligations for registered dealers, just as the fund must do to comply with any other regulatory obligation.

In response to the commenter who suggested there were ''only two differences'' between the dealer and private fund regulatory regimes, the examples provided in the Proposing Release (*i.e.,* leverage constraints and reporting requirements) were non-exhaustive examples.[252] As discussed in the Proposing Release, registered dealers' leverage is limited by net capital requirements, which must be maintained at all times, while private funds have no formal leverage constraints.[253] Further, in response to commenters who raised concerns about the application of certain SEC and FINRA rules or stated that certain dealer requirements were untenable or inappropriate, while the Commission acknowledges that complying with a new rule set may require market participants to revise their business models, as discussed further in the economic analysis, appropriate regulation of dealer activities, and the benefits associated with enhancements to investor protection and orderly markets, justifies these associated costs and difficulties associated with registration.[254]

Finally, while not excluding registered investment advisers and private funds, the Commission is, however, modifying the definition of ''own account'' to mean an account held in the name of, or for the benefit of, that person and removing the proposed first qualitative factor. These changes will respond to concerns related to separately managed accounts and investment advisers trading on behalf of their clients, including those exercising discretion; these investment advisers generally will not be captured by the final rules because they would not be buying and selling for their ''own account.'' Private funds that are buying and selling for their ''own account'' in a way that meets the qualitative standard could be captured by the final rules. To the extent that private funds or investment advisers trigger application of the final rules, they would need to comply with the dealer registration requirements or cease engaging in dealer activity.

c. Official Sector Exclusions

The Commission is adopting express exclusions for central banks, sovereign entities, and international financial institutions, as defined in the final rules. Together, these exclusions are referred to as the ''Official Sector Exclusions.''

The Official Sector Exclusions are designed to permit central banks, sovereign entities, and international financial institutions to continue to pursue important policy goals, and to be consistent with principles of international comity and the privileges and immunities granted to foreign central banks, foreign sovereigns and sovereign entities, and certain international financial institutions under U.S. Federal law.[255]

For purposes of the Official Sector Exclusion, the final rules define a ''central bank'' as a reserve bank or monetary authority of a central government (including the Board of Governors of the Federal Reserve System or any of the Federal Reserve Banks). This definition also includes the Bank for International Settlements (''BIS''). The BIS is owned by central banks,[256] so it is appropriate to include the BIS in the final rules' definition of central bank. The final rules define a ''sovereign entity'' as a central government (including the U.S. Government), or an agency, department, or ministry of a central government. Finally, the final rules define an ''international financial institution'' by identifying specific entities and providing that an ''international financial institution'' also includes any other entity that provides financing for national or regional development in which the United States government is a shareholder or contributing member.[257] The following entities are specifically identified as an ''international financial institution'' under the final rule: (1) African Development Bank; (2) African Development Fund; (3) Asian Development Bank; (4) Banco Centroamericano de Integración Económica; (5) Bank for Economic Cooperation and Development in the Middle East and North Africa; (6) Caribbean Development Bank; (7) Corporación Andina de Fomento; (8) Council of Europe Development Bank; (9) European Bank for Reconstruction

[248] Proposing Release at 23083.

[249] *Id.*

[250] *Id.*

[251] 17 CFR 279.9. *See* section III.C.1.c for a discussion of the benefits of additional regulatory reporting.

[252] *See* section I.A (citing to the benefits of dealer registration).

[253] Proposing Release at 23083. *See also* section III.B.2.b (stating that private funds and investment advisers do not have to comply with the Net Capital Rule or with any other direct, regulatory constraint on leverage).

[254] *See* section III.C.

[255] *See, e.g.,* Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities, Exchange Act Release No. 99149 (Dec. 13, 2023).

[256] *See* BIS, About BIS—Overview, *https://www.bis.org/about/index.htm* (noting that ''the BIS is owned by 63 central banks, representing countries from around the world that together account for about 95% of world GDP.'').

[257] *Cf.* 17 CFR 50.76(b) (the Commodity Futures Trading Commission (''CFTC'') definition of international financial institution for purposes of exemptions from swap clearing requirement).

and Development; (10) European Investment Bank; (11) European Investment Fund; (12) European Stability Mechanism; (13) Inter-American Development Bank; (14) Inter-American Investment Corporation; (15) International Bank for Reconstruction and Development; (16) International Development Association; (17) International Finance Corporation; (18) International Monetary Fund; (19) Islamic Development Bank; (20) Multilateral Investment Guarantee Agency; (21) Nordic Investment Bank; (22) North American Development Bank.

The exclusion is appropriate for the Federal Reserve System—the central bank of the United States—both because excluding the Federal Reserve System will not contravene any of the Commission's goals in adopting the final rules and because of the Federal Reserve System's unique role in the U.S. Treasury market and the U.S. economy. Entities that constitute part of the Federal Reserve System should be excluded from dealer registration because requiring them to register as dealers would not address the primary concerns animating the final rules.[258] Moreover, transactions in U.S. Treasury securities are an important tool in the fiscal and monetary policy of the United States.[259] In particular, cash and repo transactions in U.S. Treasury securities are one of the primary tools used by the Federal Reserve Bank of New York to conduct open market transactions at the direction of the Federal Open Market Committee.[260] The System Open Market Account, which is managed by the Federal Reserve Bank of New York's System Open Market Trading Desk, is ''the largest asset on the Federal Reserve's balance sheet.'' [261] In light of the key role of open market operations conducted by the Federal Reserve Bank of New York in the monetary policy of the United States, an exemption from the final rules is appropriate for the Federal Reserve System.[262]

With respect to central banks generally, central banks are typically created by statute and are part of, or aligned with, a central government.[263] Further, as with the Federal Reserve System in the United States, the purpose of a central bank is generally to effectuate monetary policy for its respective nation.[264] In light of ongoing expectations that Federal Reserve Banks and agencies of the Federal government would not be subject to foreign regulatory requirements in their transactions in the sovereign debt of other nations, the principles of international comity counsel in favor of exempting foreign central banks—as well as sovereign entities and international financial institutions.[265]

Finally, Congress has granted foreign central banks, other foreign sovereign entities, and certain international financial institutions special privileges and immunities under U.S. Federal law,[266] and thus in these circumstances the Commission is not including these entities in the final rules.

d. Other Requests for Exclusions

The Commission received a number of comments about how the proposed rules would apply to crypto assets. In the Proposing Release, the Commission explained that the definition of ''dealer'' and the accompanying registration requirements of the Exchange Act were drawn broadly by Congress to encompass a wide range of activities involving securities markets and participants in those markets.[267] The Commission further stated that proposed Rules 3a5–4 and 3a44–2 would apply to any crypto asset that is a ''security'' as defined by section 3(a)(10) of the Exchange Act or a ''government security'' as defined by section 3(a)(42) of the Exchange Act, respectively.[268]

The Commission received several comments concerning the application of the proposed rules to crypto assets that are securities that trade through centralized trading platforms or trade in the so-called DeFi market, and to persons who trade crypto asset securities. Many opposed applying the proposed rules to persons transacting in crypto asset securities.[269] Commenters

[258] Regulators already have insight into the activities of the Federal Reserve System, and the Federal Reserve Banks already consider market integrity and resiliency issues. *See, e.g.,* Enhancing the Resilience of the U.S. Treasury Market 2022 Staff Progress Report (Nov. 10, 2022) at 1, *available at https://home.treasury.gov/system/files/136/2022-IAWG-Treasury-Report.pdf* (stating that the Inter-Agency Working Group for Treasury Market Surveillance ''was formed by the Treasury Department, SEC, and Federal Reserve Board in 1992 to improve monitoring and surveillance and strengthen interagency coordination with respect to the Treasury markets . . .'').

[259] 12 U.S.C. 225a (defining goals of monetary policy); *see also* Federal Reserve Bank; Monetary Policy: What Are Its Goals? How Does It Work? *available at https://www.federalreserve.gov/monetarypolicy/monetary-policy-what-are-its-goals-how-does-it-work.htm.*

[260] *See* Federal Reserve Bank; Monetary Policy Implementation, *available at https://www.newyorkfed.org/markets/domestic-market-operations/monetary-policy-implementation.*

[261] *Id.*

[262] *See* Order Exempting the Federal Reserve Bank of New York, Maiden Lane LLC, Exchange Act Release No. 61884 (Apr. 9, 2010) (granting exemptions to the Federal Reserve Bank of New York, Maiden Lane LLC and the Maiden Lane Commercial Mortgage Backed Securities Trust 2008–1 in connection with restructuring of debt instruments acquired by the Federal Reserve Bank of New York when it facilitated the acquisition of the Bear Stearns Companies Inc. by JP Morgan Chase & Co., including permitting receipt of compensation that is calculated by reference to underwriting fees received by other parties to the restructuring). Congress similarly exempted transactions in which one counterparty is a member of the Federal Reserve System from the regulation of swaps and security-based swaps in Title VII of the Dodd-Frank Act. *See* 15 U.S.C. 78c(a)(68)(A) (stating that a security-based swap is a swap, as defined in 7 U.S.C. 1a(47), subject to certain other conditions); 7 U.S.C. 1a(47)(B)(ix) (excluding from the definition of swap any transaction in which one counterparty ''is a Federal Reserve bank, the Federal Government, or a Federal agency that is expressly backed by the full faith and credit of the United States'').

[263] The authorizing statutes generally provide that the government owns all or part of the capital stock or equity interest of the central bank. *See, e.g.,* Capital of the ECB Protocol on the Statute of the European System of Central Banks and of the European Central Bank (''ECB Protocol''), Article 28.2, *available at https://www.ecb.europa.eu/ecb/legal/pdf/en_statute_2.pdf.*

[264] *See, e.g.,* ECB Protocol, *supra* note 263, Article 3.1; Bank of Japan Act, Articles 1 and 2, *available at https://www.boj.or.jp/en/about/boj_law/index.htm/#p01.*

[265] For similar reasons, the CFTC has similarly determined to exempt swap transactions involving foreign central banks, sovereign entities, and international financial institutions from the statutory requirement that swap transactions be cleared with a Derivatives Clearing Organization. *See* 17 CFR 50.75, 50.76; Swap Clearing Exemptions, 85 FR 76428, 76429–30, 76432 (Nov. 30, 2020).

[266] The United States has taken actions to implement international obligations with respect to such immunities and privileges. *See, e.g.,* International Bank for Reconstruction and Development (''World Bank'') and International Monetary Fund (22 U.S.C. 286g and 22 U.S.C. 286h), the European Bank for Reconstruction and Development (22 U.S.C. 290l–6), the Multilateral Investment Guarantee Agency (22 U.S.C. 290k–10), the Africa Development Bank (22 U.S.C. 290–8), the African Development Fund (22 U.S.C. 290g–7), the Asian Development Bank (22 U.S.C. 285g), the Inter-American Development Bank (22 U.S.C. 283g), the Bank for Economic Cooperation and Development in the Middle East and North Africa (22 U.S.C. 290o), and the Inter-American Investment Corporation (22 U.S.C. 283hh). *See also* the International Organization and Immunities Act (22 U.S.C. 288) and the Foreign Sovereign Immunities Act (28 U.S.C. 1602) (''FSIA'') (the FSIA is an exception from the general principle of sovereign immunity, which derives from customary international law).

[267] *See* Proposing Release at 23057.

[268] *See id.* at n.36.

[269] *See, e.g.,* Consensys Comment Letter; ADAM Comment Letter; Andreessen Horowitz Comment Letter; Blockchain Comment Letter; Comment Letter of Global Digital Asset and Cryptocurrency Association (May 27, 2022) (''GDCA Comment Letter''); U.S. Reps Comment Letter; Chamber of Digital Commerce Comment Letter; DeFi Fund Comment Letter. In addition to the comments discussed in section II.A.1, many of the commenters that represent participants of the crypto asset industry expressed concerns that mirror those of other commenters. For example, *compare* GDCA Comment Letter (stating that the ''the proposed one-year compliance period is wholly impractical'') *with* MFA Comment Letter I. In these circumstances, those comments are addressed in

Continued

expressed their concern that they do not understand which crypto assets are securities under the Federal securities laws and believe it would be inappropriate for the dealer regulatory framework to apply to persons transacting in crypto assets that are securities.[270] In addition, certain of these commenters expressed their view that there were aspects of the dealer regulatory framework, including registration, that could substantially raise the costs, or would be unworkable, for crypto asset security participants, and could hinder U.S. innovation in the crypto asset market.[271] For example, some commenters contended that the Commission has provided no viable path forward by which a Commission-registered broker-dealer can custody digital assets.[272] Commenters requested that if the Commission were to move forward with adopting the proposed rules, the Commission revise the final rules to carve out or tailor the application to persons transacting in crypto assets that are securities.[273]

One commenter supported applying the proposed rules to all securities, including crypto asset securities, and asked the Commission to resist suggestions from other commenters to carve out any types of assets that are securities from the ''dealer'' definition.[274] The commenter urged that the Commission apply securities regulation ''equally to all securities regardless of how novel, 'innovative,' popular, or profitable such offerings may be.'' [275]

The Commission also received comments about the application of the proposed rules to so-called DeFi products, structures, and activities, and users and participants thereof.[276] One commenter asserted that it is unreasonable for the proposed rules to apply to so-called DeFi products, structures and activities because they assert that these do not have a central controlling body and are just software, and that they do not raise the concerns identified by Congress when enacting the Exchange Act.[277] Other commenters questioned whether the proposed rules would apply to participants in so-called DeFi products, structures and activities, including those involving the use of smart contracts, automated market makers, or other ''all-to-all'' or peer-to-peer execution protocols.[278] Commenters expressed concerns that the uncertainty of whether the proposed rules applied to such users or participants could lead to less liquidity in the crypto asset markets.[279] Commenters requested that the Commission clarify that the adopted rules would not apply to so-called DeFi products, structures or activities, or users or participants thereof.[280] One commenter also asserted that crypto assets were currency, and not securities, and asked that the Commission clarify that the proposed rules would not apply to ''retailers'' or ''merchants'' that accept payment for goods and services in crypto assets and exchange that crypto asset for fiat currency.[281]

As stated in the Proposing Release, as a threshold matter, the definitions of ''dealer'' and ''government securities dealer'' under sections 3(a)(5) and 3(a)(44) of the Exchange Act, and the requirement that dealers and government securities dealers register with the Commission pursuant to sections 15 and 15C of the Exchange Act, apply with respect to the buying and selling of all securities or government securities.[282] Therefore, Rules 3a5–4 and 3a44–2 as adopted apply to any person transacting in securities or government securities, regardless of where the security or government security trades.

The dealer framework is a functional analysis based on the securities trading activities undertaken by a person, not the type of security being traded. The final rules apply to the buying and selling of all securities, including crypto assets that are securities or government securities within the meaning of the Exchange Act. While some commenters stated that the proposed rules should not apply to so called DeFi, whether there is a dealer involved in any particular transaction or structure (whether or not referred to as so-called DeFi) is a facts and circumstances analysis. There is nothing about the technology used, including distributed ledger technology-based protocols using smart contracts, that would preclude crypto asset securities activities from falling within the scope of dealer activity.[283] Accordingly, certain persons engaging in crypto asset securities transactions may be operating as dealers as defined under the Exchange Act.[284]

Rules 3a5–4 and 3a44–2 apply to persons transacting in crypto assets that meet the definition of ''securities'' or ''government securities'' under the Exchange Act. If a person's trading activities in crypto asset securities, including products, structures and activities involved in the so-called DeFi market, meet the definition of ''as part of a regular business'' as set forth in the final rules (*i.e.,* the person engages in a regular pattern of buying and selling crypto asset securities that has the effect of providing liquidity to other market participants as stated in the qualitative standard), and no exception or exclusion applies, that person would be required to register as a dealer or government securities dealer under the Exchange Act and comply with the requirements applicable to dealers and government securities dealers. Contrary

their respective section in this Adopting Release. *See, e.g.,* section II.B.

[270] *See, e.g.,* ADAM Comment Letter; Chamber Digital Commerce Comment Letter; Blockchain Comment Letter; Andreessen Horowitz Comment Letter.

[271] *See, e.g.,* GDCA Comment Letter; ADAM Comment Letter; DeFi Fund Comment Letter; Consensys Comment Letter; Blockchain Comment Letter; U.S. Reps Comment Letter; American Blockchain PAC Comment Letter; Andreessen Horowitz Comment Letter; ABA Comment Letter.

[272] *See, e.g.,* GDCA Comment Letter; ABA Comment Letter.

[273] *See, e.g.,* Andreessen Horowitz Comment Letter; DeFi Foundation Comment Letter; ADAM Comment Letter. Similarly, one commenter recommended that the application to businesses in crypto assets be narrow. *See also* Gretz Comment Letter (stating ''based on the principle of 'same business, same risks, same rules' we'd recommend to have the applicability on digital asset related businesses in narrow scope'').

[274] *See* Better Markets Comment Letter.

[275] *See id.*

[276] *See, e.g.,* Andreessen Horowitz Comment Letter; DeFi Fund Comment Letter; Consensys Comment Letter.

[277] *See* Consensys Comment Letter.

[278] *See, e.g.,* DeFi Fund Comment Letter; Andreessen Horowitz Comment Letter.

[279] *See, e.g.,* DeFi Fund Comment Letter; Andreessen Horowitz Comment Letter.

[280] *See, e.g.,* Consensys Comment Letter; Andreessen Horowitz Comment Letter.

[281] *See* Consensys Comment Letter (stating that the rules might apply to ''retailers'' or ''merchants'' that accept crypto assets as payment for goods and as an ancillary part of their business, exchange the crypto assets for more traditional forms of currency). The final rules apply only to trading activities involving crypto assets that are securities. As the rules apply only to crypto assets that are securities, commenter's view as to the treatment of trading in crypto assets that are not securities are not relevant to the analysis.

[282] Proposing Release at 23057, n.36.

[283] *See supra* note 135.

[284] *See, e.g., SEC* v. *Beaxy Digital, Ltd., et al.,* No. 23–cv–1962 (N.D. Ill. Mar. 29, 2023) (Docket Entries 1, 4) (final judgment entered on consent enjoining crypto asset trading platform from operating an unregistered exchange, broker, dealer, and clearing agency). The President's Executive Order on Ensuring Responsible Development of Digital Assets recognized that ''many activities involving digital assets are within the scope of existing domestic laws and regulations'' and ''[d]igital asset . . . intermediaries whose activities may increase risks to financial stability, should, as appropriate, be subject to and in compliance with regulatory and supervisory standards that govern traditional market infrastructures and financial firms.'' *See* President's Executive Order on Ensuring Responsible Development of Digital Assets, dated Mar. 9, 2022, *available at https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/.* As discussed below, these intermediaries perform a wide range of functions, many of which may already qualify them as dealers under the Exchange Act. *See* section III.B.2.c.

to what some commenters have stated, unless an exemption or exception applies, the Exchange Act requires the Commission to register and regulate persons acting as dealers in securities.[285] Regardless of the technology used to engage in crypto asset securities trading and transactions, if a person meets the qualitative standard in the final rule, or otherwise meets the definition of dealer under the Exchange Act, that person is subject to registration as a dealer, and the application of the dealer regulatory regime to its activities.[286]

In addition to the commenters requesting additional exclusions for private funds and advisers and for market participants transacting in crypto asset securities, a commenter stated that the Commission should exclude from the scope of the proposed rules inter-affiliate transactions used by banking institutions to centrally manage cash or risk throughout their organizations.[287] In the context of discussing its concerns with the proposed aggregation provision, the commenter stated that, consistent with exclusions for inter-affiliate transactions in the security-based swaps context, as well as with the language of the proposed rules, which focus on transactions that have ''the effect of providing liquidity to other market participants,'' inter-affiliate transactions should be excluded.[288]

The Commission is not adding an exclusion for inter-affiliate transactions because the Commission is removing the aggregation provision, and the final rules have been modified to focus on the trading activity of a person for an account in the name of, or for the benefit of, that person.[289] In the context of whether a person is acting as a dealer, the Commission continues to believe each person must independently consider its own trading activities to determine whether its activities require dealer registration.[290] Accordingly, the Commission is not excluding inter-affiliate transactions.[291]

Further, some commenters requested clarification that the proposed rules would not apply to a governmental plan, including public pensions, nor to state administrators managing state funds or to city administrators managing the city pension funds through an exclusion from the proposed rules.[292] One of these commenters specifically raised concerns that the proposed quantitative standard could subject state boards and similar investment fiduciaries and/or administrators of state pension funds to the rules.[293] The Commission is not adding an exclusion for such arrangements because the rules have been significantly modified, including by removal of the quantitative standard and the proposed first qualitative standard, such that the final rules should not capture these arrangements.[294]

4. Definitions and Anti-Evasion

As noted in the Proposing Release, the Exchange Act defines a ''dealer'' or ''government securities dealer'' as a person engaged in the business of buying and selling securities for its ''own account.'' [295] The proposed rules included definitions for the terms ''person,'' [296] ''own account,'' ''control,'' and ''parallel account structure.''

The proposed rules would have broadly defined a person's ''own account'' to mean any account that is: ''held in the name of that person,'' or ''held in the name of a person over whom that person exercises control or with whom that person is under common control,'' [297] or ''held for the benefit of those persons,'' subject to certain exclusions.[298]

The proposed rules would have excluded from the definition of ''own account'': (A) an account in the name of a registered broker, dealer, or government securities dealer, or an investment company registered under the Investment Company Act of 1940; [299] (B) with respect to an investment adviser registered under the Investment Advisers Act of 1940, an account held in the name of a client of the adviser unless the adviser controlled the client as a result of the adviser's right to vote or direct the vote of voting securities of the client, the adviser's right to sell or direct the sale of voting securities of the client, or the adviser's capital contributions to or rights to amounts upon dissolution of the client; [300] and (C) with respect to any person, an account in the name of another person that was under common control with that person solely because both persons are clients of an investment adviser registered under the Advisers Act unless those accounts constituted a parallel account structure.[301]

[285] *See* 15 U.S.C. 78*o*(a); *see generally* DAO 21(a) Report, *available at https://www.sec.gov/litigation/investreport/34-81207.pdf* (addressing the obligation to comply with the registration provisions of the Federal securities laws with respect to products and platforms involving emerging technologies and new investor interfaces).

[286] *See* section III.C.1 (discussing benefits of dealer regulatory framework).

[287] *See* SIFMA Comment Letter I.

[288] *Id.* SIFMA suggested that the Commission modify the text of the proposed second qualitative factor to clarify the treatment of inter-affiliate transactions by adding that the relevant expressions of trading interests are those made to other market participants ''not controlling, controlled by or under common control with the person.'' *See* Comment Letter of Securities Industry and Financial Markets Association (Oct. 5, 2022) (''SIFMA Comment Letter III'').

[289] *See* section II.A.4 (discussing the deletion from the definition of ''own account'' any accounts held in the name of a person over whom that person exercises control or with whom that person is under common control and corresponding exclusions).

[290] In addition, the Commission analyzes the activities of each entity in determining broker-dealer registration status. *See, e.g.,* Foreign Broker-Dealer Adopting Release at 30017 (stating ''the Commission uses an entity approach with respect to registered broker-dealers. Under this approach, if a foreign broker-dealer physically operates a branch in the United States, and thus becomes subject to U.S. registration requirements, the registration requirements and the regulatory system governing U.S. broker-dealers would apply to the entire foreign broker-dealer entity.'')

[291] *Id.*

[292] Comment Letter of Marcie Frost, Chief Executive Officer, California Public Employees Retirement System; Anastasia Titarchuk, Chief Investment Officer and Deputy Comptroller for Pension Investment & Cash Management, New York State Common Retirement Fund; Jase R. Auby, Chief Investment Officer, Teacher Retirement System of Texas; and Steven Meier, Chief Investment Officer and Deputy Comptroller for Asset Management, Office of the Comptroller of the City of New York (Nov. 3, 2023) (''Public Pension Fund Comment Letter''); Comment Letter of Lamar Taylor, Interim Executive Director & CIO, State Board of Administration of Florida (Nov. 1, 2023) (''Florida State Board Comment Letter'').

[293] Florida State Board Comment Letter.

[294] *See* section I.B.

[295] 15 U.S.C. 78c(a)(5) (''The term 'dealer' means any person engaged in the business of buying and selling securities . . . for such person's *own account* through a broker or otherwise.'') (emphasis added); 15 U.S.C. 78c(a)(44) (''The term 'government securities dealer' means any person engaged in the business of buying and selling government securities for his *own account,* through a broker or otherwise . . .'') (emphasis added).

[296] Paragraph (b)(1) of the proposed rules provided that the term ''person'' has the same meaning as prescribed in section 3(a)(9) of the Exchange Act. Section 3(a)(9) of the Exchange Act defines a ''person'' as ''a natural person, company, government, or political subdivision, agency, or instrumentality of a government.'' *See* 15 U.S.C. 78c(a)(9).

[297] When using the terms ''aggregation provision'' and ''aggregation,'' the Commission is referring to the following language in the definition of ''own account'' that was included in the proposed rules: ''held in the name of a person over whom that person exercises control or with whom that person is under common control.'' The removal of this provision eliminated the inclusion of entities under control or common control as set forth in the definition of ''own account'' under the proposed rules.

[298] Proposing Release at 23062. For purposes of paragraph (b)(2)(ii), the proposed rules incorporated the definition of ''control'' under 17 CFR 240.13h–1 (''Rule 13h–l'').

[299] Proposed 17 CFR 240.3a5–4(b)(2)(ii)(A) and 240.3a44–2(b)(2)(ii)(A).

[300] Proposed 17 CFR 240.3a5–4(b)(2)(ii)(B) and 240.3a44–2(b)(2)(ii)(B).

[301] Proposed 17 CFR 240. 3a5–4(b)(2)(ii)(C) and 240.3a44–2(b)(2)(ii)(C). The Commission proposed to define parallel account structure to mean ''a structure in which one or more private funds (each

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The Proposing Release explained that the proposed definitions were intended to avoid incentivizing market participants to change their corporate structures for the purpose of avoiding registration.[302] The Proposing Release sought comment generally on this aspect of the proposed rules, and also asked whether the Commission should include an anti-evasion provision similar to Rule 13h–1(c)(2) under the Exchange Act.[303]

The Commission received extensive comment on the definitions included in the Proposing Release.[304] Most commenters did not support the definitions, and in particular, suggested eliminating the aggregation provision set forth in the definitions of ''own account'' and ''control.'' [305] Commenters stated that the proposed rules represented a departure from the Commission's historical ''entity'' approach to broker-dealer regulation.[306]

Many commenters stated that the Commission should maintain an entity approach to registration, focusing on activity on an entity-by-entity basis,[307] and suggested that instead of aggregating the trading activities of entities within a corporate structure, the Commission should adopt an anti-evasion standard.[308] In particular, one commenter stated that the Commission should apply the principles of the entity approach to broker-dealer registration that it articulated in the adopting release to 17 CFR 240. 15a–6 (''Rule 15a–6'') where registration activities are assessed on an entity-by-entity basis, rather than across affiliated entities.[309] Another commenter also cited to Rule 15a–6, stating that, in assessing whether a person has to register as a government securities dealer, such commenter believed that Congress intended that the Commission should focus on activity on an entity-by-entity basis rather than on an aggregated basis.[310]

Regarding the proposed aggregation standard, many commenters raised concerns that trading activities of entities, including banks and bank holding companies, that may be excepted or exempted from dealer registration would nonetheless need to be aggregated with, and potentially trigger registration of, commonly controlled persons under the proposed rules, contrary to policy decisions Congress and the Commission has made to not require these entities to register as dealers.[311] One commenter stated that the proposed aggregation provisions would force market participants to constantly monitor their trading activities and their volume (for government securities) across all subsidiaries and clients to determine whether either the qualitative or quantitative standards are triggered.[312] One commenter questioned why the Commission's aggregation approach departs substantially from established Commission precedent under Regulation M and section 13 reporting requirements.[313]

One commenter stated that the Commission has not explained how dealer registration would work if unrelated client accounts needed to be aggregated.[314] One commenter specifically raised concerns with the ''common control'' provision stating that: ''Combining the securities buying of one entity and the securities selling of another entity when they are under common control is plainly not indicative of dealing activity when it is not coordinated or integrated.'' [315]

As noted above, many commenters did not support the definitions, specifically the definition of ''own account,'' which they stated was overbroad.[316] One of these commenters stated that there is no connection between controlling—but not owning—an account and that account being the party's ''own account.'' [317] Some commenters stated that all managed accounts should be excluded from the definition.[318]

Similarly, many commenters also did not support the definition of ''control''

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a 'parallel fund'), accounts, or other pools of assets (each a 'parallel managed account') managed by the same investment adviser pursue substantially the same investment objective and strategy and invest side-by-side in substantially the same positions as another parallel fund or parallel managed account.'' *See* Proposing Release at 23075.

[302] Proposing Release at 23074.

[303] 17 CFR 240.13h–1(c)(2) (''Rule 13h–1(c)(2)''). Rule 13h–1(c)(2) provides that under no circumstances shall a person disaggregate accounts to avoid the identification requirements of the section.

[304] While we received letters from a variety of commenters, these letters primarily represented the asset management industry.

[305] *See, e.g.,* SIFMA Comment Letter I; Fried Frank Comment Letter; Two Sigma Comment Letter I; ICI Comment Letter; AIMA Comment Letter II; ADAM Comment Letter; FIA PTG Comment Letter I; MFA Comment Letter I; T. Rowe Price Comment Letter. *See also* IAA Comment Letter I; SIFMA AMG Comment Letter; AIMA Comment Letter II (''If the Commission is going to subject private funds and private fund advisers to the Proposal, it should provide some clarity regarding its application and remove the aggregation requirements (including the 'under common control' element)''). While many commenters raised concerns with the definitions of ''own account'' and ''control,'' most commenters did not specifically address the definition of ''person.'' *But see* MFA Comment Letter I (''The Commission should define the term 'person' to recognize disaggregation by independent portfolio managers. The Proposal appears based on an assumption that all trading activity taking place within a single legal entity or commonly controlled group of legal entities takes place on an integrated and coordinated basis. However, it is quite common that a single entity (including a fund) or group of entities engage in trading through substantially (for all relevant purposes) independent portfolio managers. . . . To avoid this issue, the Commission should adopt a definition of 'person' that treats separately trading activity conducted by separate decision-makers without coordination of trading or cooperation among or between them. This treatment would be consistent with the treatment of truly separate accounts for other securities law purposes.'').

[306] *See, e.g.,* ADAM Comment Letter; SIFMA AMG Comment Letter.

[307] *See, e.g.,* Morgan Lewis Comment Letter; ADAM Comment Letter; SIFMA AMG Comment Letter.

[308] *See* SIFMA Comment Letter I (''Instead of the Aggregation Rule, the Commission should adopt a targeted anti-evasion standard prohibiting a person from willfully evading dealer or government securities dealer status (under the existing definition and guidance) through coordinated trading activity across commonly controlled entities over which the person exercises investment discretion.''). *See also* ICI Comment Letter (''[I]nstead of a blanket exclusion for parallel account structures from the exception for commonly managed accounts, we believe a general anti-evasion provision similar to Rule 13h–1(c)(2) under the Exchange Act is more appropriate.''); IAA Comment Letter I (''The Commission should focus on general anti-evasion principles rather than imposing dealer regulation on advisers and their clients out of concern that some persons could theoretically evade regulation.''); T. Rowe Price Comment Letter (''A better way to address potential abusive situations is to simply have an anti-evasion clause.''); MFA Comment Letter I; Two Sigma Comment Letter I; IAA Comment Letter II.

[309] SIFMA AMG Comment Letter.

[310] Morgan Lewis Comment Letter.

[311] *See* SIFMA Comment Letter I (''In addition, the Aggregation Rule would undermine statutory and regulatory limits on the scope of dealer and government securities dealer registration.''); Committee on Capital Markets Regulation Comment Letter. *See also* ICI Comment Letter; SIFMA AMG Comment Letter; Morgan Lewis Comment Letter; MFA Comment Letter I.

[312] AIMA Comment Letter II.

[313] *See* Comment Letter of Managed Funds Association (Apr. 6, 2023) (''MFA Comment Letter IV'').

[314] *See* IAA Comment Letter I.

[315] *See* MFA Comment Letter IV.

[316] *See, e.g.,* ADAM Comment Letter; Schulte Roth Comment Letter; SIFMA AMG Comment Letter; McIntyre Comment Letter II; MFA Comment Letter I; Andreessen Horowitz Comment Letter; Morgan Lewis Comment Letter; BlackRock Comment Letter. *See also* IAA Comment Letter I (''We are concerned that these overbroad provisions would sweep in separately-managed accounts and pooled investment vehicles managed in the ordinary course by the same adviser but that have no relationship with one another other than having the same adviser''); McIntyre Comment Letter II (''The proposals construct a complex regime of aggregation and attribution principles in order to address a manufactured concern of avoidance structuring, which has the effect of casting a wide net to capture accounts at the 'legal-entity level,' presumably meaning accounts under common control in a fund complex.'').

[317] *See* Schulte Roth Comment Letter.

[318] *See* SIFMA AMG Comment Letter; BlackRock Comment Letter (''As discussed in SIFMA AMG's and ICI's respective comment letters, we are concerned that the Proposal's definition of 'own account' is overly broad and could require that separately managed accounts ('SMAs') register as dealers based on the activity of their unaffiliated advisers acting as their agents.'').

because they believed the definition was too broad by capturing too many types of arrangements.[319] One commenter stated that the Commission should make clear that advisers do not control their clients merely because they manage those clients' accounts on a discretionary or other basis.[320] Many commenters also opposed the ''parallel account structure'' definition, also finding that it was overbroad and impractical.[321] While commenters generally did not comment on the definition of ''person,'' one commenter suggested adopting a definition that treats separately trading activity conducted by separate decision-makers without coordination of trading or cooperation among or between them, stating that this treatment would be consistent with the treatment of separate accounts for other securities law purposes.[322]

After careful review of these comments and upon further consideration, the Commission acknowledges the concerns raised by commenters and has determined that for the purpose of assessing dealer status under the final rules, an anti-evasion approach is appropriate. The Commission is revising the rule text to delete from the definition of ''own account'' any accounts held in the name of a person over whom that person exercises control or with whom that person is under common control and corresponding exclusions. Accordingly, under the rules as adopted, ''own account'' thus means any account: (a) held in the name of that person; or (b) held for the benefit of that person.[323] At the same time, in order to prevent potentially evasive behavior and in response to comments, the Commission is adding an anti-evasion provision providing that no person shall evade the registration requirements of this section by: (1) engaging in activities indirectly that would satisfy the qualitative standard; or (2) disaggregating accounts.

Each of these changes is discussed in more detail below.

Definition of ''Person''

The Commission is adopting the definition of ''person'' as proposed. Removal of the aggregation provision adequately addresses the comment mentioned above [324] suggesting adoption of a definition of ''person'' that treats separately trading activity conducted by separate decision-makers without coordination of trading or cooperation among or between them. Further, the adopted definition of ''person'' is well-established and has the same meaning as prescribed in section 3(a)(9) of the Exchange Act and under applicable dealer precedent.[325]

Definition of ''Own Account''

As stated above, the Commission is adopting the definition of ''own account'' under paragraph (b)(2) to mean any account: (i) held in the name of that person; or (ii) held for the benefit of that person. Further, the Commission is removing the definitions of ''control'' and ''parallel account structure'' as the corresponding language in the aggregation provisions of the proposed rules has been removed, and the definitions are no longer relevant.

In response to concerns raised by commenters related to, among other things, the breadth of the proposed rule's aggregation approach, the Commission has determined to focus in the first instance on an analysis of activity on an entity-by-entity basis, rather than aggregating accounts across entities that are controlled by or are under common control with an entity.[326]

Anti-Evasion Provision

Although the Commission has determined to eliminate the proposed rule's aggregation provision, the Commission nevertheless remains concerned that some persons may seek to structure their business for the purpose of evading dealer registration. Accordingly, the Commission is adopting an anti-evasion provision in the final rules, consistent with suggestions from commenters. This anti-evasion provision prohibits structuring activities or disaggregating accounts for the purpose of evading the dealer registration requirements.[327] Specifically, the anti-evasion provision provides that ''no person shall evade the registration requirements of this section by'' either ''engaging in activities indirectly that would satisfy paragraph (a) of this section'' (''first anti-evasion prong''); or ''disaggregating accounts'' (''second anti-evasion prong'' and together, the ''anti-evasion provision'').

The first anti-evasion prong prohibits a person from evading the registration requirements by engaging indirectly in activity that would meet the qualitative standard. This prong makes clear that persons are prohibited from evading the dealer registration requirements under the final rules by, among other things, using another person or entity to indirectly engage in activity that would meet the qualitative standard.[328]

The final rules also include a second anti-evasion prong. This prong, which is modeled on Rule 13h–1(c)(2),[329] would make it unlawful for a person to evade registration by disaggregating accounts. For purposes of this second anti-evasion prong, ''disaggregate'' means separating or breaking up accounts for the purpose of evading the dealer registration requirements. This prong is intended to address persons who seek to evade the requirements of this rule—not by reducing or changing their activity to avoid triggering the rules—but by spreading the activity across entities or accounts such that the level of activity is the same, with no real change with respect to liquidity provision. The second anti-evasion prong thus is intended to address market participants who disaggregate their existing business for the purpose of evading the final rules, but not limit the ordinary course business activities of persons who have no such intent or purpose. For instance, the Commission would generally consider management by a registered investment adviser of separately owned

[319] *See, e.g.,* ADAM Comment Letter; Schulte Roth Comment Letter; T. Rowe Price Comment Letter; SIFMA Comment Letter I; MFA Comment Letter I; AIMA Comment Letter II; McIntyre Comment Letter II; IAA Comment Letter I. *See also* SIFMA AMG Comment Letter (''The Commission's definition of 'own account,' and the reference to the definition of 'control' in the large trader reporting regime is inappropriate, exceedingly broad, and will capture a number of accounts and arrangements that were otherwise not contemplated as encompassing traditional dealer activity.'').

[320] *See* IAA Comment Letter I*;* IAA Comment Letter II.

[321] *See, e.g.,* ICI Comment Letter (''The Commission's proposed definition of a 'parallel account structure' in this context is overly broad and would inappropriately result in aggregation among separately owned client accounts that follow substantially the same investment objectives and strategies but are managed by the same registered investment adviser in the ordinary course of business, rather than for purposes of evading dealer registration requirements.''). *See also* ABA Comment Letter; SIFMA AMG Comment Letter; IAA Comment Letter I; T Rowe Price Comment Letter.

[322] MFA Comment Letter I.

[323] As discussed below, the Commission has not made changes to the definition of ''person,'' but has made conforming edits to delete the definitions of ''control'' and ''parallel account structure'' due to deletion of the aggregation standard.

[324] *See* MFA Comment Letter I.

[325] Section 3(a)(9) of the Exchange Act defines a ''person'' as ''a natural person, company, government, or political subdivision, agency, or instrumentality of a government.'' *See* 15 U.S.C. 78c(a)(9). Under section 3(a)(19) of the Exchange Act, the term ''company'' has the same meaning as in the Investment Company Act of 1940. *See* 15 U.S.C. 78c(a)(19).

[326] *See supra* note 290.

[327] The use of an anti-evasion approach was also suggested by commenters. *See supra* note 308 and accompanying text.

[328] Nothing in these final rules or this release affects the Commission's ability to pursue unlawful unregistered dealer activity under any other applicable provision of the Federal securities laws.

[329] *See* Proposing Release at 23078. *See, e.g.,* ICI Comment Letter; T. Rowe Price Comment Letter.

client accounts that follow substantially the same investment objectives and strategies to be ordinary course business activities, and so would not impute the trading in the clients' accounts to the adviser's ''own account,'' absent intent to evade the dealer registration requirements.

The anti-evasion provision is intended to capture persons dividing or structuring their activity to evade the application of the final rules. Potentially evasive activity would include but is not limited to, coordinating and integrating trading across commonly controlled groups of legal entities such that it would not meet the qualitative standard, including by switching which legal entity is engaged in trading to evade the ''regular'' requirement of the qualitative standard. Other specific examples of potentially evasive behavior include: (i) a person that uses two legal entities to separately purchase and sell securities; [330] or (ii) a person that uses several legal entities to purchase and sell securities, but ''rotates'' the activity across or among entities in a way that none of the legal entities trades frequently enough to satisfy the ''regular'' test under either factor.

In determining whether or not a person is evading the dealer registration requirements in violation of the anti-evasion provision, the Commission may consider, for example, whether there are: (i) information barriers to prevent sharing of information or sufficiently segregated trading,[331] (ii) overlapping personnel across accounts or entities, or (iii) separate account statements for each account. Other relevant factors could include, for example, the identification of personnel with oversight or managerial responsibility over multiple accounts in a single entity or affiliated entities, and account owners of multiple accounts, that do not have authority to execute trades or pre-approve trading decisions for accounts or entities; [332] or a business purpose that demonstrates that there is no coordinated buying and selling between accounts or entities.

While the Commission has identified a number of non-exhaustive examples of potentially evasive behavior and described factors that weigh against a conclusion that a person's intent is evasive, it is important to recognize that whether a person has violated the anti-evasion provision will depend on an evaluation of the totality of the facts and circumstances.

5. No Presumption

In the Proposing Release, the Commission proposed to include a ''no presumption'' clause to clarify that a person may be a dealer if it engages in a regular business of buying and selling securities for its own account, even if it does not meet the conditions set forth in the proposed rules. The Commission explained that the proposed rules did not seek to address all persons that may be acting as dealers under otherwise applicable interpretations and precedent (for example, by acting as an underwriter, regardless of whether such person has or controls assets of less than $50 million).[333]

No commenters suggested changes to the proposed no presumption clause. For the reasons discussed in the Proposing Release, we are adopting this provision as proposed. We also reiterate, consistent with our adoption of the no presumption clause, that the final rules do not modify existing court precedent and Commission interpretations, which continue to apply to determine whether a person is a dealer, even if such person would not qualify as a dealer under the final rules.

B. Compliance Date

In the Proposing Release, the Commission proposed and sought comment on a compliance date of one year from the effective date of the adoption of the final rules.[334] The Commission explained that the compliance period was designed to provide adequate time for persons captured by the proposed rules, if adopted, to apply for dealer registration, and for the relevant SROs to review new member applications, without disrupting the markets or the participants' existing market activities. The Proposing Release explained that the proposed compliance period would not cover market participants whose activities following the effective date of the final rules would require registration under those rules.

The Commission received a few comments relating to the compliance date.[335] Some of the letters expressed concerns that the compliance period would not be long enough to allow for new dealers or government securities dealers to prepare to register as well as complete the SRO registration process.[336] One of the commenters recommended that the Commission provide the same transition period for market participants whose activities would require registration following the effective date.[337] Another commenter, FINRA, commented that although the current FINRA rule set currently provides for a 180-day review period for a new member application, FINRA has ''ways to help expedite the processing of applications for persons captured by the [final rules] and is committed to ensuring an application review process that is thorough and efficient while promoting investor protection.'' [338]

After further consideration, the Commission is adopting a one-year

[330] The separation of purchases and sales in distinct legal entities could also indicate evasive behavior with respect to the expressing trading interest qualitative factor, which requires expressing trading interest on *both* sides of the market.

[331] *See* Citadel Comment Letter (''The Commission should not aggregate trading activities across independent entities, portfolio managers, or trading strategies when assessing whether the proposed qualitative criteria are met, particularly if there are information barriers in place.'').

[332] *See* Exchange Act Release No. 56206 (Aug. 6, 2007), 72 FR 45094 (Aug. 10, 2007).

[333] *See* Proposing Release at 23077.

[334] *See* Proposing Release at 23062.

[335] GDCA Comment Letter at 3; MFA Comment Letter I at 33–34; FINRA Comment Letter (explaining that ''FINRA membership is key to facilitate effective oversight of such entities, and to provide for enhanced regulatory audit trails and market integrity, among other benefits. . .''). In addition, with respect to the compliance period, several commenters requested the Commission to consider interactions between the proposed rule and other recent Commission rules. In determining compliance periods, the Commission considers the benefits of the rules, as well as the costs of delayed compliance dates and potential overlapping compliance periods. For the reasons discussed throughout this release, to the extent that there are costs from overlapping compliance periods, the benefits of the rules justify such costs. See *infra* section III.C.2.a.vi for a discussion of the interactions of the final rule with certain other Commission rules.

[336] *See* GDCA Comment Letter (''If firms were required to register, the proposed one year compliance period is wholly impractical. In our experience, for a firm that is not currently registered to prepare to register as a broker-dealer, including implementing email, invoicing, and other operations related technology, hiring appropriate personnel, and completing relevant examinations takes at least six months. While FINRA is expected to approve registrations within six months, in the best circumstances that is often not the case. For firms with unusual or complex business plans, such as digital asset focused firms, this process could take years.''); MFA Comment Letter I (''We strongly urge the Commission to extend the proposed one-year compliance period. The Proposal's requirements are complex and we understand that firms will need to expend significant time, resources, and effort to understand and apply them. Firms that determine that registration is necessary after an analysis of their trading activity will then need additional time to prepare a Form BD and otherwise prepare to comply with the Commission's dealer regulations. We believe that a 36-month transition period following the effectiveness of any final rule would be more appropriate.'').

[337] *See* MFA Comment Letter I (noting that ''[i]t will be far easier and fairer to provide a common transition period for all market participants'').

[338] FINRA Comment Letter (further stating that FINRA ''looks forward to the opportunity to work with the Commission and affected market participants to facilitate a review process that can achieve this balance without disrupting the markets.'').

compliance date from the effective date of the final rules for all persons who engage in activities that meet the dealer registration requirements under the final rules. In light of the significant benefits afforded by dealer registration to investors and the markets, it is important for persons engaging in activities that meet the dealer registration requirements to register as soon as possible. Considering FINRA's expressed commitment to expedite the application process,[339] a compliance date of one year from the effective date of the final rules will provide a sufficient period of time for affected market participants to comply with the final rules. However, the one-year compliance period will be applicable to all affected market participants, as we agree that a common transition period will be easier to administer and more equitable.[340]

However, we emphasize that the one-year compliance period only applies to market participants who are engaging in activities covered by the final rules prior to the compliance date, and does not apply to persons whose activities otherwise satisfy the definition of dealer under applicable Commission interpretations and court precedent. It is incumbent here, as with questions of ''dealer'' status generally, for market participants to analyze and monitor their trading activities to understand their registration obligations.

III. Economic Analysis

A. Introduction

The Commission is sensitive to the economic effects of its rules, including the costs and benefits and effects on efficiency, competition, and capital formation. Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[341] In addition, section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the effect such rules would have on competition.[342] Exchange Act section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[343]

The final rules will promote competition among entities that regularly provide significant liquidity by applying consistent regulation to these entities, thus leveling the playing field between liquidity provision conducted by entities that are currently registered as dealers and government securities dealers and by entities that are not. The final rules will also promote the financial responsibility and operational integrity of significant liquidity providers that are acting as dealers in securities markets by subjecting them to the Net Capital Rule and to other Commission and SRO rules and oversight. The financial responsibility and operational integrity of these significant liquidity providers, in turn, will support the resilience of securities markets. In addition, the final rules will improve the Commission's ability to analyze market events and detect manipulation and fraud. Although the final rules may have small negative effects on market liquidity and efficiency, due to increases in costs for affected parties, the final rules may also promote liquidity and efficiency by limiting the probability that significant liquidity providers fail.

B. Baseline

The baseline against which the costs, benefits, and the effects on efficiency, competition, and capital formation of the final rules are measured consists of the current state of the securities markets, current practice as it relates to dealers and other significant liquidity providers in securities markets, and the current regulatory framework. The economic analysis considers existing regulatory requirements, including recently adopted rules, as part of its economic baseline against which the costs and benefits of the final rules are measured.[344] Several commenters requested the Commission to consider interactions between the economic effects of the proposed rules and other recent Commission rules.[345] The Commission recently adopted seven of the rules mentioned as potentially impacting the economic effects of the final rules,[346] namely the May 2023 SEC Form PF Amending Release,[347] the Treasury Clearing Adopting Release,[348]

[339] FINRA Comment Letter.

[340] *See* MFA Comment Letter I.

[341] 15 U.S.C. 78c(f).

[342] 15 U.S.C. 78w(a)(2).

[343] *Id.*

[344] *See, e.g., Nasdaq* v. *SEC,* 34 F.4th 1105, 1111–15 (D.C. Cir. 2022). This approach also follows SEC staff guidance on economic analysis for rulemaking. *See* Staff's ''Current Guidance on Economic Analysis in SEC Rulemaking'' (Mar. 16, 2012), *available at https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf* (''The economic consequences of proposed rules (potential costs and benefits including effects on efficiency, competition, and capital formation) should be measured against a baseline, which is the best assessment of how the world would look in the absence of the proposed action.''); *id.* at 7 (''The baseline includes both the economic attributes of the relevant market and the existing regulatory structure.''). The best assessment of how the world would look in the absence of the proposed or final action typically does not include recently proposed actions, because doing so would improperly assume the adoption of those proposed actions.

[345] *See, e.g.,* ICI Comment Letter (''The Commission has issued a wide range of interconnected rule proposals . . . [that] in the aggregate warrant further analysis by the Commission. The Commission's failure to consider the Interconnected Rules holistically is a widespread concern among other market participants.'').

[346] Short Position and Short Activity Reporting by Institutional Investment Managers, Exchange Act Release No. 94313 (Feb. 25, 2022), 87 FR 14950 (Mar. 16, 2022) (*see, e.g.,* Overdahl Comment Letter at 24 n.113; MFA Comment Letter I at 15–16); Modernization of Beneficial Ownership Reporting, Securities Act Release No. 11030, Exchange Act Release No. 94211 (Feb. 10, 2022), 87 FR 13846 (Mar. 10, 2022) (*see, e.g.,* Element Comment Letter at 10; Overdahl Comment Letter at 24 n.113; MFA Comment Letter I at 14–16); Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, Investment Advisers Act Release No. 5955 (Feb. 9, 2022), 87 FR 16886 (Mar. 24, 2022) (*see, e.g.,* MFA Comment Letter I at 20; Element Comment Letter at 10; Overdahl Comment Letter at 24 n.113; AIC Comment Letter at 1 n.3, 8); Amendments to Form PF to Require Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers and to Amend Reporting Requirements for Large Private Equity Fund Advisers, Investment Advisers Act Release No. 5950 (Jan. 26, 2022), 87 FR 9106 (Feb. 17, 2022) (*see* Overdahl Comment Letter at 24 n.113; AIC Comment Letter at 1 n.3, 8; MFA Comment Letter I at 20 n.21); Prohibition Against Conflicts of Interest in Certain Securitizations, Securities Act Release No. 11151 (Jan. 25, 2023), 88 FR 9678 (Feb. 14, 2023) (*see* MFA Comment Letter I at 21–22); Reporting of Securities Loans, Exchange Act Release No. 93613 (Nov. 18, 2021), 86 FR 69802 (Dec. 8, 2021) (*see, e.g.,* Overdahl Comment Letter at 24 n.113); Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities, Exchange Act Release No. 95763 (Sept. 14, 2022), 87 FR 64610 (Oct. 25, 2022) (*see* AIMA Comment Letter III at 4; MFA Comment Letter II at 6 n.13).

[347] Form PF; Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers; Requirements for Large Private Equity Fund Adviser Reporting, Investment Advisers Act Release No. 6297 (May 3, 2023), 88 FR 38146 (June 12, 2023) (''May 2023 SEC Form PF Amending Release''). The Form PF amendments adopted in May 2023 require large hedge fund advisers and all private equity fund advisers to file reports upon the occurrence of certain reporting events. The May 2023 SEC Form PF Amending Release revised Form PF to (i) add new current reporting requirements for large hedge fund advisers to qualifying hedge funds upon the occurrence of key events (new section 5); (ii) add new quarterly reporting requirements for all private equity fund advisers upon the occurrence of key events (new section 6); and (iii) add and revise new regular reporting questions for large private equity fund advisers. The compliance dates are Dec. 11, 2023, for the event reports in Form PF sections 5 and 6, and June 11, 2024, for the remainder of the Form PF amendments in the May 2023 SEC Form PF Amending Release.

[348] Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the

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the Private Fund Advisers Adopting Release,[349] the Beneficial Ownership Amending Release,[350] the 17 CFR 240.10c–1a (''Rule 10c–1a'') Adopting Release,[351] the Short Position Reporting Adopting Release,[352] and the Securitizations Conflicts Adopting Release.[353] These adopted rules were not included as part of the baseline in the Proposing Release because they were not adopted at that time.[354] In response to commenters, this economic analysis considers potential economic effects arising from any overlap between the compliance period for the final amendments and each of these recently adopted rules.[355]

Dealers perform important market functions, such as absorbing order imbalances and providing liquidity to buyers and sellers who may not arrive at the same time, and a regulatory regime exists to govern their activities.[356] However, market participants that do not register as dealers—and so do not comply with the dealer regulatory regime—increasingly perform critical market functions that historically have been performed by dealers. This difference in regulatory treatment creates the potential for negative externalities, as described below. Furthermore, the unevenness of regulation potentially gives less-regulated entities an unfair advantage over registered dealers that engage in similar activities.

1. Rules and Regulations That Apply to Registered Dealers

Persons engaged in the business of buying and selling securities for such person's own account are generally dealers pursuant to section 3(a)(5) of the Exchange Act and are required to register as dealers with the Commission in accordance with section 15(b) of the Exchange Act, become members of an SRO, and adhere to a comprehensive regulatory regime, unless their activities fall within an exception,[357] or unless they limit their dealing activity to excluded or exempted securities.

Dealers that are also government securities dealers are further subject to rules issued by the Treasury that concern financial responsibility, capital requirements, recordkeeping, and

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Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities, Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (''Treasury Clearing Adopting Release''). Among other things, the Treasury Clearing Adopting Release requires covered clearing agencies for U.S. Treasury securities to have written policies and procedures reasonably designed to require that every direct participant of the covered clearing agency submit for clearance and settlement all eligible secondary market transactions in U.S. Treasury securities to which it is a counterparty. The compliance dates are 60 days following Jan. 16, 2024, for each covered clearing agency to file any proposed rule changes pursuant to 17 CFR 240.17ad–22(e)(6)(i) and (e)(18)(iv)(C) (''final Rule 17ad–22(e)(6)(i) and (e)(18)(iv)(C)'') and final Rule 15c3–3, and the rule changes must be effective by Mar. 31, 2025. With respect to the changes to Rule 17ad–22(e)(18)(iv)(A) and (B), each covered clearing agency will be required to file any proposed rule changes regarding those amendments no later than 150 days following Jan. 16, 2024, and the proposed rule changes must be effective by Dec. 31, 2025, for cash market transactions encompassed by paragraph (ii) of the definition of an eligible secondary market transaction, and by June 30, 2026, for repo transactions encompassed by paragraph (i) of the definition of an eligible secondary market transactions. Compliance by the direct participants of a U.S. Treasury securities covered clearing agency with the requirement to clear eligible secondary market transactions would not be required until Dec. 31, 2025, and June 30, 2026, respectively, for cash and repo transactions.

[349] Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, Investment Advisers Act Release No. 6383 (Aug. 23, 2023), 88 FR 63206 (Sept. 14, 2023) (''Private Fund Advisers Adopting Release''). The Commission adopted five new rules and two rule amendments as part of the reforms. The compliance date for the quarterly statement rule and the audit rule is Mar. 14, 2025, for all advisers. For the adviser-led secondaries rule, the preferential treatment rule, and the restricted activities rule, the Commission adopted staggered compliance dates that provide for the following compliance periods: for advisers with $1.5 billion or more in private funds assets under management, a 12-month compliance period (ending on Sept. 14, 2024) and for advisers with less than $1.5 billion in private funds assets, an 18-month compliance period (ending on Mar 14, 2025). The amended Advisers Act compliance provision for registered investment advisers has a Nov. 13, 2023, compliance date. *See* Private Fund Advisers Adopting Release, sections IV, VI.C.1.

[350] Modernization of Beneficial Ownership Reporting, Securities Act Release No. 11253, Exchange Act Release No. 98704 (Oct. 10, 2023), 88 FR 76896 (Nov. 7, 2023) (''Beneficial Ownership Amending Release''). Among other things, the amendments generally shorten the filing deadlines for initial and amended beneficial ownership reports filed on Schedules 13D and 13G, and require that Schedules 13D and 13G filings be made using a structured, machine-readable data language. The new disclosure requirements and filing deadlines for Schedule 13D are effective on Feb. 5, 2024. The new filing deadline for Schedule 13G takes effect on Sept 30, 2024, and the rule's structured data requirements have a one-year implementation period ending Dec. 18, 2024. *See* Beneficial Ownership Amending Release, section II.G.

[351] Reporting of Securities Loans, Exchange Act Release No. 98737 (Oct. 13, 2023), 88 FR 75644 (Nov. 3, 2023) (''Rule 10c–1a Adopting Release''). The securities loan reporting rule requires any person who loans a security on behalf of itself or another person to report information about securities loans to a registered national securities association (namely, FINRA) and requires FINRA to make certain information it receives available to the public. The covered persons will include market intermediaries, securities lenders, broker-dealers, and reporting agents. The final rule's compliance dates require that FINRA propose its rules within four months of the effective date of final Rule 10c–1a, or approximately May 2024, and finalize them no later than 12 months after the effective date of final Rule 10c–1a, or approximately Jan. 2025; that FINRA implement data retention and availability requirements for reporting 24 months after the effective date of final Rule 10c–1a, or approximately Jan. 2026; that covered persons report Rule 10c–1a information to FINRA starting on the first business day thereafter; and that FINRA publicly report Rule 10c–1a information within 90 calendar days thereafter, or approximately May 2026. *See* Rule 10c–1a Adopting Release, section VIII.

[352] Short Position and Short Activity Reporting by Institutional Investment Managers, Exchange Act Release No. 98738 (Oct. 13, 2023), 88 FR 75100 (Nov. 1, 2023) (''Short Position Reporting Adopting Release''). The new rule and related form are designed to provide greater transparency through the publication of short sale-related data to investors and other market participants. Under the new rule, institutional investment managers that meet or exceed certain specified reporting thresholds are required to report, on a monthly basis using the related form, specified short position data and short activity data for equity securities. The compliance date for the rule is Jan. 2, 2025. In addition, the Short Position Reporting Adopting Release amends the national market system plan governing CAT to require the reporting of reliance on the bona-fide market-making exception in the Commission's short sale rules. The compliance date for the CAT amendments is July 2, 2025.

[353] Prohibition Against Conflicts of Interest in Certain Securitizations, Securities Act Release No. 11254 (Nov. 27, 2023), 88 FR 85396 (Dec. 7, 2023) (''Securitizations Conflicts Adopting Release''). The new rule prohibits an underwriter, placement agent, initial purchaser, or sponsor of an asset-backed security (including a synthetic asset-backed security), or certain affiliates or subsidiaries of any such entity, from engaging in any transaction that would involve or result in certain material conflicts of interest. The compliance date for securitization participants to comply with the prohibition is June 9, 2025.

[354] Since proposing these rules, the Commission adopted rules to prohibit fraud and prevent undue influence over chief compliance officers in security-based swaps entities that were proposed in another proposal identified by a commenter, the Security-Based Swaps Proposal. *See* Overdahl Comment Letter; Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition Against Undue Influence over Chief Compliance Officers, Exchange Act Release No. 97656 (June 7, 2023), 88 FR 42546 (June 20, 2023). However, the Commission believes that there are no potential significant effects from overlapping requirements to comply with the final rules. Specifically, the new security-based swaps rules were effective Aug. 29, 2023—before the effective date of the final rules and over a year before compliance with the final rules is required for persons engaging in activities that meet the dealer registration requirements—and were expected to have minimal compliance costs because they solely identified prohibited actions.

[355] In addition, commenters indicated there could also be overlapping compliance costs between the final amendments and proposals that have not been adopted. *See, e.g.,* ICI Comment Letter; Overdahl Comment Letter; MFA Comment Letter I; MFA Comment Letter II; Element Comment Letter; AIC Comment Letter; Consensys Comment Letter; AIMA Comment Letter II. To the extent those proposals are adopted, the baseline in those subsequent rulemakings will reflect the existing regulatory requirements at that time.

[356] Order imbalances exist when a market receives more buy orders than sell orders, or vice versa, at a point in time. Dealers may absorb these imbalances by buying when there are more sell orders (and temporarily holding inventory) and by selling when there are more buy orders (by liquidating inventory). A dealer that absorbs imbalances in this way can effectively facilitate a transaction between a person who wishes to sell at time X and a person who wishes to buy at time Y.

[357] *See supra* notes 5 and 11.

reports and audits. However, while not required to register as dealers, market participants (other than registered dealers and financial institutions) that limit their dealing activities to government securities generally have to register with the Commission as government securities dealers under section 15C of the Exchange Act, and similarly must comply with Treasury rules.

The regulatory regime for registered dealers includes provisions that limit risk (*e.g.,* the Net Capital Rule [358] and rules promoting operational integrity [359]), provisions that require certain books and records,[360] provisions that require various reporting and disclosure (including audited financial statements [361] and the identities of owners, directors, and managers [362]), and antifraud and anti-manipulation provisions.[363] The Net Capital Rule requires registered dealers to maintain minimum amounts of net liquid assets at all times, even intraday, thus constraining dealer leverage.[364] In addition to the financial and regulatory risk management controls required by the Market Access Rule, dealers with market access must comply with a number of underlying regulatory requirements when conducting their business.[365] Registered dealers are also subject to the Commission's authority to conduct examinations and impose sanctions [366] and to the rules, examination authority, and enforcement authority of the relevant SRO.[367]

Section 6(b)(5) and section 15A(b)(6) of the Exchange Act, respectively, require that the rules of a national securities exchange and the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general protect investors and the public interest.[368] SROs can review their members' supervisory procedures, including requiring internal controls on algorithmic trading.[369] For most securities dealers that trade on more than one exchange, the relevant SRO is currently FINRA.[370] Commission-registered brokers or dealers must also become members of the Securities Investor Protection Corporation (''SIPC'').[371]

The regulatory regime differs somewhat for entities that transact only in government securities, especially with respect to requirements on SIPC membership and capitalization.[372] Such persons engaged in the business of buying and selling government securities for such person's own account are generally dealers pursuant to section 3(a)(44) of the Exchange Act and have to register with the Commission as government securities dealers under section 15C of the Exchange Act. These government securities dealers are not required to be members of SIPC,[373] and they are required to comply with the capital requirements set forth in 17 CFR 402.2 rather than with the Net Capital Rule that applies to dealers. They are further subject to rules issued by the Treasury on financial responsibility, capital requirements, recordkeeping, and reports and audits.[374]

The SEC's recently-adopted Treasury Clearing rule requires that any direct participant of a covered clearing agency submit all eligible secondary market transactions in U.S. Treasury securities for clearance and settlement, including transactions where the counterparty is another member of a covered clearing agency.[375]

As explained in section I.A, courts have repeatedly recognized the requirement that dealers and government securities dealers register as being ''of the utmost importance in effecting the purposes of the Exchange Act.'' [376] Among other things, these regulations promote dealers' financial responsibility, including adequate capitalization (liquidity held against risky assets) and internal controls. The dealer regulations also give the Commission and the SROs tools to help them detect manipulation or fraud by analyzing transaction reports and examining other records kept by dealers.

2. Affected Parties

The Commission believes that some entities who are not registered as dealers or government securities dealers perform a significant role in providing liquidity in markets, including entities

[358] The Net Capital Rule requires dealers to hold liquid assets in excess of their unsubordinated liabilities. *See* section III.C.2.b for a more complete discussion of the Net Capital Rule.

[359] *See supra* note 26.

[360] *See supra* note 27.

[361] *See* 17 CFR 240.17a–5(d)(1)(i)(A) (''Rule 17a–5(d)(1)(i)(A)'').

[362] *See* Form BD.

[363] *See supra* note 28 and surrounding text. *See also, e.g.,* FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade); FINRA Rule 2020 (Use of Manipulative, Deceptive, or Other Fraudulent Devices); FINRA Rule 4510 Series (Books and Records Requirements). Other SROs have comparable and sometimes equivalent rules. *See, e.g.,* NYSE, *NYSE Rules, available at https://nyseguide.srorules.com/rules;* Nasdaq, *Rulebook—The Nasdaq Stock Market, available at https://listingcenter.nasdaq.com/rulebook/nasdaq/rules.*

[364] *See* section III.C.2.b for a discussion of the Net Capital Rule.

[365] These regulatory requirements include, for example, pre-trade requirements such as exchange-trading rules relating to special order types, trading halts, odd-lot orders, and SEC rules under Regulation SHO and Regulation NMS, as well as post-trade obligations to monitor for manipulation and other illegal activity. *See also supra* note 26 on the Market Access Rule.

[366] *See supra* note 30.

[367] Exchange Act section 17(b) subjects broker-dealers to inspections and examinations by Commission staff and by the relevant SRO. In addition, 17 CFR 240.15b2–2 (''Exchange Act Rule 15b2–2'' or ''Rule 15b2–2'') generally requires the SRO that has responsibility for examining a dealer member to inspect a newly registered dealer for compliance with applicable financial responsibility rules within six months of registration, and for compliance with all other regulatory requirements within 12 months of registration. *See also* 17 CFR 240.17d–1 (''Rule 17d–1'') (examination for compliance with applicable financial responsibility rules). Thereafter, FINRA or another SRO, as applicable, continues to inspect each firm periodically, based on the firm's risk profile.

[368] 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78*o*–3(b)(6).

[369] For instance, see FINRA Rules 2010, 3110, 5210, and 6140, which establish conduct rules that may apply to algorithmic trading and which give FINRA supervisory authority. FINRA Notice 15–09 describes how ''FINRA staff has conducted a number of examinations and investigations . . . that were prompted by the detection of systems-related issues at firms engaged in algorithmic strategies, and several of these investigations have resulted in settlements of formal actions.'' The FINRA notice provides guidance on best practices for keeping algorithmic trading compliant with FINRA and Commission rules.

[370] *See supra* note 23.

[371] Exceptions to the SIPC membership requirement exist for (a) persons whose principal business is conducted outside the United States and its territories and possessions; (b) persons whose business as a broker or dealer consists exclusively of (i) the distribution of shares of registered open end investment companies or unit investment trusts, (ii) the sale of variable annuities, (iii) the business of insurance, or (iv) the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts; and (c) persons who are registered as a broker or dealer with respect to transactions in security futures products, pursuant to 15 U.S.C. 78*o*(b)(11)(A).

[372] *See supra* note 29.

[373] *See* 15 U.S.C. 78ccc(a)(2).

[374] *See* 17 CFR 402.2. *See also supra* note 14 and accompanying text.

[375] *See* Treasury Clearing Adopting Release.

[376] Proposing Release at 23060–61; *see also SEC* v. *Benger,* 697 F. Supp. 2d 932, 944 (N.D. Ill. 2010) (quoting *Celsion Corp.* v. *Stearns Mgmt. Corp.,* 157 F. Supp. 2d 942, 947 (N.D. Ill. 2001) (section 15(a)'s registration requirement is ''of the utmost importance in effecting the purposes of the Act'' because it enables the SEC ''to exercise discipline over those who may engage in the securities business and it establishes necessary standards with respect to training, experience, and records.''); *Roth* v. *SEC,* 22 F.3d 1108, 1109 (D.C. Cir. 1994) (''The broker-dealer registration requirement serves as the keystone of the entire system of broker-dealer regulation.''); *Regional Properties, Inc.* v. *Financial and Real Estate Consulting Co.,* 678 F.2d 552, 561 (5th Cir. June 3, 1982); *Eastside Church of Christ* v. *National Plan, Inc.,* 391 F.2d 357, 361 (5th Cir. Mar. 12, 1968).

commonly known as PTFs and potentially other market participants such as private funds. The final rules exclude market participants who have or control assets of less than $50 million.[377] This threshold excludes small market participants, some of whom are natural persons, who are unlikely to pose financial and operational risks to the markets.[378] Similarly, for the reasons discussed above in section II.A.3, the final rules exclude investment companies that are registered under the Investment Company Act and central banks, sovereign entities, and international financial institutions, as defined in the final rules. The following two sub-sections describe PTFs, as well as private funds and advisers, which are the entities most likely to be affected. The third sub-section below analyzes data from TRACE and Form PF to identify up to 43 entities that the final rules may affect.

a. PTFs

PTFs, who trade only for their own account without customers, have emerged as *de facto* market makers, especially in the U.S. Treasury market.[379] While some such firms have registered with the Commission as dealers, many others have not. This section discusses the baseline for PTFs in the current market, and a later section will estimate the number of PTFs that may be affected by the final rules due to their activities in the market for U.S. Treasury securities.

Table 1 summarizes the number and type of identifiable market participants in TRACE, by average monthly trading volume in 2022.[380] Many of the most active participants are classified in the data as ''PTFs'' who are not registered with the Commission as broker-dealers.[381] The 231 firms in Table 1 that were not SEC-registered broker-dealers accounted for approximately 13% of the aggregate Treasury trading volume of all identifiable firms in 2022. The PTFs had by far the highest volumes among the non-broker-dealer firms, and the most active PTFs had trading volumes roughly comparable to those of the most active registered dealers. A Federal Reserve staff analysis concluded that PTFs were particularly active in the interdealer segment of the U.S. Treasury market in 2019, accounting for 61% of the volume on automated interdealer broker platforms and 48% of the interdealer broker volume overall.[382] Figure 1 also shows that in the U.S. Treasury market, some participants who are not SEC-registered dealers trade very high volumes comparable to the most active registered dealers. The very high trading volumes and large share of trading in the interdealer Treasury market suggest that at least some PTFs may be regularly acting as significant liquidity providers.

TABLE 1—COUNT OF ACTIVE FIRMS IN THE TREASURY MARKET BY TYPE: CALENDAR YEAR 2022

Firm type	# Firms, by average monthly (buy + sell) volume			
	all firms	>$10 bn	>$50 bn	>$100 bn
SEC-registered broker-dealers	854	83	46	34
Other firms	231	54	15	10
Dealers	110	23	*	0
Hedge Funds	62	7	*	0
PTFs	40	23	13	10
Others	19	1	*	0

** Suppressed to protect confidentiality.*

[377] As noted in section II.A.3, outside of the context of these rules, whether a person who has or controls less than $50 million in assets must register as a dealer will remain a facts and circumstances determination.

[378] Most U.S. investors are households, and most household investors have far less than $50 million in assets. The 2019 Survey of Consumer Finance, sponsored by the Federal Reserve Board of Governors and the U.S. Treasury, shows that 68 million U.S. families owned stocks and bonds, either directly or indirectly, and that 93% own less than $1 million. The survey also showed that the mean (median) U.S. household had total assets of $858,000 ($227,000). This number of household investors is much larger than the number of institutional investors. For example, there are currently 3,963 registered investment companies and 15,562 registered investment advisers.

[379] *See* FINRA Comment Letter.

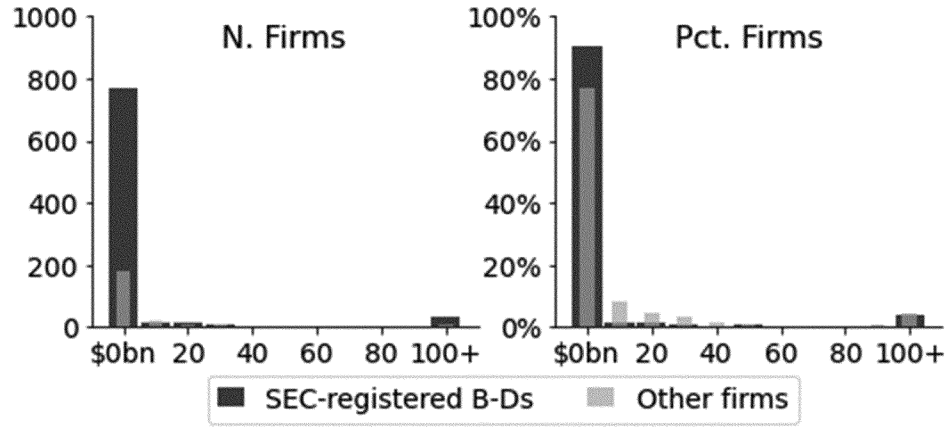
[380] The analysis is limited to a subsection of TRACE data where the identity of trading counterparties is known. Non-FINRA member participants generally appear anonymously when they trade with FINRA members, who report their activity to TRACE but maintain the anonymity of the non-FINRA member counterparties. When non-FINRA member participants trade on an ATS that is covered by FINRA Rule 6730.07, the ATS reports the transaction to TRACE along with a unique, non-anonymous MPID for each counterparty. For FINRA Rule 6730.07, a ''covered ATS'' is an ATS, as that term is defined in Rule 300 of SEC Regulation ATS (17 CFR 242.300), that executed transactions in U.S. Treasury securities against non-FINRA member subscribers of $10 billion or more in monthly par value, computed by aggregating buy and sell transactions, for any two months in the preceding calendar quarter. In 2022, approximately 58% of the non-FINRA member volume in TRACE belonged to anonymous market participants.

[381] Our classification of TRACE entities includes an assessment of non-FINRA firms in the data as ''PTFs,'' ''hedge funds,'' etc. A small number of non-FINRA firms are registered with the Commission as broker-dealers, and these are included with the FINRA firms as ''SEC-registered broker-dealers'' in Table 1.

[382] James Collin Harkrader and Michael Puglia, ''Principal Trading Firm Activity in Treasury Cash Markets,'' FEDS Notes (Aug. 4, 2020) (''[Principal trading firms] dominate activity on the electronic [interdealer broker] platforms (61%).''). *See also* Doug Brain *et al.*, ''Unlocking the Treasury Market Through TRACE,'' FEDS Notes (Sept. 28, 2018).

Figure 1. Treasury Trading Volume Distributions of SEC-registered Broker-Dealers versus Other Firms: Calendar Year 2022

The figure on the left shows the number of identifiable firms in TRACE data during year 2022, by average monthly trading volume (buy + sell). The figure on the right shows the percentage of firms in each volume bucket.



PTFs that are engaged in dealing activities without registering with the Commission as dealers do not have the same regulatory responsibilities as registered dealers or government securities dealers. These responsibilities include compliance with regulations regarding capitalization, operational controls, book-keeping, and record-keeping.[383] These PTFs also do not submit annual reports or financial statements to the Commission and are not subject to examination, thus limiting regulators' insight into their internal risk-management or record-keeping practices.

PTFs that are not registered as dealers do face constraints on risk-taking, but they face fewer constraints than registered dealers or government securities dealers. When they trade through a bank or broker-dealer, 12 CFR parts 220, 221, and 224 (''Federal Reserve Regulations T, U, and X'') require the bank or broker-dealer to limit the PTFs' risk by imposing margin requirements on loans that use securities as collateral.[384] If they trade through a broker-dealer that is a FINRA member, FINRA Rule 4210 may apply, since the rule specifies margins for securities that FINRA members hold in their customers' accounts, including initial margin requirements on securities transactions and commitments and maintenance margin.[385] If they trade directly in the market using a broker-dealer's market access, the Market Access Rule requires the broker-dealer offering its market access to establish, document, and maintain a system of controls and supervision designed to limit the risk—*e.g.,* financial, regulatory, operational, or legal—of the PTFs' activities related to that market access.[386] However, entities that are not registered as dealers do not have to comply with the Net Capital Rule.[387]

PTFs that are not registered as dealers do not have reporting obligations to CAT or to TRACE, though these data sources contain certain information on PTFs' trading.[388] CAT generally includes all PTFs' orders in NMS securities, OTC equities, and listed options because they are reported by other registered parties. Broker-dealers, including those through whom PTFs currently trade, are required to report orders and order events to CAT for NMS Securities or OTC equities.[389] Consequently, the receipt of such principal orders from PTFs and the execution of such orders (as well as all other order events) are included in CAT data. However, customers of the broker-dealers, including such PTFs, are only identified in the CAT system with Customer-IDs.[390] Regulators must then go to a separate database to obtain customer identifying information associated with a Customer-ID.[391]

Pursuant to the CAT NMS Plan, the CAT must capture and store Customer and Customer Account Information in a secure database physically separated from the transactional database. ''CAIS'' refers to the Customer and Account Information System within the CAT System that collects and links Customer-ID(s) to Customer and Account Attributes and other identifiers for queries by regulatory staff.[392] When the CAIS system becomes fully operational, authorized regulators will

[383] *See supra* notes 358–363.

[384] *See* Federal Reserve Regulation T (12 CFR part 220); Regulation U (12 CFR part 221); Regulation X (12 CFR part 224).

[385] *See* FINRA Rule 4210.

[386] *See supra* note 26.

[387] *See supra* note 24 and accompanying text.

[388] *See* Fried Frank Comment Letter; IAA Comment Letter I; McIntyre Comment Letter II; MMI Comment Letter; SIFMA Comment Letter I.

[389] Many broker-dealers contract with third-party service providers to fulfill their reporting requirements to CAT.

[390] Pursuant to the CAT NMS Plan, each customer is required to be assigned a unique Customer-ID that can be used to link all orders and reportable events from a specific customer.

[391] Pursuant to the CAT NMS Plan, the customer information data must be stored separately from the order data (*see* Appendix D–14 and D–33 of the CAT NMS Plan) with different access protocols (*see* Appendix D–14 and D–29 of the CAT NMS Plan). The purpose of these requirements is to secure Personally Identifiable Information (''PII''). According to the CAT NMS Plan, ''[a] subset of authorized regulators . . . will have permission to access and view PII data.'' *See* Appendix D–29 of the CAT NMS Plan.

[392] *See* ''Consolidated Audit Trail, Customer and Account Information System (CAIS): Specification for Firm Designated ID (FDID) and Large Trader ID (LTID)'' (Dec. 18, 2019), *available at https://www.catnmsplan.com/sites/default/files/2020-01/FDID-LTID-Specification-Publication-12-18-v1.pdf,* for background information on the CAIS system. *See also* CAT NMS Plan 6.5(c)(i) (stating that access is for regulatory use only) and CAT NMS Plan Appendix D 9.1 at p. D–33 (stating that customer information will be stored separately from other data).

be able to identify in the CAIS database all the customers associated with orders and related events captured and stored in the transactional database, including any PTFs that are engaging in dealer activities but that are not registered as dealers. Unlike the identification of customers, regulators can identify registered broker-dealers (who have reporting obligations) by their unique identifiers in CAT transactional data without having to access CAIS. Therefore, analysis requiring the identification of customers (such as PTFs) takes more time because accessing CAIS involves enhanced security measures and requires necessary additional steps that are not required for identifying broker-dealers associated with CAT reported trading activities in the CAT transactional database.

Additionally, broker-dealers and ATSs report transactions in U.S. Government securities to TRACE. However, TRACE data include the identities of unregistered entities only when the trades occur on an ATS covered by FINRA Rule 6730.07 (generally, the ATSs with higher volume).[393] When PTFs that are not registered as dealers trade U.S. Government securities and other fixed-income securities through a broker-dealer or on an ATS that is not covered by FINRA Rule 6730.07, the broker-dealer or ATS reports the transaction to TRACE, but the identity of the PTF remains anonymous. PTFs that are not registered as dealers are always anonymous in the TRACE database for corporate bond transactions.

PTFs with high volumes or large portfolios in equities markets may also have to report to the Commission on Form 13F[394] or Form 13H.[395] On Form 13F, institutional investment managers report the details of their holdings of section 13(f) securities—*e.g.,* CUSIP, fair market value. On Form 13H, among other things, large traders provide details of their organization, governance, and relationships.

PTFs are subject to the anti-manipulation and antifraud provisions under Securities Act section 17(a) and Exchange Act section 10(b), but they are not subject to Exchange Act section 15(c). Exchange Act section 15(c) authorizes the Commission to issue, for registered entities, specific rules and regulations that ''define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative and such quotations as are fictitious.'' [396] They are also not subject to examinations, net capital requirements, or any record-keeping or reporting requirements.

b. Private Funds and Advisers

Private funds [397] are also prominent participants in U.S. securities markets. This section discusses the baseline for private funds and advisers in the current market, and in section III.B.2.c we will estimate the number of hedge funds that may be affected by the final rules.

TABLE 2—PRIVATE FUND STATISTICS AS OF 2022Q4

Fund type	Count	Gross asset value		Net asset value	
		Total ($B)	Avg ($mm)	Total ($B)	Avg ($mm)
Hedge Fund	9,783	9,347	955	4,811	492
Private Equity Fund	20,860	6,710	322	6,030	289
Venture Capital Fund	2,978	375	126	342	115
Liquidity Fund	71	321	4,521	318	4,479
Other Private Fund	6,688	1,622	243	1,397	209
Real Estate Fund	4,226	1,137	269	857	203
Securitized Asset Fund	2,482	935	377	272	110

Note: These statistics rely on Form PF. Only SEC-registered advisers with at least $150 million in private fund assets under management must report to the Commission on Form PF; SEC-registered investment advisers with less than $150 million in private fund assets under management, SEC exempt reporting advisers, and state-registered investment advisers are not required to file Form PF.

Table 2 shows the number of private funds as of the fourth quarter of 2022.[398] Of the 9,783 hedge funds reported on Form PF during this period, there were 2,069 qualifying hedge funds that reported information on their positions, and these held $2.4 trillion in listed equities and $1.8 trillion in U.S. Government securities.[399] Certain hedge fund strategies, such as those that involve automated or high-frequency trading (''HFT''), could meet the final rules' definition of dealing.

The business models of private equity funds [400] and liquidity funds [401] are

[393] *See supra* note 380.

[394] Every manager which exercises investment discretion with respect to accounts holding section 13(f) securities, as defined in Rule 13f–1(c), having an aggregate fair market value on the last trading day of any month of any calendar year of at least $100,000,000, shall file a report on Form 13F with the Commission within 45 days after the last day of such calendar year and within 45 days after the last day of each of the first three calendar quarters of the subsequent calendar year.

[395] Each large trader—defined as a person whose transactions in NMS securities equal or exceed 2 million shares or $20 million during any calendar day, or 20 million shares or $200 million during any calendar month—is required to identify itself to the Commission by filing a Form 13H and submitting annual updates, as well as updates on as frequently as a quarterly basis when necessary to correct information previously disclosed that has become inaccurate. *See* 17 CFR 240.13h–1.

[396] 15 U.S.C. 78*o*(c)(2)(D). For example, the Net Capital Rule and the Market Access Rule are both tied to section 15(c) of the Exchange Act.

[397] A private fund, including a hedge fund, is an issuer that would be an investment company as defined in section 3 of the Investment Company Act if not for section 3(c)(1) or 3(c)(7) of the Investment Company Act. *See* 15 U.S.C. 80a–3.

[398] *See* SEC Division of Investment Management Analytics Office, Private Fund Statistics: Fourth Calendar Quarter 2022 (July 18, 2023) (''Private fund Statistics''), *available at https://www.sec.gov/files/investment/private-funds-statistics-2022-q4.pdf.*

[399] Large hedge fund advisers have at least $1.5 billion in hedge fund assets under management. A large hedge fund adviser is required to file Form PF quarterly and provide data about each hedge fund it managed during the reporting period (irrespective of the size of the fund). Large hedge fund advisers must report more information on Form PF about Qualifying Hedge Funds than other hedge funds they manage during the reporting period. A Qualifying Hedge Fund is any hedge fund advised by a large hedge fund adviser that had a NAV (individually or in combination with any feeder funds, parallel funds, and/or dependent parallel managed accounts) of at least $500 million as of the last day of any month in the fiscal quarter immediately preceding the adviser's most recently completed fiscal quarter.

[400] *See Investor.gov,* Private Equity Funds, *available at https://www.investor.gov/introduction-investing/investing-basics/investment-products/private-investment-funds/private-equity.*

[401] *See* Daniel Hiltgen, ''Private liquidity Funds: Characteristics and Risk Indicators,'' DERA White Paper (Jan. 27, 2017), *available at https://www.sec.gov/files/2017-03/Liquidity%20Fund%20Study.pdf.*

unlikely to engage in activities that meet the final rules' definition of dealing, because they are generally long-only investors that are not likely to regularly communicate trading interests on both sides of the market or earn revenue primarily from capturing bid-ask spreads.

Investment advisers are subject to the Advisers Act and the Commission oversees private fund advisers, many of which are registered with the SEC or report to the SEC as exempt reporting advisers.[402] Advisers may also trade for their own account subject to certain restrictions.[403] When trading through a bank or broker-dealer, private funds and investment advisers are indirectly constrained by the same limitations on risk-taking as are PTFs, as described in the previous section—*i.e.,* the Market Access Rule, FINRA Rule 4210, and Federal Reserve Regulations T, U, and X. Investment advisers are subject to a Federal fiduciary duty, which comprises a duty of care and a duty of loyalty,[404] and are subject to the antifraud provisions in section 206 of the Advisers Act. Private funds and investment advisers are also subject to section 10(b) of the Exchange Act and section 17(a) of the Securities Act. Registered investment advisers are further subject to specific substantive requirements related to various areas, including principal trading, agency cross transactions, custody of client assets, and marketing.[405] The Commission also recently adopted new rules and rule amendments to enhance the regulation of private fund advisers.[406]

The Advisers Act establishes reporting and recordkeeping requirements for registered advisers to private funds. For example, section 204 requires registered investment advisers to keep certain books and records (records of the advised private funds are considered records of the adviser for these purposes). Registered investment advisers and exempt reporting advisers must also disclose information on Form ADV. Registered private fund advisers report certain information on the private funds they manage to the Commission annually (and, for certain large advisers of certain large hedge funds, quarterly) on Form PF. Specifically, large hedge fund advisers currently file quarterly periodic reports and—within 72 hours of the occurrence of certain events including extraordinary investment losses and large margin increases—current reports to the Commission on Form PF and are subject to books and records rules and examinations.[407] Advisers are also subject to Commission examinations. Advisers and funds with high trading volumes or large portfolios may also have to report to the Commission on Form 13F or Form 13H, on which they would disclose details of their securities holdings, organization, governance, and relationships.[408]

However, private funds and investment advisers do not have to comply with the Net Capital Rule or with any other direct regulatory constraint on leverage. They also are not required to report their transactions (though their broker-dealer may be required to report the transactions), and they are not subject to section 15(c) of the Exchange Act.[409] Regulators may be able to obtain complete data on private funds' and advisers' securities transactions through examinations, but such information is currently more readily available for registered dealers or government securities dealers.

c. Number of Affected Parties

In this section, we provide estimates of the number of entities that may satisfy the qualitative standard, as adopted. These estimates are subject to significant caveats that we also describe below. We use TRACE data on U.S. Treasury transactions to provide an estimate of the number of identifiable Treasury-market participants that could be affected. We use data from Form PF[410] to approximate the number of possibly affected private funds, under the assumption that, to the extent private funds employ trading strategies that would qualify under the final rules' qualitative standard, they would most likely report those as HFT strategies. The analysis focuses on U.S. Treasury markets where market participants not registered as dealers are significant liquidity providers.[411] Natural persons are unlikely to be dealing in U.S. Government securities, and we do not observe any natural persons trading U.S. Government securities in the interdealer market.

Using TRACE data for U.S. Treasury securities, we estimate the number of affected parties by identifying firms that appear to meet the primary revenue factor by earning revenue from capturing bid-ask spreads in the market for U.S. Treasury securities. We do not estimate the number of entities that appear to meet the expressing trading interest factor because the Commission does not have sufficient data on quoting activities. TRACE data identify specific parties in the Treasury market that are not registered broker-dealers who trade on certain ATSs.[412] In other markets, post-trade data do not identify entities that are not registered as broker-dealers. In all markets, when entities transact on ATSs for or on behalf of other market participants that are not registered broker-dealers, data limitations prevent us from identifying the ultimate buyer or seller. It is the Commission's understanding that significant liquidity providers are more likely to be registered broker-dealers in other markets such as those for equities and options than they are in the market for

[402] Section 203(l) of the Advisers Act provides that an investment adviser that solely advises venture capital funds is exempt from registration, and section 203(m) exempts from registration any investment adviser that solely advises private funds if the adviser has assets under management in the U.S. of less than $150 million. Advisers that rely on the venture capital and private fund adviser exemptions are generally referred to as ''exempt reporting advisers,'' because sections 203(l) and 203(m) provide that the Commission shall require the advisers to maintain such records and to submit such reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

[403] *See* 17 CFR 275.206(3) (''Rule 206(3)'').

[404] *See* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Release No. 5248 (June 5, 2019) 84 FR 33669 (July 12, 2019), at 24–25.

[405] *See* 17 CFR 275.206(4)–1 (''Rule 206(4)–1''); 17 CFR 275.206(4)–2 (''Rule 206(4)–2''); 17 CFR 275.206(4)–7 (''Rule 206(4)–7'').

[406] *See* Private Fund Advisers; Documentation of Registered Investment Adviser Compliance, Investment Advisers Act Release No. 6383 (Aug. 28, 2023) 88 FR 63206 (Sept. 14, 2023) (adopting 17 CFR 275.206(4)–10; 275.211(h)(1)–1, 275.211(h)(1)–2; 275.211(h)(2)–1; 275.211(h)(2)–2; 275.211(h)(2)–3).

[407] These periodic and current reporting obligations of large hedge fund advisers on Form PF reflect recently adopted amendments. *See supra* note 347.

[408] *See supra* notes 394 and 395. *See also* Fried Frank Comment Letter; IAA Comment Letter I; McIntyre Comment Letter II; SIFMA AMG Comment Letter.

[409] *See supra* note 396.

[410] Commenters said the proposed rules would have had a much larger impact on private funds than suggested by the economic analysis and asked that the Commission analyze Form PF data to estimate the number of affected funds. *See* AIMA Comment Letter II; IAA Comment Letter I; Fried Frank Comment Letter; T. Rowe Price Comment Letter. In consideration of these comments, we have supplemented this economic analysis with estimations based on Form PF.

[411] *See supra* note 20. *See also* SIFMA Comment Letter I. The letter describes how the Commission's Market Access Rule, beginning in 2010, may have encouraged previously unregistered equity or options dealers to register with the Commission.

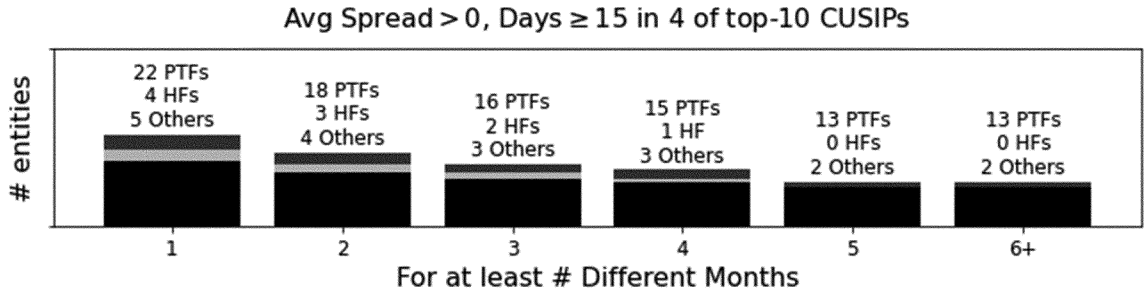
[412] *See* FINRA Rule 6730—Transaction Reporting, Supplementary Material .07—ATS Identification of Non-FINRA Member Counterparties for Transactions in U.S. Treasury Securities (among other things, defining the term ''covered ATS'' as an ATS that executed transactions in U.S. Treasury securities against non-FINRA member subscribers of $10 billion or more in monthly par value, computed by aggregating buy and sell transactions, for any two months in the preceding calendar quarter).

U.S. Treasury securities.[413] We acknowledge that this lack of transparency may affect our estimates.

The Commission does not necessarily observe all revenue sources for the most active participants in the U.S. Treasury market. Thus, for the purpose of estimating the number of affected entities, we consider that firms potentially meet the primary revenue factor if they trade at least 4 of the 10 highest-volume U.S. Government securities on at least 15 different trading days in a given month and if they realize, on average across the month, a positive intraday trading spread on each of those securities.[414] We consider such trading characteristics for this analysis because (1) TRACE data cannot determine whether any spread apparently earned is a ''primary'' source of revenue,[415] and (2) the calculation of intraday spreads does not distinguish between trades that capture the bid-ask spread and trades that profit from intraday price movements.[416] A firm that earns its revenue primarily from dealing in U.S. Government securities will likely trade at least one of the highest-volume securities on most trading days and will also tend to profit from those trades. This analysis reflects the requirement that dealing be regular by requiring the firm to trade the security on at least 15 trading days in a month (the ''day'' threshold) and by counting the number of months in which a firm appears to deal. We only consider a 15-day threshold here, rather than a lower threshold of 10 trading days or a higher threshold of 20 trading days (effectively every trading day in a month), because a firm that is not dealing—even a hypothetical firm that trades randomly—might earn a positive spread in a given security on a few trading days each month; likewise, a firm acting as a dealer might suffer a negative spread on a few trading days each month. Although we rely on a proxy definition of dealing for the purpose of this analysis, we stress that the determination of whether an entity is engaged in regular dealing activity depends on the facts and circumstances. The empirical proxy of dealing used for the purpose of this analysis—trading a security for at least 15 days in a month with a positive average trading spread—may not be necessary or sufficient for determining whether an activity constitutes dealing according to the final rules.

Figure 2 counts the number of identifiable non-broker-dealers that appear to meet the primary revenue factor for 1+, 2+, etc. months during 2022 in the market for U.S. Government securities. Figure 2, using the empirical measures described above, identifies as potential significant liquidity providers a total of 31 non-broker-dealers in TRACE that would have met the primary revenue factor for at least one month in 2022,[417] and 15 that would have done so for at least 6 months. Depending upon the number of months considered in Figure 2, these numbers include from 13 to 22 entities classified as PTFs and up to 4 entities classified as hedge funds.[418]

Figure 2. Number of non-broker-dealers appearing to meet the primary revenue factor for U.S. Government securities in 2022



Several commenters[419] cited the relevance of Form PF data for identifying market participants that could be captured by the final rules. We use Form PF to provide an estimate of the number of possibly affected hedge funds. Form PF filers provide information on hedge funds' trading strategies in two ways: (1) Question 20 asks about the breakdown of funds' reliance on several categories of strategy—*e.g.,* ''Equity, Market Neutral'' or ''Equity, Long/Short''—and (2) Question 21 asks how much of the funds' assets are dedicated to HFT strategies.[420] Based on our

[413] *See supra* note 20.

[414] For each firm and for each CUSIP, we calculate the daily spread as the volume-weighted average sell price minus the volume-weighted average buy price. We then take the simple average of this number across days within each firm-CUSIP-month.

[415] The final rules' primary revenue factor says, ''earning revenue primarily from capturing bid-ask spreads.''

[416] *See* Lewis Study for a description of some trades that may profit from intraday price movements without intending to capture bid-ask spreads.

[417] These 31 non-broker-dealers represent 13% of the 231 non-broker-dealers shown in Table 1.

[418] In Figure 2, the 31 non-broker dealers that appear to meet the primary revenue factor in 2022 for at least 1 month include 22 PTFs, 4 hedge funds, 4 entities classified as ''dealers'' (though they are not FINRA members and do not appear to be registered with the Commission), and 1 entity classified as ''other.'' A higher alternative threshold of 20 days would show up to 12 firms, including 9 PTFs and 1 hedge fund. A lower alternative threshold of 10 days would show up to 40 firms, including 27 PTFs and 7 hedge funds.

[419] *See, e.g.,* AIMA Comment Letter II; IAA Comment Letter I; Fried Frank Comment Letter; T. Rowe Price Comment Letter.

[420] The question does not provide a definition for the term high frequency trading strategies. The Commission has proposed to remove Question 21 from Form PF because the form's question on portfolio turnover, with proposed revisions, would better inform our and FSOC's understanding of the extent of trading by large hedge fund advisers and would better show how larger hedge funds interact with the markets and provide trading liquidity. *See* Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers, Investment Advisers Act Release No. 6083 (Aug. 10, 2022), 87 FR 53832 at 53850 (Sept. 1, 2022), *as corrected* 87 FR 54641 (Sept. 7, 2022). The proposed amendments to the form's question on portfolio turnover would not provide information on the number of funds that would meet the definition of dealer under the final rules because the proposed portfolio turnover question asks about aggregate value of turnover in a month, for specific asset classes. While responses to the question could indicate potentially high trading activity by private funds, they would not indicate the number of trades or the securities traded. In contrast, responses to current Question 21, which asks about HFT strategies at the fund

understanding of the trading objectives that hedge funds report pursuant to Questions 20 and 21, we believe that any hedge funds employing trading strategies that would fit the final rules' qualitative standard, as adopted, would likely report them as HFT.

Table 3 describes the number of hedge funds that used at least some HFT strategies, as reported by their advisers in the advisers' most recent Form PF filing between 2021–Q4 and 2022–Q3. Using Form PF, advisers report their use of HFT strategies as a range of percentages of net asset value (''NAV''), such as ''less than 10%'' of NAV, ''10%–25%,'' etc. We calculate a range of dollar values for each fund by multiplying the high and low values of the reported range by the fund's NAV. For example, if an adviser reports that a fund engages in HFT using ''Less than 10%'' of the fund's NAV, and if the fund's NAV is $100, then we conclude that the fund uses HFT to manage between $0 and $10 (10% of $100). For reported HFT use of ''100% or more'' of NAV, we use 500% of NAV as the high end of the range. The third row of Table 3 shows the total range of HFT use that we obtain by summing the low and the high estimates across funds. The left column provides statistics for funds with reported HFT use that is less than 10% of NAV, and the right column provides statistics for funds with reported HFT use that is 10% or more of NAV.

TABLE 3—PRIVATE FUNDS' USE OF HFT, LATEST FORM PF FILING BETWEEN 2021–Q4 AND 2022–Q3

	Funds with HFT <10% of NAV	Funds with HFT ≥10% of NAV
# Funds	40	12.
Average NAV	$3.2 bn	$0.9 bn.
Total $s dedicated to HFT*	$0–$12.7 bn	$8.9 bn–$40.4 bn.
# Advisers	21	10.

*Form PF includes a range of reported HFT—*e.g.,* ''less than 10%'' of NAV, ''10%–25%,'' etc. For funds reporting ''100% or more,'' we use 500% of NAV as the high end of the range.

The use of HFT strategies is, however, an imperfect proxy for whether these funds would qualify under the qualitative standard, as adopted. We are unable to determine whether the HFT activities that these funds report would satisfy the expressing trading interest factor or the primary revenue factor because we do not observe individual transactions in Form PF. The use of HFT strategies, to the extent it may be dealing, is more likely to be a primary source of revenue when it accounts for a larger percentage of a fund's NAV. Accordingly, the 12 hedge funds with HFT of at least 10% of NAV in Table 3 are the more likely to meet the final rules' primary revenue factor. However, since reported HFT may apply to a broader set of activities than the final rules' qualitative factors, the actual number of affected funds may be less than 12.

Our empirical analyses of likely affected parties face other limitations. In the current stage of implementation of CAT, we do not have comprehensive statistics on option or equity market activity stemming from entities engaging in dealing activity that are not registered as dealers, such as those known as PTFs in other markets.[421] Similarly, because our TRACE analysis is limited to U.S. Government securities, it does not cover markets for equities, options, or other fixed-income markets. Our TRACE data also cannot establish whether firms primarily earn revenue from capturing bid-ask spreads. Further, and specifically for Treasury market participants, our counts of identifiable firms in TRACE may be low because TRACE data on U.S. Government securities transactions does not identify all market participants.[422] The TRACE analysis also relies on empirical proxies to estimate the number of firms—*i.e.,* the range of values for ''regular'' and the ''at least 15 days'' distinction—and uses observed intraday trading spreads rather than the (unobserved) revenue earned from bid-ask spreads. As explained above, the analysis also does not estimate the number of entities described by the final rules' expressing trading interest factor because of data limitations. Whether or not a person is a securities dealer or government securities dealer under the final rules would be, in part, a question of facts and circumstances not observed in the data, such as whether and to whom trading interests are expressed, whether they are on both sides of the market, and whether they are at or near the best available prices.

Commenters said that the number of hedge funds affected by the Proposed Rules would be much higher than the Proposing Release suggested, potentially numbering into the hundreds.[423] However, the changes to the final rules described in section I.B largely respond to commenters' concerns by reducing the number of entities that the final rules would potentially require to newly register as dealers.

One commenter stated that the Commission did not estimate the number of affected parties based on trading in other asset classes, such as corporate bonds, municipal securities, and asset- or mortgage-backed securities.[424] Transaction data in these markets do not permit such estimations because non-broker-dealers are generally labeled as ''customer'' without name attribution in trade reports. However, with regard to PTFs, it is the Commission's understanding that these market participants are most active in on-the-run Treasury markets, where they provide a substantial amount of liquidity, but are less active in off-the-run Treasury securities and play only a small role in the market for agency securities.[425] Similarly, the Commission

level, are more directly informative for this release. Based on our understanding of private fund activity, self-reported HFT is more relevant for estimating which entities may be affected by these final rules than the proposed portfolio turnover question.

[421] As described in section III.B.2.a, the CAIS system in CAT will allow the Commission to identify individual non-broker-dealers in equity and options markets, including any PTFs not currently registered as broker-dealers, but CAIS is not yet fully operational. Notably, because CAIS is not fully operational, the transactional data does not contain unique customer identifiers needed to track the same customer across broker-dealers. This prevents us from analyzing CAT to identify entities engaging in dealing activity that are not registered as dealers.

[422] *See supra* note 380.

[423] *See, e.g.,* AIMA Comment Letter II; Consensys Comment Letter; Fried Frank Comment Letter; ICI Comment Letter; McIntyre Comment Letter II; MFA Comment Letter I; NAPFM Comment Letter; SIFMA Comment Letter I; SIFMA AMG Comment Letter; Two Sigma Comment Letter I.

[424] *See* SIFMA Comment Letter I.

[425] *See* the Commission's proposed amendments to Regulation ATS for ATSs that trade government securities (''ATS–G Proposing Release''), 85 FR

Continued

does not believe that PTFs are active in municipal securities markets, which are characterized by a high level of retail investors. One commenter to the ATS–G Proposing Release noted that approximately 15% of daily dollar volume in municipal bonds is executed electronically, further indicating that PTFs—which rely on electronic platforms—may not play a significant role in this market.[426] Finally, recent research finds that non-dealer liquidity providers are present in corporate bond markets, though they account for a small share of overall volume. Looking at a particular electronic platform, the authors of one study find that all-to-all trading makes up 12% of all trades on the platform; of this, new liquidity providers acting as dealers account for 7%.[427] However, this platform accounts for approximately 10% of trading reported to TRACE, so that the overall share of non-dealer liquidity providers or PTFs in the corporate bond market is relatively small. Other anecdotal evidence suggests that PTFs have begun to enter the corporate bond market using RFQ platforms, possibly driven by the growth of corporate bond ETFs.[428]

Because crypto asset platforms transacting in crypto assets for their own account may already be dealers under current law—*i.e.,* with respect to crypto assets that are securities or government securities within the meaning of the Exchange Act—the final rules might affect only a few of the entities that provide significant liquidity in crypto asset markets. We understand that the rules may affect some PTFs in crypto asset markets, however. We are unable to estimate the number of crypto asset market participants who would be affected by the rules, because data do not allow us to match crypto asset security transactions to individual traders, especially across platforms.[429]

3. Competition Among Significant Liquidity Providers

The previous sections highlight important differences in regulatory treatment among competing significant liquidity providers. Specifically, registered dealers and the unregistered market participants that perform similar functions operate under different regulations—*i.e.,* unregistered market participants have fewer constraints on risk-taking and are subject to fewer reporting requirements—even as they perform a similar role as dealers in markets. The requirement that dealers register is of the utmost importance in effecting the purposes of the Exchange Act (*see* section I.A). In this section, we provide some data on current concentration in the market for U.S. Government securities and also discuss the competitive implications of differences in regulatory treatment.

Our analysis of TRACE data suggests that liquidity provision in the interdealer market for U.S. Government securities is not concentrated.[430] Table 4 displays measures of market concentration among entities that are potentially dealing in U.S. Government securities across months in 2022.[431] This table categorizes firms as potential significant liquidity providers in three ways, and we display two measures of concentration for each. In column 1, the list of potential significant liquidity providers includes only firms currently classified as dealers in our TRACE data. In column 2, the list also includes identifiable PTFs. In column 3, the list expands again to include identifiable hedge funds. The two measures of concentration are the volume share of the 5 highest-volume firms and the Herfindahl-Hirschman index (''HHI'').[432] The inverse of the HHI provides some intuition by giving the number of equally sized competitors a market would need to produce such an HHI. The first column of Table 4 shows that between 445 and 714 dealers were active in the U.S. Treasury market in 2022, and that the 5 highest-volume of these firms accounted for approximately 40% of the group's total volume each month. Across months, the HHI in column 1 ranged between 0.047 and 0.056, comparable to a market with 18 to 21 equally sized competitors.[433] If we also consider identifiable PTFs to be significant liquidity providers (column 2), then 479 to 748 significant liquidity providers were active each month during 2022, and the five highest-volume firms accounted for approximately one-third of the group's total. The HHI in this case averages approximately 0.0385, comparable to a market with 26 equally sized competitors. If we further consider identifiable hedge funds in TRACE to be significant liquidity providers (column 3), then 517 to 799 significant liquidity providers were active in the U.S. Treasury market in each month during 2022, the concentration metrics are nearly the same as in column 2. The narrow differences between columns 2 and 3 suggest that the hedge funds that we can identify in TRACE are not major competitors in the market for liquidity provision against either registered broker-dealers or PTFs.

87106 (Dec. 31, 2020), *available at https://www.federalregister.gov/documents/2020/12/31/2020-21781/regulation-ats-for-atss-that-trade-us-government-securities-nms-stock-and-other-securities.* In particular, Table X.2 highlights that PTFs accounted for 31.4% of on-the-run volume share from July 1, 2019, to Dec. 31, 2019, while Table X.3 shows that PTFs accounted for only 1.5% of off-the-run volume. Table X.4 shows that PTFs were essentially not active in agency securities during the same period.

[426] *See* Bond Dealers of America comment letter to ATS–G Proposing Release, *available at https://www.sec.gov/comments/s7-12-20/s71220-8426431-229605.pdf.*

[427] *See* Terrence Hendershott, Livdan Dmitry, and Norman Schürhoff, ''All-to-All Liquidity in Corporate Bonds,'' Swiss Finance Institute Research Paper No. 21–43 (Oct. 27, 2021), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3895270.*

[428] *See* Kevin McPartland, What's Next for High Frequency Traders? Not Calling Them High Frequency Traders, Coalition Greenwich (Sept. 27, 2019), *available at https://www.greenwich.com/blog/what%E2%80%99s-next-high-frequency-traders* (noting that one PTF has begun to trade using corporate bond RFQs).

[429] We would have to match entities' trades in crypto asset securities across platforms in order to determine whether or not their trading activity meets the final rules' definition of regular liquidity provision.

[430] We consider all dealer-to-dealer trades and all trades on covered ATSs (*see supra* note 380) to be the interdealer market. For the purposes of this table, we consider all registered broker-dealers to be potential liquidity providers, though it may be the case that some broker-dealers do not regularly seek to provide liquidity in the market for U.S. Government securities.

[431] As of Oct. 2023, there were 3,490 active broker-dealers registered with the Commission. *See* SEC, *Data: Company Information About Active Broker-Dealers* (updated Oct. 2, 2023), *available at https://www.sec.gov/help/foiadocsbdfoiahtm.html.*

[432] HHI is equal to the sum of squared market shares. An index of 1 would indicate a completely concentrated market with a single significant liquidity provider.

[433] A Federal Reserve analysis from 2020 finds that activity on electronic interdealer platforms is slightly more concentrated, with an HHI of 0.082. *See* James Collin Harkrader and Michael Puglia, ''Principal Trading Firm Activity in Treasury Cash Markets,'' FEDS Notes (Aug. 4, 2020).

TABLE 4—COMPETITION AMONG SIGNIFICANT LIQUIDITY PROVIDERS IN THE TREASURY MARKET, 2022

[The largest 5 firms in this table overall are registered broker-dealers]

	Significant liquidity providers: registered BDs	Significant liquidity providers: registered BDs + PTFs	Significant liquidity providers: registered BDs + PTFs + hedge funds
No. of firms	445–714	479–748	517–799.
Share of interdealer market*	72.7%–83.7%	93.7%–97.4%	95.0%–98.5%.
Concentration measures:			
Share of top 5 firms	37.3%–43.1%	32.0%–35.4%	31.7%–35.0%.
HHI	0.047–0.056	0.036–0.041	0.036–0.047.
HHI comparable to market with ____ equal-size competitors.	*18–21*	*24–28*	*24–28.*

*Source: TRACE data. Our sample contains all transactions in the interdealer market, including direct dealer-to-dealer trades and trades that occur on ATSs covered by FINRA Rule 6730.07.

The Commission also understands that many firms compete to provide liquidity in the markets for corporate bonds and for equities (not necessarily the same firms). Research has documented that, as of the first quarter of 2020, about 600 dealers intermediated in the market for corporate bonds, but that the top 10 broker-dealers controlled approximately 70% of the volume.[434] Another analysis by the Commission [435] found that of the 3,972 broker-dealers that filed Form X–17a–5 (FOCUS report) in 2016, 430 were also members of U.S. equities exchanges, and the largest 20 broker-dealers controlled approximately 75% of the total assets of all broker-dealers.

The current competitive landscape among significant liquidity providers is shaped by the difference in regulatory treatment between registered dealers and the unregistered market participants that perform a similar role in the markets. Competition among significant liquidity providers in U.S. capital markets, described above, puts pressure on firms' ability to profit from these activities, meaning that even small regulatory differences across significant liquidity providers can be important. The compliance costs of the additional requirements to which registered dealers are subject may currently allow less-regulated firms such as PTFs to increase (or continue to increase) their share of dealing activity at registered dealers' expense. These dynamics may especially apply to the electronic interdealer segment of the Treasury market, where PTFs now account for a majority of trading activity (as of 2019).[436]

4. Externalities

Externalities arise in a market when a market participant engages in activity that impacts participants not otherwise directly related to the activity and the market participant does not take this impact into account. In this analysis, externalities can arise with regard to activities, such as risk taking and abusive trading, that are taken by market participants who act as regular significant liquidity providers (*i.e.,* dealers). The dealer regulatory regime promotes dealers' financial responsibility, including adequate capitalization (liquidity held against risky assets) and internal controls, which can help address externalities—above and beyond any other existing regulatory or industry practices. Subjecting unregistered market participants that perform as dealers to this regime, similarly to all currently registered dealers, will therefore enhance oversight by regulators and help limit externalities by helping prevent spillovers that may broadly harm investors.

Market participants that act as regular significant liquidity providers, whether registered with the Commission as dealers or not, can not only harm their counterparties but also cause wider harm throughout securities markets if they fail financially.

Failed liquidity providers can become unable to meet short-term obligations to trading counterparties, repo lenders and other lenders, and clearing firms. Negative effects can be transmitted further through creditors or counterparties to other market entities who are not directly related. For instance, a lender that suffers a loss due to the bankruptcy of one of its borrowers may reduce its willingness to lend (*i.e.,* it may increase the price of credit) more generally, especially when the lender is uncertain about whether the bankruptcy is due to idiosyncratic events or to events that have also negatively impacted other potential borrowers. Prior to or during a failure, a significant liquidity provider may have to liquidate an unexpectedly large position—perhaps acquired because offsetting trades were unavailable for a time or because of errors in trading algorithms or other systems (including human errors). Rapid liquidation of the position may cause detrimental price volatility or a temporary drop in market liquidity.

If the failed liquidity provider is a substantial market participant, then its disorderly exit from the market or from a securities position may push market prices away from fundamental value and harm traders across the markets. Because a significant liquidity provider can harm others to whom it is not directly related—and who may not be able to contract to bear those costs—its failure can impose negative externalities. These externalities may ensue whether the failed liquidity provider is registered as a dealer or not. However, the next paragraph explains how the dealer regime's limitations on financial risk, including the Net Capital Rule, reduce the risk for registered dealers.

Dealer regulations are designed to mitigate the magnitude of these externalities and to limit the probability that they occur at all. For example, the Net Capital Rule requires dealers to maintain sufficient liquid assets to meet all unsubordinated liabilities—including obligations to counterparties and other creditors—and to have adequate additional resources to wind down their business in an orderly manner if they fail financially. PTFs that are not registered as dealers currently face fewer regulations restricting their operational or financial risk,[437] and they are also not subject to additional SRO rules that promote financial

[434] Maureen O'Hara and Alex Zhou, *Anatomy of a Liquidity Crisis: Corporate Bonds in the Covid–19 Liquidity Crisis,* 142 J. Fin. Econ. 46 (2021), 46–68.

[435] Transaction Fee Pilot for NMS Stocks, Exchange Act Release No. 82873 (Mar. 14, 2018), 83 FR 13008 (Mar. 26, 2018).

[436] *See supra* note 382.

[437] *See* discussion of risk limitations in section III.B.2.a.

responsibility and operational capability. Private funds can place limits on investor withdrawals, and the fund adviser's fiduciary obligations may also deter private funds' excessive risk-taking. However, qualifying hedge funds have no regulatory leverage constraints and tend to have more secured debts than assets that could be liquidated within a day or even within a year.[438]

Some commenters disagreed that traders without customers pose risks to investors, since they do not interact directly with the investing public.[439] A dealer's insolvency can also harm other counterparties and creditors even in the absence of customers. Any entity that effectively and regularly provides significant liquidity to markets, regardless of whether that entity has customers or not, has the potential to harm markets if it fails, as discussed above.

Some commenters questioned the proposal's premise that market participants who are not registered dealers can have important externalities, or stated that any such externalities manifest themselves so infrequently that the proposed rules are unnecessary.[440] Market participants engaged in dealing activities but without being registered as dealers create the potential for serious externalities if they fail, regardless of the historical frequency of such failure. Two examples illustrate such externalities: the failure of Drysdale Government Securities and the Treasury market illiquidity in March 2020. In 1982, Drysdale Government Securities—a firm that was not registered as a dealer but was actively dealing in the U.S. Treasury market for its own account—failed when it became unable to pay interest due on securities it had acquired in reverse repo agreements with 30 brokers.[441] Drysdale had acquired a $4 billion securities portfolio supported by only $20–30 million in capital—far in excess of the leverage that the Net Capital Rule would have allowed for a registered dealer. Even though Chase Bank (Drysdale's agent) supported market confidence by making Drysdale's payments and markets eventually return to normal, Drysdale's failure harmed market functioning for several days. For as long as a week, ''according to dealers, the secondary markets in government securities continue[d] to be very thin, with few deals being done. And . . . the repo market was virtually dead.'' [442]

In addition, the 2021 IAWG Joint Staff Report showed that PTFs in particular (many of whom were not registered as dealers) appeared to pull back from providing liquidity in the Treasury markets relative to dealers during the market volatility in March 2020, possibly because ''their lower capitalization relative to dealers may [have left] them with less capacity to absorb adverse shocks.'' [443] Higher capitalization may have given PTFs more capacity to absorb the shock, which may have increased their ability to provide liquidity as well as increasing the resiliency of the market itself. While PTFs may not have been the primary cause of the volatility,[444] this episode illustrates that PTFs' market withdrawal can contribute to stress in the overall U.S. Treasury market. One commenter disagreed with the IAWG's characterization of March 2020, and said that ''price moves reflected rapidly shifting outlooks for the world economy, and the spreads were narrower than might be expected given the price moves.'' [445] Research has shown that Treasury market liquidity in March 2020 was considerably lower than might be expected given the price volatility.[446] Consistent with this research, we disagree with the commenter that spreads were narrower than might be expected. However, we do not necessarily conclude that PTFs always exacerbate market instability, since PTFs' share of market trading appeared to increase during the uncertainty in March 2023.[447]

Negative externalities can also derive from market misconduct by unregistered dealers. Several elements of the dealer regulatory regime address misconduct risks and regulators can examine regulated dealers. Under that regime, financial statement reporting, transaction reporting,[448] and examinations help regulators detect manipulation or fraud and determine whether firms comply with applicable regulations. If unregistered dealers engage in market misconduct, it could result in negative externalities by distorting market prices and adversely impacting market participants.[449]

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[438] *See* Private Fund Statistics, Tables 4, 49, and 51. As of the fourth quarter of 2022, qualifying hedge funds had $1.2 trillion (32%*$3.8 trillion) in assets that could be liquidated within a day, $2.9 trillion (78%*3.8 trillion) in assets that could be liquidated within a year, and $3.5 trillion in secured debts. In the Proposing Release, we estimated that ''qualifying hedge funds are more leveraged than registered dealers.'' A commenter disagreed with our use of the word ''leverage'' in that statement, citing statistics showing that the average hedge fund has a lower ratio of assets to equity—a more traditional measure of leverage—than registered dealers (*see* MFA Comment Letter I). However, we believe the comparison in the proposal and here is apt because the Net Capital Rule constrains a form of leverage—not book leverage, but a more ''liquid'' notion of leverage equal to liquid assets minus unsubordinated liabilities. To avoid misunderstanding, we refer to ''having more secured debts than assets that could be liquidated within a day or even within a year'' instead of ''leverage.'' *See also supra* note 399 for a definition of ''qualifying hedge fund.''

[439] *See* AIMA Comment Letter II; Blockchain Association Comment Letter; FIA PTG Comment Letter I; MFA Comment Letter I; SIFMA Comment Letter I.

[440] *See* AlphaWorks Comment Letter; FIA PTG Comment Letter I; McIntyre Comment Letter I; Overdahl Comment Letter.

[441] Drysdale Government Securities was very active in the U.S. Treasury market, and the firm had acquired a large portfolio of U.S. Government securities through reverse repurchase agreements. Those agreements required Drysdale to pass along any interest received to the banks from whom it had borrowed the securities. The firm collapsed when it was unable to pass along those interest payments. *See* Ron Scherer, ''How Drysdale Affair Almost Stymied US Securities Market,'' Christian Science Monitor (May 27, 1982), *available at https://www.csmonitor.com/1982/0527/052737.html;* James L. Rowe Jr. and Merrill Brown, ''Through Abrupt Personality Change, Tiny Wall Street Firm Demonstrates the Allure, and Danger, in Speculative Trading,'' Wash. Post (May 23, 1982), *available at https://www.washingtonpost.com/archive/politics/1982/05/23/through-abrupt-personality-change-tiny-wall-street-firm-demonstrates-the-allure-and-danger-in-speculative-trading/532bf4ea-bdf2-4248-924b-d6a682907aba/ https://www.washingtonpost.com/archive/politics/1982/05/23/through-abrupt-personality-change-tiny-wall-street-firm-demonstrates-the-allure-and-danger-in-speculative-trading/532bf4ea-bdf2-4248-924b-d6a682907aba/* (retrieved from Factiva database).

[442] *See* Ron Scherer, ''How Drysdale Affair Almost Stymied US Securities Market,'' Christian Science Monitor (May 27, 1982), *available at https://www.csmonitor.com/1982/0527/052737.html.*

[443] *See* 2021 IAWG Joint Staff Report, *supra* note 21. Initially, PTFs increased trading activity, but they pulled back from market making several days later when volatility reached very high levels. *See id.* at 13 (''In the first week of Mar., a large share of the increased trading volume came from PTFs, and on Mar. 9, PTFs' share of trading on electronic IDB platforms was just over 60%, a typical level. But as heavy net investor sales continued, the balance of activity in the interdealer market shifted . . . PTFs' total share of activity fell to a low of 45% on Mar. 16. Dealers' total volumes on electronic IDB platforms also declined, but less sharply than PTFs' volumes.''). *See also infra* note 460 and surrounding text.

[444] *See* Overdahl Comment Letter.

[445] *See* Alphaworks Comment Letter.

[446] *See* Darrell Duffie, *et al.,* Oct. 2023, ''Dealer Capacity and U.S. Treasury Market Function,'' *Federal Reserve Bank of New York Staff Reports,* no. 1070, *available at https://doi.org/10.59576/sr.1070.*

[447] *See* Nellie Liang, ''Remarks by Under Secretary for Domestic Finance Nellie Liang at the 2023 Treasury Market Conference'' (Nov. 16, 2023), *available at https://home.treasury.gov/news/press-releases/jy1917.*

[448] *See* section III.B.2.a for a discussion on transactions reporting by registered dealers versus other entities.

[449] In 2020 and 2021, FINRA identified non-member firms in 17% of the alerts generated by its surveillance of manipulative trading patterns in U.S. Treasury market, despite limitations on its surveillance of non-members—FINRA can only identify trades as involving non-FINRA members when the trades take place on certain ATSs (*see supra* note 380). *See* Sept. 27, 2022, letter from FINRA responding to SEC Release No. 95388 (15b9–1), pp. 9–10, *available at https://www.sec.gov/*

Some commenters said that requiring more Treasury security transactions to be centrally cleared would address the same externalities that are described above.[450] The SEC recently adopted the Treasury Clearing Adopting Release, which, among other things, amends 17 CFR 240.17Ad–22(e)(18) to require covered clearing agencies that provide central counterparty (''CCP'') services for U.S. Treasury securities to establish, implement, maintain and enforce written policies and procedures reasonably designed, as applicable, to establish objective, risk-based and publicly disclosed criteria for participation, which require that any direct participant of such a covered clearing agency submit for clearance and settlement all the eligible secondary market transactions in U.S. Treasury securities to which such direct participant is a counterparty.[451] The Treasury Clearing Adopting Release lowers overall systemic risk in the U.S. Treasury market by bringing the benefits of central clearing to more transactions involving U.S. Treasury securities.[452] The amendments that the Commission adopted in the Treasury Clearing Adopting Release will likely yield benefits associated with increased levels of central clearing in the secondary market for U.S. Treasury securities.[453] These benefits could be particularly significant in times of market stress, as CCPs will mitigate the potential for a single market participant's failure to destabilize other market participants, destabilize the financial system more broadly, and/or reduce the effects of misinformation and rumors.[454] A CCP also will address concerns about counterparty risk by substituting the creditworthiness and liquidity of the CCP for the creditworthiness and liquidity of counterparties.[455]

Accordingly, the Commission acknowledges that the Treasury Clearing Adopting Release addresses some of the externalities discussed above stemming from the failure of large firms, which the final rules are also intended to address. However, given that the Treasury Clearing Adopting Release and the final rules address these externalities through different mechanisms, the final rules would serve to further reduce the externalities in the market for U.S. Government securities. This, in turn, further reduces the probability that a significant liquidity provider fails and thus promotes the stability and resiliency of the government securities market. By limiting the risk of failure, the final rules limit the probability that such failure could harm creditors or lead to price volatility as a troubled firm rapidly deleverages. The final rules may also limit the probability of failure for all PTFs and hedge funds who are engaged in dealing activity. The Treasury Clearing Adopting Release, in contrast, would not require central clearing for hedge funds' cash trades or for any transaction between a PTF who is not a member of a clearing agency and another non-member counterparty. In addition, benefits of the final rules such as the consistent application of dealer regulations across significant liquidity providers, operational and financial requirements designed to mitigate risks, deterrence of abusive and deceptive trading practices, extension of SROs' examination authority to significant liquidity providers for U.S. financial markets, and increased transparency into the identities of significant liquidity providers in the Treasury market, are largely unaffected by the adoption of the Treasury Clearing Adopting Release.

C. Economic Effects, Including Impact on Efficiency, Competition, and Capital Formation

As described in section II, the Commission believes that the final rules will promote the stability and transparency of U.S. Treasury and other securities markets by closing the regulatory gap that currently exists and ensuring consistent regulatory oversight of persons engaging in regular liquidity provision in securities markets. Specifically, the final rules will increase the share of liquidity provision that is undertaken by persons who are subject to the dealer regime's limits on financial risk-taking, reporting requirements, regulation against abusive practices, and examinations. The greatest benefits come from applying these dealer regulations to entities that are currently not registered at all—*i.e.,* unregistered PTFs. While the Commission already has some insight into private funds and investment advisers, to the extent that certain private funds or registered investment advisers perform the functions of dealers, it would be beneficial to extend dealer risk limitations and transaction reporting responsibilities to them. These benefits, as well as the costs described in this section, may differ for registered government securities dealers, since they have different capital requirements and are not required to join SIPC as discussed in section III.B.1.

Costs of the final rules include registration and membership fees, costs of recordkeeping and reporting, and costs associated with net capital requirements. Additionally, the final rules may influence patterns of market participation, which may in turn affect competition among significant liquidity providers, market liquidity and efficiency, and capital formation.

1. Benefits

The final rules would subject all market participants that perform similar dealer functions to a common regulatory regime. This regime includes provisions that limit risk (*e.g.,* the Net Capital Rule and rules promoting operational integrity), provisions that require certain books and records, provisions that require various reporting and disclosure (including audited financial statements and the identities of owners, directors, and managers), and antifraud and anti-manipulation provisions. Subjecting currently unregistered (as dealers) market participants to dealer requirements will thus enable oversight by regulators,[456] limit externalities by helping prevent spillovers that may broadly harm investors, and ensure that the competitive landscape among significant liquidity providers is not shaped by a difference in regulatory treatment.[457]

As previously discussed, PTFs and hedge funds would be the primary affected parties, and registering PTFs that are dealing would provide the

comments/s7-05-15/s70515-20144330-309240.pdf. FINRA staff later clarified that some of that 17% may be due to SEC-registered broker-dealers who are not FINRA members (*see* memorandum of telephone conversation between Commission staff and FINRA *available at https://www.sec.gov/comments/s7-05-15/s70515-226580-474322.pdf*).

[450] *See* AIMA Comment Letter III; Lewis Study; MFA Comment Letter II; Overdahl Comment Letter.

[451] *See* Treasury Clearing Adopting Release, 89 FR 2717–22.

[452] *See id.* at 2716.

[453] *See id.* at 2798.

[454] *See id.*

[455] *See id.* at 2798–99.

[456] One commenter stated that ''[t]he Regulation ATS proposal may well result in coverage of some of the same market participants as would be covered by the [proposed rules] and may therefore address some of the needs that the Commission claims warrant the [proposed rules].'' *See* Consensys Comment Letter (discussing Amendments Regarding the Definition of ''Exchange'' and Alternative Trading Systems (ATSs) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities, Exchange Act Release No. 94062 (87 FR 15496, Mar. 18, 2022) (''Regulation ATS Proposal'')). The Regulation ATS Proposal has not been adopted and is therefore not part of the baseline for this economic analysis. *See supra* note 355. In any event, the final rules and the Regulation ATS Proposal differ in scope and impact, as the rules would apply to market participants engaging in different types of market activities if Regulation ATS is adopted as proposed.

[457] In a comment letter, FINRA agreed that ''requiring such entities to register with the SEC . . . would close regulatory gaps,'' and stated that ''current regulatory disparities are especially pronounced in the market for U.S. Treasury securities.'' *See* FINRA Comment Letter.

largest benefits. Some investment advisers may also be affected if they engage in dealing activities on their own account, and these entities' dealer registration would also provide benefits.

In response to a related initiative in 2010,[458] at least one principal trading firm told the Commission that the costs of registering PTFs as dealers were not justified because equity markets worked well during the autumn of 2008 (then the most-recent crisis) and because the commenter believed that principal trading firms in general help market integrity by providing liquidity during difficult situations.[459] However, the 2021 IAWG Joint Staff Report showed that, during the U.S. Treasury market volatility of March 2020, PTFs' share of market intermediation fell considerably more than did dealers' share.[460] The Joint Staff Report's conclusion suggests that PTFs do not always promote stability in securities markets.

a. Regulatory Consistency and Competition

Currently, large market participants that are not registered as dealers (or government securities dealers) perform critical market functions, in particular liquidity provision, akin to those performed by dealers (or government securities dealers). For example, in the U.S. Treasury market, PTFs account for about half of the daily volume in the interdealer market and yet are not registered as dealers. The final rules will help ensure that all market participants that take on significant liquidity-providing roles are appropriately registered as dealers and government securities dealers. The final rules will thereby promote competition among entities that regularly provide significant liquidity by applying consistent regulation to these entities, thus leveling the competitive playing field between liquidity provision conducted by entities that are currently registered as dealers and government securities dealers and by entities that are not.

The regulatory consistency under the final rules is expected to benefit currently registered dealers by ensuring that all of their competitors, including currently unregistered market participants that perform the same function as dealers, are subject to common regulatory requirements.[461] As stated above in section III.B.3, even small differences across significant liquidity providers in regulatory costs could be enough to give important advantages to the firms bearing the smallest regulatory burdens.

Some commenters stated that the final rules would negatively impact competition by especially harming small PTFs and creating barriers to entry against small liquidity providers.[462] We agree that the final rules could impose proportionally greater costs on small-volume liquidity providers for two reasons. First, FINRA's Gross Income Assessment [463] generally declines as a percentage of revenue for larger firms, so that firms with smaller revenues pay proportionally larger fees. Second, fees associated with reporting to TRACE [464] are proportionally lower for trades with larger dollar par value. To the extent that larger firms also tend to place larger trades, on average, TRACE reporting might be proportionally more costly for small firms. However, the final rules will exclude market participants who have or control assets less than $50 million.[465] Also, currently registered dealers include smaller market participants, and under the final rules smaller unregistered market participants would be subject to the same rules as smaller registered market participants, thereby creating a level competitive landscape amongst smaller market participants.

b. Regulations on Financial and Operational Risk-Taking

The final rules will mitigate externalities to liquidity and stability, discussed in section III.B.3, by applying the Net Capital Rule and SRO requirements to additional significant liquidity providers. These final rules will reduce the risk that a significant liquidity provider fails and harms its counterparties and the broader functioning of the markets, by promoting the financial stability of individual significant liquidity providers. SRO supervision may also reduce the risks that errors in algorithms lead to trading activities that violate Commission or SRO rules.[466]

The Net Capital Rule will make risk-taking more costly for affected parties because the final rules will require them to maintain a greater supply of liquid assets when they are exposed to more risk. In the event that a significant liquidity provider fails, the Net Capital Rule will ensure that it has sufficient liquid assets to meet all its liabilities to unsubordinated creditors. In addition, qualifying hedge funds,[467] on average, have fewer liquid assets than the Net Capital Rule would allow.[468] Markets in which significant liquidity providers are required to hold some amount of liquid assets and face constraints on leverage may be less sensitive to sudden market disruptions that could otherwise reduce their capacity to provide liquidity. Such liquidity providers are better able to withstand adverse events without compromising their ability to remain engaged in the market.[469]

The benefit of the Net Capital Rule's constraints on risk-taking may be smaller for certain affected parties. Some persons may meet the final rules' definition of dealing but also keep their gross exposure small at any moment. Such persons would operate with very little leverage and would have few short-term obligations at any moment. The benefit of the Net Capital Rule may also be smaller when applied to persons whose creditors and counterparties have rigorous risk management practices and are capable of calculating and managing their exposure to that person. Such creditors and counterparties may not be seriously harmed by a dealer's failure. As noted above, registered government securities dealers are subject to minimum liquid capital requirements as set forth in 17 CFR 402.2. These requirements would generally serve the same risk-limiting purpose as the Net Capital Rule. Also, the Net Capital Rule would not necessarily make affected persons more willing to provide liquidity in times of market stress; solvent firms could still decide not to provide liquidity if it were not profitable to do so.

The final rules require affected persons to become FINRA members and comply with FINRA rules designed to

[458] *See* 2010 Equity Market Structure Concept Release.

[459] *See* Comment Letter of Berkowitz, Trager & Trager, LLC (Apr. 21, 2010) (''Berkowitz Comment Letter''). *See also supra* note 20.

[460] See *supra* notes 21 and 443 and accompanying text for further discussion of changes in trading activity of principal trading firms during the U.S. Treasury market volatility of Mar. 2020. The market share of PTFs declined from approximately 62% at the beginning of Mar. 2020 to a low of 45% on Mar. 16, 2020.

[461] *See* section III.B.3.

[462] *See* Alphaworks Comment Letter; MMI Comment Letter; FIA PTG Comment Letter I.

[463] *See infra* Table 6.

[464] *See infra* note 543.

[465] This discussion of the potential negative economic impact on smaller liquidity providers for purposes of the economic analysis does not impact the regulatory flexibility analysis discussed later in section V because the final rules include a $50 million exclusion. As a result, any of the ''small liquidity providers'' discussed in the economic analysis would not meet the Commission's definition of a ''small business'' or ''small organization'' in 17 CFR 240.0–10 (''Rule 0–10''), which defines an ''issuer'' or ''person'' other than an investment company as having total assets less than $5 million on the last day of its fiscal year for purposes of the Regulatory Flexibility Act.

[466] *See supra* note 369 and accompanying text.

[467] *See supra* note 399.

[468] *See supra* note 438 and accompanying text.

[469] *See supra* notes 21 and 443 (referring to the Treasury market events of 2020).

facilitate the orderly and robust execution of algorithmic and HFT operations.[470] Applying these rules would address the risk that a significant liquidity provider's failure could cause market disruptions, and these rules are also designed to limit the duration of any such market disruptions that may occur. We understand that algorithmic HFT is a primary feature of the PTFs and private funds who are most likely to meet the final rules' qualitative factors, since such trading can involve regularly expressing trading interests on both sides of the market (the expressing trading interest factor) or earning revenue from bid-ask spreads or incentives offered for liquidity-providing trades (the primary revenue factor). The application of these rules to affected parties engaged in such algorithmic trading activity will accordingly promote the stability and resilience of U.S. securities markets.

A few commenters agreed that the proposed rules would provide benefits of market stability, integrity, and resiliency.[471] Other commenters asked how the final rules would prevent or mitigate harm from future market disruptions and one said that having more market participants registered as dealers would not have improved the market structure in March 2020.[472] We acknowledge that dealer registration does not obligate an entity to provide liquidity in the secondary market, and that even registered dealers may pull back from the market at times for business reasons. We also acknowledge that even registered dealers can fail. However, we emphasize that the dealer regime, including the Net Capital Rule, seeks to limit financial risk that may make entities more likely to fail or to need to pull back from the market. We believe that compliance with the dealer regime would make significant liquidity providers less likely to contribute to market instability.[473]

Many commenters stated that market participants who are not registered as dealers are already subject to regulatory risk limits, because the market participants typically trade through registered entities (*e.g.,* banks and broker-dealers), and therefore it is not necessary for such participants to comply with the Net Capital Rule.[474] Other commenters questioned the benefits of regulating private fund advisers as dealers, since existing rules and regulations already limit advisers' risk and protect their investors through rules on custody of assets, fiduciary duty, and reporting, and record-keeping.[475] Another commenter added that professional equity trading firms are also subject to the Market Access Rule, which is designed to promote market integrity, and to the Commission's large trader program, which may impose reporting obligations on unregistered as well as registered entities.[476] The Commission acknowledges that market participants currently have direct and indirect constraints on their trading activity and risk-taking.[477] However, as discussed in section III.B.3.a, the Net Capital Rule is another important constraint on risk-taking and helps promote the stability of markets. Unlike the various margin requirements, the Net Capital Rule directly ensures that dealers are sufficiently liquid so that they can quickly satisfy creditors and counterparties. With respect to direct market access, the Market Access Rule does not directly impose obligations on all trading firms. Rather, the Market Access Rule requires a broker or dealer with market access to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage financial, regulatory, and other risks of this business activity.

Some commenters questioned the benefits of applying the Net Capital Rule to entities without customers—*e.g.,* PTFs, investment advisers, or private funds.[478] However another commenter stated that even entities without customers may still engage in a significant amount of trading activity, and so their financial and operational condition can present risks to the markets.[479] Two commenters said that the Net Capital Rule was designed to protect creditors and counterparties, in addition to customers.[480] Such creditors and counterparties may include repo counterparties and clearing firms. If a significant liquidity provider were to fail, these other parties could become unable to complete trades or lose control of assets, either permanently or temporarily during bankruptcy proceedings. Even if the losses were eventually recovered, the significant liquidity provider could be temporarily unable to deliver securities or cash, forcing the counterparties to quickly enter new trades, put on new hedges, replace frozen collateral, or find new sources of liquidity. If market prices were volatile during this period, even a temporary freeze could cause serious stress to these counterparties and creditors. If a liquidity provider with large enough positions were to fail, the cumulative harm to counterparties and creditors, even if temporary, could cause substantial market disorder. Even if it does not fail, a highly leveraged significant liquidity provider may exacerbate market instability during times of market stress or volatility. For example, the entity may receive margin calls at a time of volatility, requiring it to reduce its leverage by closing positions instead of continuing to provide liquidity the market.

The final rules may also increase the benefits associated with increased central clearing. Under the recent Treasury Clearing amendments,[481] registered dealers and government securities dealers that are direct participants of a covered clearing agency will be required to centrally clear all of their eligible secondary market transactions; such transactions of dealers and government securities dealers that are not direct participants of a covered clearing agency will still be subject to central clearing requirements if those transactions are with members of a covered clearing agency. Accordingly, the final rules may increase the number of transactions subject to central clearing requirements to the extent they result in registration of new dealers or government securities dealers whose eligible secondary market

[470] *See supra* note 369.

[471] *See* Better Markets Comment Letter; FINRA Comment Letter; Gretz Comment Letter.

[472] *See* Alphaworks Comment Letter; Consensys Comment Letter; FIA PTG Comment Letter I; McIntyre Comment Letter II; Morgan Lewis Comment Letter.

[473] *See supra* section I.A for a discussion on how dealer registration enhances market stability by giving regulators increased insight into firm-level and aggregate trading activity and so helps regulators to evaluate, assess, and address market risks and to contribute to fair and orderly markets.

[474] *See* Alphaworks Comment Letter; ADAM Comment Letter; MFA Comment Letter I; Lewis Study; Element Comment Letter; ICI Comment Letter; Letter from the Hedge Fund Association (May 27, 2022) (''HFA Comment Letter''); IAA Comment Letter I; IDTA Comment Letter; Morgan Lewis Comment Letter; NAPFM Comment Letter; SIFMA Comment Letter; T. Rowe Price Comment Letter; Virtu Comment Letter. *See supra* notes 384–386 and accompanying text for a discussion of existing risk limits.

[475] *See* AIMA Comment Letter II; ABA Comment Letter; Citadel Comment Letter; Committee on Capital Markets Regulation Comment Letter; Element Comment Letter; MFA Comment Letter I; MFA Comment Letter II; Fried Frank Comment Letter; HFA Comment Letter; IAA Comment Letter I; ICI Comment Letter; Lewis Study; McIntyre Comment Letter II; T. Rowe Price Comment Letter; Two Sigma Comment Letter I.

[476] *See* Lewis Study; McIntyre Comment Letter II.

[477] *See* sections III.B.2.a and III.B.2.b.

[478] *See* AIMA Comment Letter; Blockchain Association Comment Letter; Consensys Comment Letter; FIA PTG Comment Letter I; IAA Comment Letter I; MFA Comment Letter I; T. Rowe Price Comment Letter.

[479] *See* FINRA Comment Letter.

[480] *See* FIA PTG Comment Letter I; AIMA Comment Letter II.

[481] *See supra* notes 348 and 375 and accompanying text.

transactions with a direct participant of a covered clearing agency will need to be centrally cleared.[482] This increase in central clearing will confer benefits as discussed in the Treasury Clearing Adopting Release.[483]

Entities that register as dealers, other than registered government securities dealers, will be required to become members of SIPC. Some commenters questioned whether dealers registered under the final rules that do not have customers would benefit from SIPC membership.[484] We acknowledge that not every registered dealer has customers. However, in the Securities Investor Protection Act of 1970 (''SIPA''), Congress mandated that a broad range of dealers, including those without customers, are required to become members of SIPC.[485] In fact, there are many firms that are current broker-dealers and have no customers that are members of SIPC.[486] The requirement for dealers to become SIPC members is intended to place the financial support of the SIPC program on all firms that made their livelihood in the securities business, regardless of whether they had public customers or not.[487] Accordingly, we believe that expanding SIPC membership will enhance the ability of SIPC to carry out its investor protection mission, consistent with SIPA, which will have positive effects on the securities markets overall. In addition, we note that entities that choose to comply with the final rules by registering as government securities dealers under section 78*o*–5(a) of the Exchange Act are not required to become SIPC members.

c. Regulations on Reporting

The final rules would enhance regulators' oversight of significant liquidity providers and of individual securities trades. Entities that register as dealers under the final rules will have new reporting obligations to CAT (if they transact in CAT-reportable securities) and to TRACE (if they transact in TRACE-eligible securities). The additional reporting would give regulators greater insight into securities trading patterns, including the ability to more efficiently match trades to market participants.[488] PTFs who register as dealers or as government securities dealers would also begin submitting annual reports, including financial statements, for the first time. This additional information, especially the financial reporting and the transaction reporting, would help address the Commission's concerns described in sections III.B.3. and III.B.4. The information would enable regulators to better analyze markets—including reconstructing markets and detecting abusive trading behaviors—respond to market events and inform investors.[489] Improved regulatory oversight would, in turn, promote the efficiency and stability of the markets as well as investor confidence, which would support capital formation by increasing demand for securities issued in U.S. markets and lowering yields.

Comment letters argued that dealer registration would not provide an information benefit because transactions are already reported to TRACE or CAT,[490] because investment advisers are already subject to Commission oversight, and because PTFs and investment advisers are potentially subject to reporting on Forms 13F or 13H.[491] Section III.B.2 describes the differences in the information available to regulators for registered dealers compared to PTFs and private funds. Specifically, registered dealers who become FINRA members will be required to report fixed income transactions to TRACE, which will expand the ability to identify the new registered dealers and potentially result in more trades being reported. We believe this information would be useful for surveillance and for market reconstruction.[492] Forms 13F and 13H also contain valuable information, but they do not contain the detailed transaction data that registered dealers are responsible for submitting.[493]

d. Regulations on Deceptive Practices

The final rules would help the Commission and the SROs to detect and deter abusive behaviors such as fraud or manipulation by subjecting significant liquidity providers to section 15(c) of the Exchange Act[494] and to SRO rules and oversight.[495] As described in section III.B.2, registering affected parties as dealers would subject them to Commission examinations and would expand the Commission's ability to issue specific rules and regulations designed to deter misbehavior under Exchange Act section 15(c). The persons whom the final rules would require to register would be those with the ability to significantly impact markets, whether in pursuit of legitimate trading strategies or possibly through market manipulation. Therefore, subjecting them—particularly the highly active but unregistered PTFs shown in Table 1—to the additional anti-fraud regulations that apply to registered dealers, as well as to additional regulatory oversight, would contribute to fair and orderly markets.

e. Regulations Related to Examinations

Registered dealers and government securities dealers are subject to examinations by the Commission and by the relevant SRO, and they are also required to comply with certain books and records requirements.[496] PTFs that are not registered as dealers are not subject to examinations or to books and records rules, but registered private fund advisers are currently subject to recordkeeping requirements and Commission examinations. Examinations help regulators detect manipulative or fraudulent activities, as well as verify more generally that persons comply with all relevant

[482] Such transactions would not have been cleared under the baseline unless the transaction was with direct participant that brought together multiple buyers and sellers using a trading facility (such as a limit order book) and is a counterparty to both the buyer and seller in two separate transactions. *See* Treasury Clearing Adopting Release.

[483] *See* Treasury Clearing Adopting Release; *see also supra* section III.B.4.

[484] *See* Citadel Comment Letter; Overdahl Comment Letter.

[485] *See* 15 U.S.C. 78ccc(a)(2).

[486] *See* SIPC, *List of Members, available at https://www.sipc.org/list-of-members/* (listing SIPC members, including multiple firms that do not have customers).

[487] *See* SIPC, Member FAQs, *available at https://www.sipc.org/for-members/member-faqs#my-firm-has-no-public-customers-why-do-i-have-to-be-a-member* (''When Congress passed the Securities Investor Protection Act, it made all SIPC members subject to its provisions, including the obligation to pay assessments into the SIPC Fund. The objective was to instill confidence in the investing public and to place the financial support of the SIPC program on all firms that made their livelihood in the securities business, regardless of whether they had public customers or not.'').

[488] *See* section III.B.2.a for a discussion of limitations that exist when market participants do not have reporting obligations—reduced efficiency in identifying market participants in CAT, and limited ability to identify market participants in TRACE.

[489] For example, regulators' lack of insight into the market for U.S. Treasury securities became especially apparent during the instability of Mar. 2020. The 2021 IAWG Joint Staff Report on Nov. 8, 2021, noted that ''In Mar. 2020 . . . there was a [particular] need for timely information on the positions and transactions of institutions other than dealers.'' *See supra* note 21. Wider TRACE reporting would have provided more of such information.

[490] *See* Fried Frank Comment Letter; McIntyre Comment Letter II; MMI Comment Letter; Morgan Lewis Comment Letter; SIFMA Comment Letter I; Virtu Comment Letter.

[491] *See* Fried Frank Comment Letter; IAA Comment Letter I; McIntyre Comment Letter II; SIFMA AMG Comment Letter.

[492] *See* FINRA Comment Letter; Gretz Comment Letter.

[493] *See supra* notes 394 and 395 and surrounding text.

[494] *See supra* note 396.

[495] *See supra* notes 367–369.

[496] *Id.*

regulations. Books and records requirements facilitate examinations by ensuring that data entries are defined, recorded, and preserved in a consistent manner across all dealers. The final rules would allow regulators to examine firms that currently are not registered, including PTFs, who are not currently subject to examinations but whose activity contributes significantly to market liquidity or to price discovery. Since examinations help ensure compliance with other rules, and since the Commission already has authority to examine registered investment advisers, subjecting PTFs to examination would support the other benefits that would come from registering PTFs as dealers.

Examinations also help regulators analyze market disruptions and inform subsequent regulatory changes. Since the final rules will give regulators the ability to conduct targeted examinations of entities that provide substantial market liquidity and price formation, regulators will be able to better determine the causes of market disruptions and implement regulatory reforms designed to mitigate and prevent future similar disruptions.[497] For instance, following the market disruptions caused by Knight Capital in 2012,[498] FINRA conducted targeted examinations on member firms' HFT operations and then updated its guidance on supervision and control practices for algorithmic trading strategies.[499] While FINRA oversight did not prevent Knight Capital's disruptions—Knight was a registered broker-dealer—FINRA oversight did give the regulator authority to examine other firms engaged in activities similar to Knight and to inform its guidance.[500]

2. Costs

a. Compliance Costs

The final rules will impose compliance costs on certain market participants, including costs of registering with the Commission and with an SRO, recordkeeping and reporting costs, direct costs that may stem from meeting net capital requirements (*i.e.,* continuously monitoring capitalization), and self-evaluation as to whether one is a dealer or not.[501] These potential compliance costs can be broadly organized into five categories:

1. Costs related to registration as a dealer or government securities dealer.
2. Costs related to FINRA membership or membership with another SRO.
3. Costs related to TRACE reporting for firms that trade fixed income securities.
4. Costs related to CAT reporting for firms that trade NMS securities or OTC equities.
5. Costs related to SIPC membership for firms that register as dealers under section 15(b) of the Exchange Act.

The costs of registration as a dealer or government securities dealer will apply to all firms. Likewise, the cost of FINRA membership or membership with another SRO will apply to all firms. However, the costs of TRACE reporting will only apply to firms that trade fixed income securities. The costs of CAT reporting will only apply to firms that trade NMS securities, OTC equity securities, or options. The costs of SIPC membership will apply only to firms that register as dealers under section 15(b) of the Exchange Act and not firms that register as government securities dealers under section 15C of the Exchange Act.

The Commission has itemized and updated its cost estimates for affected parties in response to commenters.[502] The following subsections present itemized compliance cost estimates for affected parties that register as dealers under section 15(b) of the Exchange Act after the rules' adoption or register as government securities dealers under section 15C of the Exchange Act. The compliance cost estimates reported in the following subsections are reported on a per firm basis. Some compliance costs in the following subsections are approximately proportional to trading activity or revenue. For these compliance costs, we report both how these costs scale with trading activity or firm revenue, and quantitative estimates of these costs for the large firm sample from the Amended Rule 15b9–1 Adopting Release.

The cost estimates in the following subsections are subject to several assumptions, uncertainties, and other factors. In particular, the cost estimates are for firms the Commission expects to register as dealers or government securities dealers because the firms meet either the expressing trading interest factor or the primary revenue factor in the final rule. Since estimates of the number of affected parties are subject to some uncertainty, the following cost estimates are subject to similar uncertainty and limitations.[503] Other sources of uncertainty are discussed within individual subsections. Additionally, some firms may already own a registered dealer or government securities dealer. If an affected party already owns a registered dealer, then the party may choose to migrate operations satisfying the expressing trading interest factor or primary revenue factor into the registered dealer instead of registering additional entities as dealers. If an affected party chooses to migrate operations into an existing registered dealer after the rules' adoption, then its compliance costs will likely be less than the cost estimates reported in the following subsections. PTFs, since they do not have clients or customers, would bear the costs of registration and compliance themselves. Private funds, however, may either bear the costs themselves (*i.e.,* the funds' investors would bear the cost) or the costs may be borne by their investment adviser.

i. Dealer Registration

This section discusses the Commission's estimates of the costs associated with dealer registration under section 15(b) of the Exchange Act and government securities dealer registration under section 15C of the Exchange Act with the Commission for the final rules' affected parties. The Commission expects the costs of registration to be similar for dealer registration under section 15(b) and government securities dealer registration under section 15C because

[497] The Commission currently can examine registered investment advisers and private funds, but it has no authority to examine PTFs who are not registered as dealers.

[498] On Aug. 1, 2012, an error in Knight Capital's trading software caused the firm to purchase $7 billion in equities in the first hour of trading, and the firm later tried to reverse some of the unintentional purchases. The buying and selling caused price volatility in approximately 150 different equities, and nearly bankrupting the firm. *See* Henrico Dolfing, ''Case Study 4: The $440 Million Software Error at Knight Capital,'' *available at https://www.henricodolfing.com/2019/06/project-failure-case-study-knight-capital.html.* For FINRA's response, *see Targeted Examination Letter on High Frequency Trading,* FINRA, *available at https://www.finra.org/rules-guidance/guidance/targeted-exam-letter/high-frequency-trading.*

[499] *See* FINRA Regulatory Notice 15–09, *available at https://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-09.pdf.*

[500] *Id.* The notice states, in part, ''FINRA staff has conducted a number of examinations and investigations over the past several years that were prompted by the detection of systems-related issues at firms engaged in algorithmic strategies . . . As a result of these reviews and working with member firms engaged in algorithmic strategies, FINRA has developed the following list of suggested effective practices for such firms.''

[501] Registered dealers would be subject to requirements, such as Exchange Act Rules 15c3–1, 17 CFR 240.17a–1 (''Rule 17a–1''), 17a–3, 17a–4, and 17 CFR 240.17a–5 (''Rule 17a–5'').

[502] The TRACE analysis identifies up to 22 PTFs, 4 hedge fund, 4 entities classified as ''dealers'' (though they are not FINRA members and do not appear to be registered with the Commission), and 1 entity classified as ''other.'' The Form PF analysis identifies 12 hedge funds as the most likely to be affected. *See supra* note 418.

[503] *See, e.g.,* section III.B.2.c for a discussion of the affected entity estimates and uncertainty regarding the affected entity estimates.

of the registrations' similarity, *e.g.,* both registrations require completing and amending Form BD, maintaining dealer-related policies and procedures, record-keeping, and filing annual reports.

The Commission estimates the initial cost of the final rules for affected parties that register as dealers is approximately $700,000.[504] The Commission estimates the cost of the final rules for parties that self-evaluate but do not register as dealers is approximately $60,000.[505] The initial costs to register as a dealer with the Commission would include costs associated with filing Form BD, filing Form ID, any related legal or consulting costs that may be needed to ensure compliance with rules, including drafting policies and procedures as may be required, and an initial self-evaluation of the final rules' applicability to the affected party.[506] If a firm has a large number of employees, has several lines of business, or relatively complicated trading operations, then the firm may incur greater expenses relative to other firms when registering as a dealer.[507]

The Commission estimates the ongoing cost of registering with the Commission as a dealer is approximately $600,000.[508] The Commission's estimate of the annual cost for an affected party to maintain its status as a registered dealer includes several items: filing form BD amendments, risk management system maintenance, information collection, information storage, financial reporting, audits by an independent PCAOB-registered accounting firm, and claiming an exemption from treatment as a dealer pursuant to 17 CFR 240.15c3–3 (''Rule 15c3–3'').[509]

A dealer registered under section 15(b) of the Exchange Act is subject to the compliance requirements of the customer protection rule, Rule 15c3–3, unless the dealer's operations satisfy certain criteria that exempt the dealer from the rule.[510] The Commission believes that the affected parties would generally claim they are exempt from Rule 15c3–3 because they do not carry brokerage accounts for customers.[511] If an affected party does not claim an exemption, then the affected party may incur additional costs to comply with Rule 15c3–3. Several commenters suggested that dealers registered under the final rules would lose protections under Rule 15c3–3.[512] However, we do not believe the final rules will significantly impact registered dealers with respect to the customer protection rule. In particular, Rule 15c3–3 requires a carrying broker-dealer to take steps to protect both customer accounts and also proprietary accounts of other brokers or dealers (''PAB Accounts''). Therefore, a registered dealer that holds accounts at another broker-dealer would benefit from the protections for PAB Accounts under Rule 15c3–3.[513]

The initial and ongoing compliance costs include financial reporting, recording keeping, and net capital requirement compliance operations. The costs associated with the reporting, record keeping, and net capital requirements of dealer registration will depend on the scope of the firm's dealer activities, capital structure, existing compliance-related activity, and jurisdiction. If a firm trades securities belonging to several different asset classes, then the firm may incur greater dealer related compliance costs because different types of securities are subject to different reporting, record keeping, and net capital requirements.[514] If a firm is already a registered investment adviser or affiliated with an investment adviser, then the firm may incur fewer dealer related compliance costs because the firm has prior experience implementing and maintaining compliance-related operations.[515] Firms already conducting reporting and recordkeeping related activities for compliance purposes may incur somewhat lower costs because these firms have already established recordkeeping practices, internal controls, and related business processes. For example, if some of a private fund adviser's existing compliance-related records, internal controls, and other processes overlap with dealer compliance requirements, then the private fund might use its adviser's existing compliance infrastructure to satisfy dealer related compliance requirements. However, these potential cost reductions are limited only to situations where a private fund's existing compliance operations can be re-used to comply with dealer requirements.

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[504] Exchange Act Release No. 76324 (Oct. 30, 2015), 80 FR 71388, 71509 n.1487 (Nov. 16, 2015) (''Regulation Crowdfunding Adopting Release''), estimates the upper bound on the costs of registering as a broker-dealer and complying with associated regulations would be $500,000. Most of these costs involve personnel hours and legal services. Since the cost of legal services and nominal wages paid to administrative and financial operations employees have approximately risen with the consumer price index since 2015, we adjust these estimates for inflation of 27.31% between Oct. 2015 and May 2023, based on the CPI–U as recorded by the Bureau of Labor Statistics (*see* U.S. Bureau of Labor Statistics, *Consumer Price Index, available at https://www.bls.gov/cpi/data.htm*). $500,000 × 1.2731 = $636,550. We add an additional $60,000 self-evaluation cost suggested by commenters discussed in *infra* note 517. $636,550 + $60,000 = $696,550. We round this figure to $700,000 to reflect uncertainty in our estimate. As in previous releases, this is an estimated upper bound on the range of registration costs incurred by broker-dealers; it is possible that certain affected parties—for example, smaller firms with relatively simple trading operations—could incur lower registration costs.

[505] *See infra* note 517 for the calculation of the $60,000 self-evaluation cost.

[506] *See* section III.B.1 for a detailed description of the filings and regulations associated with dealer registration and maintaining dealer registration.

[507] *See* Regulation Crowdfunding Adopting Release.

[508] The Regulation Crowdfunding Adopting Release estimated the ongoing cost of broker-dealer registration with the Commission is approximately $230,000. Most of these costs involve personnel hours and legal services, so we adjust this cost estimate for inflation by a factor of 1.2731. The inflation adjusted cost estimate is $230,000 × 1.2731 = $292,831. We add a $300,000 estimate for the cost of an annual audit by an independent PCAOB-registered account firm to this figure to construct the final cost estimate. *See* Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, Investment Advisers Act Release No. 6383 (Aug. 2023), 88 FR 63206 (Sept. 14, 2023) (''Registered Investment Adviser Compliance Reviews Adopted Rule''). $292,831 + $300,000 = $592,831. We round $592,831 to the nearest hundred thousand to reflect uncertainty in the cost estimate. We have added an additional auditing expense to the Commission's revised cost estimates in response to comment letters that stated that the original expense estimates for broker-dealer registration were underestimated because they omitted compliance, clerical, and accounting related costs associated with preparing and verifying financial statements required to comply with broker-dealer related regulations. *See, e.g.,* AlphaWorks Comment Letter; AIMA Comment Letter II; Citadel Comment Letter; Fried Frank Comment Letter.

[509] *See* the Proposed Rule for estimates of labor hour requirements for completing tasks associated with ongoing broker-dealer registration-related expenses and filing related fees. The hourly wage rates are based on: (1) *SIFMA's Management & Professional Earnings in Securities Industry 2013,* modified by SEC staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead; and (2) SIFMA's *Office Salaries in the Securities Industry 2013,* modified by SEC staff to account for an 1,800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead. The final estimates are based on the preceding SIFMA data sets, which SEC staff have updated since the Proposing Release to account for current inflation rates.

[510] *See* Rule 15c3–3(k).

[511] *See* section IV.A.8.

[512] *See, e.g.,* AIMA Comment Letter II; AIMA Comment Letter III; BlackRock Comment Letter; Citadel Comment Letter at 5; Committee on Capital Markets Comment Letter; Lewis Study; Element Comment Letter; Fried Frank Comment Letter; Hagerty-Hill Comment Letter; MFA Comment Letter I; NAPFM Comment Letter; Two Sigma Comment Letter.

[513] *See* Rule 15c3–3(e) (requiring carrying broker-dealers to maintain a special reserve bank account for brokers and dealers, which must be separate from any other bank account of the carrying broker-dealer).

[514] Regulation ATS Proposal at 15629.

[515] *Id.*

An additional compliance cost of the rules is the cost of self-evaluation.[516] The self-evaluation cost applies to firms whose trading operations may satisfy the final rules' expressing trading interest factor or primary revenue factor. The Commission estimates the initial costs of self-evaluation for one firm will add up to approximately $60,000.[517] This expense includes costs incurred by a firm to determine whether the firm should register as a dealer following the final rules' adoption from an initial review of the firm's trading operations through the potential preparation of an opinion letter by outside counsel stating the firm does not need to register as a dealer. The self-evaluation process may begin with a review of a firm's trading operations by internal personnel or consultants to assess a firm's likelihood of satisfying the expressing trading interest factor or primary revenue factor. If a firm finds its trading operations are very unlikely to meet either criteria, then the firm may conclude its self-evaluation after this initial review at a cost much less than the $60,000 estimate.[518]

If a firm finds its trading operations might satisfy the criteria for the trading interest factor or primary revenue factor, then the firm will likely hire legal counsel to conduct an independent review of a firm's trading operations. The review will produce one of two outcomes. The first possible outcome is the preparation of an opinion letter stating that the legal counsel believes a firm's trading operations do not satisfy the trading interest or primary revenue factors and therefore the firm does not need to register as a dealer. The second possible outcome is that the external legal counsel finds that the firm should register as a dealer following the final rules' adoption, in which case the firm will not incur the costs associated with the preparation of an opinion letter.

The Commission is unable to provide quantitative estimates of the number of firms that would incur the cost of self-evaluation but determine they are not required to register. The Commission is unable to provide a quantitative estimate because of the same data limitations that constrain the Commission's ability to estimate the number of firms that will ultimately register as dealers.[519] Our analyses observe several entities whose activities may constitute dealing according to the final rules.[520] However, the lack of transparency in TRACE conceals the identities of other non-FINRA entities that may also be dealing or near enough to dealing to require careful self-evaluation.[521] In addition, some firms engaged in HFT activity as reported on Form PF may determine that they do not meet the final rules' qualitative factors. It is also possible, though unlikely, that some hedge fund activity that is not reported as HFT may nevertheless be dealing or near enough to dealing to require self-evaluation. Because of the limitations of TRACE data, we are unable to estimate the number of entities that would need to self-evaluate. As discussed above, section I.B explains modifications made to the rules that tailor the scope of the final rules. These changes largely respond to commenters' concerns regarding the number of affected parties by narrowing the scope of the final rules in a way that reduces that number. These changes would likewise reduce the number of firms that would incur the cost of self-evaluation.

ii. FINRA or Other SRO Membership

Affected parties that register as dealers after the final rules' adoption must become members of FINRA or another appropriate SRO.[522] The Commission expects affected parties who choose to register as government securities dealers to become members of FINRA.[523]

The initial costs for an affected party to become a member of FINRA are composed of FINRA membership application fees and any legal or consulting costs necessary for an affected party to complete the FINRA membership application and comply with FINRA rules.[524] Table 5 summarizes the initial costs associated with FINRA membership for an affected firm. The small firm column in Table 5 reports initial costs for FINRA membership for a firm with one to ten registered employees. The large firm column in Table 5 reports initial costs for FINRA membership for a firm with 101–150 employees.

TABLE 5—INITIAL COST OF FINRA MEMBERSHIP IN DOLLARS PER FIRM*

Cost	Small firm	Large firm
Application	$7,500	$20,000
Consulting	40,000	125,000
Total**	50,000	150,000

*Cost estimates are from the Amended Rule 15b9–1 Adopting Release. A small firm has 1–10 registered employees. A large firm has 101–150 registered employees.

**Totals are rounded to the nearest ten thousand to reflect uncertainty in the cost estimates.

The fees associated with a FINRA membership application can vary.[525] The application fee itself depends on the number of registered persons associated with the affected party. If an affected party employs ten or fewer registered persons, then the application fee is $7,500. For an affected party with 11 to 100 registered persons the application fee is $12,5000. The application fee is $20,000 for an affected party affiliated with 101 to 150 registered persons.[526]

The other initial cost associated with FINRA membership is a consulting expense, which accounts for the legal and other advisory work necessary for an affected party to successfully complete a FINRA membership application. Some affected parties may decide to perform this work internally, while others may use outside counsel. When making this choice, an affected party will likely consider factors, such as the size and resources of the affected party, the complexity of the affected

[516] *See* Blockchain Association Comment Letter II; AIMA Comment Letter II; HFA Comment Letter; Morgan Lewis Comment Letter; NAPFM Comment Letter; SIFMA Comment Letter I; SIFMA Comment Letter II; Schulte Roth Comment Letter.

[517] The Regulation Crowdfunding Adopting Release estimated a lower bound on the cost of registration as a broker-dealer with the SEC is $50,000. *See* Regulation Crowdfunding Adopting Release at 71509 n.1487. We use this lower bound to approximate the cost of the self-evaluation process, including, if necessary, the use of outside consultants and legal counsel to evaluate a firm's trading operations and the possible preparation of an opinion letter stating a firm does not need to register as a dealer to comply with the final rule. Because the cost of consulting and legal services has approximately risen with the consumer price index since 2015, we adjust this estimate for inflation of 27.31% between Oct. 2015 and May 2023, based on the CPI–U as recorded by the Bureau of Labor Statistics. *See Consumer Price Index,* U.S. Bureau of Labor Statistics, *available at https://www.bls.gov/cpi/data.htm.* The inflation adjusted cost of the opinion letter is $63,655.46 = $50,000 × 1.2731. We round this figure to $60,000 to the nearest ten thousand to reflect uncertainty in our estimate of the cost of the opinion letter.

[518] *See supra* note 517 for the calculation of the $60,000 cost.

[519] *See* section III.B.2.c.

[520] *Id.*

[521] *See supra* notes 380 and 422 and surrounding discussion.

[522] The Commission has revised its estimate of affected firms' FINRA-related costs in response to comment letters. *See, e.g.,* Citadel Comment Letter; Fried Frank Comment Letter; Overdahl Comment Letter; MFA Comment Letter II; Morgan Lewis Comment Letter; NAPFM Comment Letter; Virtu Comment Letter.

[523] *See supra* note 23.

[524] Initial and ongoing cost estimates associated with FINRA membership are from section V.C.2 of Amended Rule 15b9–1 Adopting Release.

[525] The application fee ranges from $7,500 for a small new member applicant (*i.e.,* 1–10 employees, Tier 1) to $55,000 for a large new member applicant (*i.e.,* 5,000+ employees, Tier 3). *See* FINRA, *Schedule of Registration and Exam Fees, available at https://www.finra.org/registration-exams-ce/classic-crd/fee-schedule.*

[526] *See* FINRA, *Schedule of Registration and Exam Fees, available at https://www.finra.org/registration-exams-ce/classic-crd/fee-schedule,* for application fees when an applicant has more than 150 registered persons.

party's trading operations, and the affected party's previous use of outside counsel. The Commission's estimate of these consulting costs ranges from $40,000 to $125,000 with a midpoint of $82,500.[527] Additionally, if an affected party is affiliated with a firm that is already a registered member of FINRA and the affiliated firm retains legal personnel with FINRA-related experience, then the affected party may incur fewer expenses during the FINRA membership application process because the affiliated firm's legal staff may provide services at a lower cost than a third party.

Affected parties will incur ongoing annual costs to maintain FINRA membership after completing their initial application. The ongoing annual costs include the Gross Income Assessment (''GIA''), the Trading Activity Fee (''TAF''), the FINRA section 3 fee, FINRA-related compliance activities, and the personnel assessment. Table 6 summarizes these ongoing annual expenses for the final rules' affected parties. The Commission estimates that the ongoing annual cost of FINRA membership for an affected entity will range from approximately $61,000 for a relatively small firm to $1,130,000 for a relatively large firm. We will discuss each of these costs and our estimates below.

TABLE 6—ONGOING COST OF FINRA MEMBERSHIP IN DOLLARS PER FIRM *

Cost	Small firm	Large firm
Trading Activity Fee **	$7,000	$120,000
Gross Income Assessment	30,000	330,000
Section 3 Fee	3,000	560,000
Compliance Activities	20,000	100,000
Personnel Assessment	1,000	20,000
Total ***	61,000	1,130,000

* Cost estimates are from the Amended Rule 15b9–1 Adopting Release. A small firm has 1–10 registered employees. A large firm has 101–150 registered employees.

** FINRA recently implemented an amendment to TAF that exempts PTFs belonging to FINRA from TAF for trades on exchanges of which the firm is a member. This may cause affected parties to incur lower TAF fees than those reported in the table.

*** Totals are rounded to the nearest thousand to reflect uncertainty in the cost estimates.

The Commission estimates the TAF cost for an affected party registering as a dealer following the final rules' adoption will range from approximately $7,000 for a small firm conducting few trades in securities subject to TAF to $120,000 for a large firm conducting many trades subject to TAF.[528]

The TAF is a transaction-based fee that is usually assessed on member firm transactions in covered equity securities, options, security futures, TRACE-eligible bonds, and asset-backed securities.[529] Table 7 summarizes the fees associated with specific classes of securities under TAF.[530] Most security fees assessed via TAF are subject to one or more conditions and one or more possible exemptions. The covered equity security fee, TRACE-eligible bond fee, and asset-backed security fee are subject to maximum fees per trade. The security future fee is subject to a minimum fee per trade. Some transactions are exempt from TAF, which may reduce firms' TAF related expenses.[531] Potentially relevant exemptions from TAF for firms registering under the rules include transactions in U.S. Treasury securities, transactions in options and futures involving narrow and broad indices, transactions made by a firm in their capacity as a market specialist or market maker, and transactions executed outside the United States not requiring reporting to a transaction reporting association. Additionally, a recently implemented TAF Amendment exempts PTFs from TAF for trades occurring on exchanges of which the firm is a member.[532] If the firms joining FINRA because of the final rules execute trades that qualify for exemption from TAF under the recent TAF amendment, then the firms' TAF-related expenses may be less than our TAF cost estimates.

TABLE 7—TRADING ACTIVITY FEE RATES FOR SPECIFIC SECURITIES IN DOLLARS *

Security	Fee	Rate
Covered Equity Security	0.000166	per share sale.**
Option	0.00279	per option sale.
Security Future	0.00011	per round turn transaction.***
TRACE-eligible bond	0.00105	per bond sale.****
Asset-Backed Security	sale price × 0.00000105	per security sale.****

* FINRA recently implemented an amendment to TAF that exempts PTFs belonging to FINRA from TAF for trades on exchanges of which the firm is a member. Additionally, FINRA is currently implementing annual increases in its TAF rates until 2024. This table reports the fees that will be in effect for 2024 and future years.

** Up to $7.27 per trade.

*** Minimum charge is $0.012 per round turn transaction.

**** Up to $0.92 per trade.

The GIA is an annual expense determined by a firm's annual gross revenue, which is defined as a firm's total income as reported on FOCUS form Part II or Part IIA excluding commodities income.[533] We estimate

[527] *See* Amended Rule 15b9–1 Adopting Release section V.C.2 for the consulting cost estimates and methodology.

[528] The small firm TAF estimate corresponds to the $6,746.92 median annual TAF for the 64 non-FINRA member firms in the Amended Rule 15b9–1 Adopting Release. The large firm TAF estimate corresponds to the $119,255.85 median annual TAF for the 12 largest non-FINRA member firms. We round both figures to the nearest thousand to reflect uncertainty in the estimates. We use data from the Amended Rule 15b9–1 Adopting Release to estimate FINRA costs for affected firms because the Commission does not observe the financial or trading data necessary to directly calculate the TAF or GIA costs associated with FINRA membership for firms affected by these rules.

[529] We have revised our TAF cost estimates in response to comment letters. *See* Blockchain Association Comment Letter; Overdahl Comment Letter. *See also* FINRA, *Trading Activity Fee, available at https://www.finra.org/rules-guidance/guidance/trading-activity-fee.*

[530] *See* FINRA, Schedule A to the By-Laws of the Corporation, Section 1—Member Regulatory Fees (footnote on Trading Activity Fee rates), *available at https://www.finra.org/rules-guidance/rulebooks/corporate-organization/section-1-member-regulatory-fees.*

[531] *See id.,* section 1(b)(2) (transactions exempt from the Trading Activity Fee).

[532] *See* Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA's Trading Activity Fee, Exchange Act Release No. 97798 (June 26, 2023), 88 FR 42404 (June 30, 2023), *available at https://www.govinfo.gov/content/pkg/FR-2023-06-30/pdf/2023-13894.pdf.*

[533] We are adding GIA to our estimate of the rules' cost for an effected firm in response comment letters. *See* Blockchain Association Comment Letter; Overdahl Comment Letter. For the definition of gross revenue, *see* FINRA, Schedule A to the By-Laws of the Corporation, *Section 2—Gross Revenue for Assessment Purposes, available at https://www.finra.org/rules-guidance/rulebooks/corporate-organization/section-2-gross-revenue-assessment-purposes.*

the annual GIA for an affected party joining FINRA after the final rules' adoption will range from approximately $30,000 for a small firm with relatively little annual gross revenue to $330,000 for a large firm with a relatively large annual gross revenue.[534] Since FOCUS forms are not available for the final rules' affected parties, we use GIA estimates from Amended Rule 15b9–1 to estimate the affected parties' GIA.[535]

A firm's GIA is the greater of the expense calculated per the schedule in Table 8 below or the firm's average GIA over the previous three years. Table 8 reports the schedule used to calculate a firm's GIA given its gross revenue. The table reports the assessment for the portion of a firm's gross revenue within a given range. For instance, suppose a firm's gross revenue is $100M. The firm's Gross Income Assessment is $172,293. This assessment is the sum of the following items: The firm owes $1,200 on its first million dollars of gross revenue. The firm owes an additional $41,568 = ($24M × 0.1732%) on its gross revenue between $1M and $25M. The firm also owes $92,625 = ($25M × 0.3705%) on its gross revenue between $25M and $50M. And the firm owes $36,900 = ($50M × 0.0738%) on its gross revenue between $50M and $100M.

TABLE 8—GROSS INCOME ASSESSMENT *

Gross income range	Cost
$0 to $1M	$1,200
$1M to $25M	0.1732%
$25M to $50M	0.3705%
$50M to $100M	0.0738%
$100M to $5B	0.0520%
$5B to $25B	0.0566%
$25B or more	0.1219%

* FINRA is currently implementing annual increases in the rates for its Gross Income Assessment until 2024. This table reports the rates that will be in effect for 2024 and future years.

FINRA charges an annual personnel assessment of $210 for each of the first five registered representatives at a firm, $200 for each of the sixth through 25th registered representatives at a firm, and $190 for each of the 26th and subsequent representatives at a firm.[536] Registered individuals include salespersons, branch managers, department supervisors, partners, officers, and directors involved in a firm's securities business.[537] The Commission does not have the information necessary to estimate the personnel fees the affected parties will likely incur to maintain FINRA membership.[538] Table 6 reports personnel fees for the midpoints of a small firm with 1–10 registered employees and a large firm with 101–150 registered employees.[539] The personnel fee estimate for a small firm is $1,000. The personnel fee estimate for a large firm is $20,000.

FINRA also charges an annual branch office fee of $75 for each office, excluding one office, operated by a firm and registered by FINRA.[540]

Finally, registered dealers are subject to an annual renewal fee that applies for each SRO or jurisdiction where the dealer is registered. Renewal fees vary by SRO and jurisdiction, as well as by the number of registered representatives and branch offices at a dealer. Given our estimate that entities that register as a result of the final rules will not have registered representatives or branch offices, we focus on the fee that applies at the level of the dealer. At the jurisdiction level, renewal fees range between $40 and $600, depending on the state, with most between $250 and $300. If the newly registered dealer chooses to also register with another SRO, renewal fees range between $0 and $10,000, depending on the SRO.[541] We assume that the final rules would require membership at only one SRO.

The discussion above may overstate the final rules' costs to affected firms to the extent that already registered broker-dealers pass regulatory costs through to the affected firms. For example, the Commission understands that FINRA member brokers and dealers can pass at least some of the burden of regulatory costs including the TAF to their customers, so that the parties who will be affected by the final rules may already bear these costs indirectly to the extent that they trade with FINRA members. If the affected party were to register as a dealer and become a FINRA member, some of the regulatory costs incurred by its trading partners may fall. For instance, when a PTF who is not a broker-dealer places a sell order on an ATS and matches with a FINRA member broker-dealer, the TAF is assessed on the FINRA member executing the cross.[542] However, if the PTF were a FINRA member, then it would bear the TAF costs directly and the other member executing the cross would not, because the TAF is assessed on the selling FINRA member broker-dealer.

iii. TRACE Reporting

Firms joining FINRA will also incur the costs of reporting their fixed-income transactions (other than municipal securities) to TRACE.[543] We estimate that the initial implementation cost associated with TRACE reporting is $2,000 and that the ongoing annual cost associated with TRACE reporting $100,000.[544] Firms that do not trade fixed-income securities will not incur TRACE reporting costs. In addition, FINRA Rule 7730(b) excludes transactions in U.S. Treasury securities from the TRACE transaction reporting fees.

iv. Consolidated Audit Trail Reporting

In this section, we estimate costs from CAT-related reporting, should an affected party trade CAT-eligible securities. However, the Commission believes few, if any, of the 43 potentially affected parties identified in section III.B.2.c will incur CAT-related reporting costs. If an affected party does

[534] The small firm GIA estimate corresponds to the $33,655.65 median GIA estimate for the 64 non-member firms from the Amended Rule 15b9–1 Adopting Release. The large firm GIA estimate corresponds to the $327,870 median GIA estimate for the 12 largest non-member firms from the Amended Rule 15b9–1 Adopting Release. We round both figures to the nearest ten thousand to reflect uncertainty in the estimates.

[535] *See supra* note 533.

[536] For the personnel assessment, *see* FINRA Fee Increase Schedule, *available at https://www.finra.org/rules-guidance/rule-filings/sr-finra-2020-032/fee-increase-schedule.*

[537] *See* FINRA, Individual Registration, *available at https://www.finra.org/registration-exams-ce/individuals.*

[538] *See* section III.B.2 for a discussion of the data limitations associated with the Commission's estimates of the final rules' affected parties.

[539] For a small firm with 1–10 registered employees the midpoint is 5 employees. 5 × $210 = $1,050. We round $1,050 to the nearest thousand to reflect uncertainty in our cost estimate. For a large firm with 101–150 employees the midpoint is 125 employees. 5 × $210 + 25 × $200 + 95 × $190 = $24,100. We round $24,100 to the nearest ten thousand ($20,000) to reflect uncertainty in our estimate.

[540] *See* FINRA, Schedule A to the By-Laws of the Corporation, Section 4—Fees, *available at https://www.finra.org/rules-guidance/rulebooks/corporate-organization/section-4-fees.*

[541] *See* FINRA, SRO/Jurisdiction Fee and Setting Schedule, *available at https://www.finra.org/sites/default/files/srojurisdiction-fee-and-setting-schedule.pdf.*

[542] *See* FINRA, Trading Activity Fee Frequently Asked Questions, *available at https://www.finra.org/rules-guidance/guidance/faqs/trading-activity-fee.*

[543] TRACE fees include system fees of between $20 and $260 per month plus transaction reporting fees, which are one of: (i) $0.475 per trade for trades with par value up to $200,000, (ii) $2.375 per million dollars par value for trades with par value more than $200,000 but less than $1 million, or (iii) $2.375 per trade for trades with par value of at least $1 million or $1.50 per trade for agency pass-through MBS that are traded TBA or SBA-backed ABS that are traded TBA. *See* FINRA Rule 7730 (Trade Reporting and Compliance Engine), *available at https://www.finra.org/rules-guidance/rulebooks/finra-rules/7730.*

[544] *See* Amended Rule 15b9–1 Adopting Release, Tables 5 and 6. We have rounded the implementation cost estimate and ongoing annual cost estimate to reflect uncertainty in the estimates.

not trade NMS stocks, OTC equities, or listed options, then the affected party will not incur CAT-related reporting costs because the affected party does not trade securities that must be reported to CAT. For instance, if an affected party that only trades government securities only registers as a government securities dealer under section 15C, then that affected party will not incur CAT-reporting related expenses because it will not trade securities associated with CAT-reporting obligations. Affected parties that newly register as dealers under section 15(b) and trade NMS stocks, OTC equities, or listed options will incur the cost of reporting their transactions in these securities to CAT.[545]

The Commission estimates the initial cost of CAT reporting for an affected party that trades CAT-reportable securities will range from a lower value of approximately $1,100,000 for a small firm with relatively few reportable trades to an upper value of approximately $4,900,000 for a large firm with many reportable trades. Our estimates for the initial costs of CAT compliance for an affected party registered as a dealer and trading CAT-reportable securities are based on inflation-adjusted cost estimates from the CAT NMS Plan Approval Order.[546]

The Commission estimates the ongoing cost of CAT reporting for an affected party that trades CAT-reportable securities will range from a lower value of approximately $600,000 annually for a small firm with relatively few CAT-related trades to an upper value of approximately $4,000,000 annually for a relatively large firm reporting many trades to CAT. The Commission's estimates for the annual costs of CAT compliance of an affected party registered as a dealer and trading CAT-reportable securities are based on inflation-adjusted cost estimates from the CAT NMS Plan Approval Order.[547]

CAT reporting costs also vary depending on security type, order size, and trading venue, among other factors.[548] An affected party that trades more types of securities, that trades a greater variety of order sizes, or that trades at more venues will see higher CAT-related expenses. Affected parties that have a smaller number of registered persons, that conduct less brokerage activity, or that trade smaller volumes of securities will see lower CAT-related reporting costs. Affected parties that only trade U.S. Government securities will not incur CAT-related reporting costs because government securities are not CAT-reportable securities.

In addition to the costs for reporting data to CAT, affected parties that register as dealers and trade NMS stocks, OTC equities, or listed options may be assessed CAT fees under the CAT Funding Plan.[549] These CAT fees would depend on the extent to which an affected party is the executing broker-dealer for its transactions reported to CAT and the type of securities involved in its transactions reported to CAT.[550] The Commission cannot estimate the magnitude of these costs because the amounts of the CAT fees to be charged to broker-dealers pursuant to the funding model must be established through rule filings pursuant to section 19(b) of the Exchange Act.[551] However, the CAT fees allocated in accordance with the funding model borne by the affected parties are not a new cost to industry, but at least partially represent a transfer of costs from current broker-dealers with CAT reporting responsibilities, who would have higher CAT fees in the absence of the final rules, to affected parties. Furthermore, the Commission believes that other broker-dealers with CAT reporting responsibilities or CAT NMS Plan participants that have previously reported data related to the orders of affected parties to CAT would have likely passed on such costs to the affected parties in the absence of the amendments because the affected parties are customers of existing broker-dealers with CAT reporting obligations.

v. SIPC Membership

Commenters said that the costs of joining SIPC should also be considered in addition to the costs discussed in the Proposing Release.[552] Under SIPA, all dealers registered under section 15(b) of the Exchange Act in the U.S. are automatically members of SIPC except for certain subsets of dealers. The Commission acknowledges that if an affected party registers as a dealer under section 15(b) of the Exchange Act, then the affected party will become a member of SIPC and incur the costs discussed in this section.[553] However, government securities dealers registered under section 15C of the Exchange Act do not

[545] *See* Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT NMS Plan Approval Order''), for additional information about CAT. We note that the Commission recently approved the CAT Funding Plan. *See* Securities Exchange Act Release No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (''CAT Funding Plan'') for additional information about the CAT Funding Plan.

[546] *See* section V.F of the CAT NMS Plan Approval Order for information about the construction of the estimates of CAT reporting for different types of firms. *See supra* note 504 for information about the sources for the inflation adjustments. The inflation factor for CAT-related costs is 1.25 = 303 (May 2023 CPI–U)/238 (Nov. 2016 CPI–U) after rounding to the nearest hundredths place. The lower value estimate is the inflation adjusted initial implementation cost for an options floor broker from Table 4 of the CAT NMS Plan Approval Order. $848,700 (Implementation cost for one options floor broker) × 1.25 = $1,062,487.53. We round this value to the nearest $100,000 to reflect uncertainty in our cost estimate. The upper value estimate is the inflation adjusted initial implementation cost for an electronic liquidity provider in Table 4 of the CAT NMS Plan Approval Order. $3,875,517 (Implementation cost for one electronic liquidity provider) × 1.25 = $4,851,760. We round this figure to the nearest $100,000 to reflect uncertainty in our cost estimate. We use an options floor broker and an electronic liquidity provider to estimate the range of CAT costs for the affected parties because both types of firms' primary business is liquidity provision and both types of firms do not carry customer accounts.

[547] *See supra* note 546 for a discussion of the inflation adjustments used for the initial and ongoing CAT reporting costs. The lower value estimate is the inflation adjusted ongoing cost for an options floor broker from Table 4 of the CAT NMS Plan Approval Order. $442,625 (Ongoing cost for one options floor broker) × 1.25 = $554,122. We round this value to the nearest $100,000 to reflect uncertainty in our ongoing cost estimate. The upper value estimate is the inflation adjusted ongoing cost for an electronic liquidity provider in Table 4 of the CAT NMS Plan Approval Order. $3,22,5714 (Ongoing cost for one electronic liquidity provider) × 1.25 = $4,038,271. We round this figure to the nearest $100,000 to reflect uncertainty in our ongoing cost estimate.

[548] *See* CAT NMS Plan Approval Order section V.F for a discussion of how CAT reporting costs may vary across firms.

[549] The CAT NMS Plan requires both the Participants and broker-dealers to fund CAT. The CAT NMS Plan includes a funding model that sets for the methodology for allocating fees to recover those costs, including certain costs previously paid by the Participants, among the Participants and broker-dealers. *See* CAT Funding Plan. Specifically, the CAT NMS Plan sets forth a one-third allocation of CAT fees to the applicable Participant in a transaction, to the CAT Executing Broker for the buyer in a transaction, and to the CAT Executing Broker for the seller in a transaction. *See* CAT NMS Plan Approval Order Section 11.3.

[550] *See* CAT Funding Plan Section III.3 for the CAT fees associated with NMS stocks, OTC equities, and listed options.

[551] Such filings have been filed and noticed but are not effective because the Commission temporarily suspended them and instituted proceedings to determine whether to approve or disapprove the proposed rule changes. For example, on Jan. 3, 2024, New York Stock Exchange LLC filed a proposed rule change to establish fees on behalf of CAT LLC for broker-dealers relating to certain historical costs. On Jan. 17, 2024, pursuant to section 19(b)(3)(C) of the Exchange Act, the Commission temporarily suspended the rule change and instituted proceedings to determine whether to approve or disapprove the proposed rule change. *See* Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of a Proposed Rule Change to Amend the NYSE Price List to Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change, Exchange Act Release No. 99380 (Jan. 17, 2024), *available at https://www.sec.gov/files/rules/sro/nyse/2024/34-99380.pdf*.

[552] *See* Overdahl Comment Letter; Citadel Comment Letter; AIMA Comment Letter II.

[553] *See* 15 U.S.C. 78ccc(2)(A)(i) through (iii).

need to join SIPC, and thus if an affected party registers as a government securities dealer under section 15C, the party will not incur the costs discussed in this section. If an affected party trades only government securities, then the Commission expects the party to register as a government securities dealer under section 15C of the Exchange Act.

The Commission estimates the annual cost of SIPC membership for an affected party registered as a dealer is approximately $3,000 plus 0.15% of gross operating revenues generated by the affected party's securities business minus interest expense and dividends. This annual expense is the sum of two separate annual costs associated with SIPC membership. The first annual expense is approximately $3,000 and represents costs associated with preparing and filing annual reports with SIPC.[554] The second annual expense is an assessment equal to 0.15% of gross operating revenues generated by a dealer's securities business minus interest expense and dividends, which SIPC collects for the SIPC Fund from all SIPC members.[555] We estimate that an affected firm's annual SIPC assessment will be approximately $700,000 for larger firms and $30,000 for smaller firms, although costs will vary depending on each firm's actual gross operating revenues.[556] The annual SIPC assessment of an affected party registered as a dealer may differ from the above two estimates for a larger firm and a smaller firm if the SIPC assessment rate changes from 0.15% to a different value in the future.[557]

vi. Other Compliance Costs

One commenter stated that the Commission should consider that ''the sheer number and complexity of the Proposals, when considered in their totality, if adopted, would impose staggering aggregate costs, as well as unprecedented operational and other practical challenges.'' [558] But, consistent with its long-standing practice, the Commission's economic analysis in each adopting release considers the incremental benefits and costs for the specific rule—*i.e.,* the benefits and costs stemming from that rule compared to the baseline. In doing so, the Commission acknowledges that in some cases resource limitations can lead to higher compliance costs when the compliance period of the rule being considered overlaps with the compliance period of other rules. In determining compliance periods, the Commission considers the benefits of the rules as well as the costs of delayed compliance periods and potential overlapping compliance periods.

In this regard, some commenters mentioned the proposals which culminated in the recent adoptions of the May 2023 SEC Form PF Amending Release, the Private Fund Advisers Adopting Release, the Treasury Clearing Release, the Beneficial Ownership Amending Release, the Rule 10c-1a Adopting Release, the Short Position Reporting Adopting Release, and the Securitizations Conflicts Adopting Release.[559] The Commission acknowledges that there are compliance dates for certain requirements of these rules that overlap in time with the final rules, which may impose costs on resource constrained entities affected by multiple rules.[560]

However, we think these increased costs from overlapping compliance periods will be limited for several reasons. First, the number of newly registered dealers that will be subject to each of the recently adopted rules identified by commenters will be limited based on whether those newly registered dealers' activities fall within the scope of the other rules.[561] Second, commenters' concerns about the costs of overlapping compliance periods were raised in response to the proposal and, as discussed above, we have taken steps to reduce costs of the final rules.[562] Third, although the compliance periods for these rules overlap in part, the compliance dates adopted by the Commission are generally spread out over more than a two-year period from 2023 to 2026.[563] As discussed above, the Commission is adopting a compliance date of one year from the effective date of the final rules for persons engaging in activities that meet the dealer registration requirements to register.[564]

As discussed above, the final rules may result in certain transactions of newly registered dealers or government securities dealers being subject to central clearing requirements under the recent Treasury Clearing amendments.[565] Such newly registered

[554] $3,234 = $431 Compliance Attorney × 0.5 hours (Annual Report to SIPC Filing) + $431 Compliance Attorney × 5 hours + $1 Postage (Annual SIPC Membership Filing) + $431 Compliance Attorney × 2 + $1 Postage (Filing Annual Statement from Independent Accounting Firm). We round $3,234 to $3,000 to reflect uncertainty in our estimate.

[555] For the current assessment rate, *see* Securities Investor Protection Corporation, *Assessment Rate, available at https://www.sipc.org/for-members/assessment-rate.* For the assessment rate calculation, *see* Article 6 of the SIPC Bylaws, *available at https://www.sipc.org/about-sipc/statute-and-rules/bylaws.*

[556] We use firms from the Amended Rule 15b9–1 Adopting Release to approximate the gross revenue of affected parties that register as dealers. We use the 12 largest firms, which have a median gross revenue of approximately $491 million, from the Amended Rule 15b9–1 Adopting Release to estimate the SIPC assessment for large firms. We use the remaining firms from the Amended Rule 15b9–1 Adopting Release, which have a median gross revenue of approximately $20 million, to estimate the SIPC assessment for small firms. *See* Amended Rule 15b9–1 Adopting Release, section V.C.2.b. Based on those median revenues: $491 million × 0.0015 = $736,500; and $20 million × 0.0015 = $30,000. We round $736,000 to the nearest hundred thousand, $700,000, to reflect the estimate's uncertainty. We cannot calculate with precision the total SIPC-related costs for all affected firms because of data limitations regarding estimating the number of firms that will ultimately register. *See* sections III.B.2.c and III.C.2.a.i and gross operating revenues of those firms.

[557] *See supra* note 555.

[558] MFA Comment Letter II; *see also* ICI Comment Letter (stating that the Commission should consider ''practical realities such as the implementation timelines as well as operational and compliance requirements''); Overdahl Comment Letter (''direct costs associated with registering as a government securities dealers will aggregate with the direct costs of compliance with other proposed rules which impact that fund'').

[559] *See supra* note 346. As stated above, commenters also specifically suggested the Commission consider potential overlapping compliance costs between the final rules and certain proposing releases. *See supra* note 345 (identifying proposals other than those that have been adopted). These proposals have not been adopted and thus have not been considered as part of the baseline here. To the extent those proposals are adopted in the future, the baseline in those subsequent rulemakings will reflect the regulatory landscape that is current at that time.

[560] *See supra* notes 347–353 (summarizing compliance dates).

[561] The Beneficial Ownership Amending Release amends disclosure requirements that apply to only those persons who beneficially own more than five percent of a covered class of equity securities. The Rule 10c-1a Adopting Release will require only persons who agree to a covered securities loan to report that activity. The Short Position Reporting Adopting Release will require only institutional investment managers that meet or exceed certain reporting thresholds to report short position and short activity data for equity securities. And the Securitizations Conflicts Adopting Release will affect only certain entities—and their affiliates and subsidiaries—that participate in securitization transactions. In addition, principal trading firms will not have to comply with the final rules in the May 2023 SEC Form PF Amending Release or the Private Fund Advisers Adopting Release. *See id.*

[562] The final rules mitigate costs relative to the proposal. As discussed above, the Commission is deleting the proposed quantitative and aggregation standards, which would have required persons to establish robust controls to monitor and analyze trading across their corporate structure to determine whether registration was required, and if so, which entities would register. Additionally, we expect FINRA's expressed commitment to expedite the application process will generally ease the compliance burdens raised by commenters. *See supra* section II.B.

[563] For example, the effective date of the amended deadline for filing Schedule 13D will be early 2024. By contrast, compliance deadlines for reporting securities loans under the Rule 10c–1a Adopting Release will be approximately two years later. *See supra* notes 347–353.

[564] *See* section II.B.

[565] *See* discussion on benefits in section III.C.1.

dealers or government securities dealers may incur costs associated with these central clearing requirements, as discussed in the Treasury Clearing Adopting Release.[566]

b. Costs Associated With the Net Capital Rule

Affected persons who are not currently in compliance with the Net Capital Rule would need to decrease the charges to their net capital or raise additional capital. This may particularly impact private funds, as their investors generally have withdrawal rights and the Net Capital Rule requires a broker-dealer to subtract from net worth when calculating net capital any contribution of capital to the broker-dealer: (1) under an agreement that provides the investor with the option to withdraw the capital; or (2) that is intended to be withdrawn within a period of one year of the contribution.[567] Therefore, commenters said that funds registering as dealers may have to amend their contractual agreements with investors and that those investors may lose substantial liquidity rights.[568] However, we estimate that the final rules will only affect a small percentage of private funds.[569] We acknowledge that affected private funds may have to limit investor withdrawals if they want to continue dealing securities.[570] Alternatively, an affected private fund may choose to separate its dealing activities into a separate entity.[571]

For market participants engaging in dealing activity, other than private funds, the Net Capital Rule may require additional capital. We anticipate the costs associated with the Net Capital Rule to vary according to the type of investment. For example, less liquid investments and derivatives positions are subject to greater haircuts (see below), and will thus require more capital.[572] Crypto assets that are not securities would be subject to a 100% deduction when computing net capital and so affected persons that hold more of such assets would likely need more net capital.[573] The cost of complying with increased capital requirements arises because an entity is required to either shift the composition of its portfolio to hold more liquid assets—which typically earn lower rates of return—than it would otherwise, or to fund its positions with a greater amount of equity or subordinated debt, which is typically costlier than unsubordinated debt. However, entities that take less financial risk tend to have better credit with investors or lenders, other things equal, so more favorable borrowing terms for affected parties may partially offset the costs of increasing their net capital.

One comment letter stated that the proposed rule would greatly increase the cost of certain trading strategies and provided numerical estimates.[574] These estimates appeared to rely on position sizes and existing margin requirements which the commenter did not provide. We can nevertheless ascertain that the commenter's estimates rest on two assumptions. First, the commenter said that, under the proposed rule, the futures margin requirement would increase by 50% and cited to a CFTC rule describing ''Minimum financial requirements for futures commission merchants and introducing brokers.'' [575] Registration with the SEC as a dealer—by itself—does not create a requirement to also register with the CFTC as a futures commission merchant or introducing broker, so the final rules would not necessarily increase affected parties' futures margin. Registered broker-dealers—as is the case with futures commission merchants—are subject to requirements to take capital charges for proprietary futures positions.[576] However, they need not take a charge if the position is a covered futures position.[577] Second, the commenter calculated margin costs based on a 5-day, 99% confidence, portfolio value at risk (''VaR'') that recognizes offsets between futures and bonds positions.[578] VaR calculation methods vary, and they may depend on several assumptions—among other things, the relevant historical time period, the precise assets in a portfolio, covariance between those assets, and methods for modelling future returns. We are uncertain of some of the details of the sample strategies identified by the commenter, such as which precise assets may be involved in the butterfly strategies. Under this uncertainty, rather than make the assumptions needed to calculate VaR, we assume a flat 2% margin cost that does not necessarily recognize offsets. For entities with margin costs lower (or, respectively, higher) than 2%, the actual increases in minimum capital would be higher (lower) than the estimates we report in Table 9. Because the final rules will not include the proposed first qualitative factor, we do not expect the strategies in the letter to necessarily constitute dealing under the final rules.

In this context, in response to the commenter's letter, we undertake our own estimations of how much the final rules may increase affected parties' required capital for different position sizes under 17 of the 18 strategies listed in the comment letter.[579]

Estimates of increases in required equity: In Table 9, the left column lists the strategies as given in the comment

[566] *See* Treasury Clearing Adopting Release, 89 FR 2811–18.

[567] *See* 17 CFR 240.15c3–1(c)(2)(i)(G) (''Rule 15c3–1(c)(2)(i)(G)''). The Net Capital Rule states that ''[any] withdrawal of capital made within one year of its contribution is deemed to have been intended to be withdrawn within a period of one year, unless the withdrawal has been approved in writing by the Examining Authority for the broker or dealer.'' *Id. See* AIMA Comment Letter II; Citadel Comment Letter; FIA–PTG Comment Letter; Fried Frank Comment Letter; Hagerty-Hill Comment Letter; IAA Comment Letter I; MFA Comment Letter I; NAPFM Comment Letter; Two Sigma Comment Letter.

[568] *See* AIMA Comment Letter II; Citadel Comment Letter; Element Comment Letter; Fried Frank Comment Letter; NAPFM Comment Letter; Two Sigma Comment Letter I; MFA Comment Letter I; FIA PTG Comment Letter I; IAA Comment Letter I; Overdahl Comment Letter; McIntyre Comment Letter II. *See also* Hagerty-Hill Comment Letter.

[569] Table 2 shows 47,088 private funds reported on Form PF as of 2022Q4, but section III.B.2.c explains why the final rules may only affect a small percentage of those funds.

[570] At least some investor capital would need to remain off-limits to withdrawal for at least one year. For example, funds who wish to continue dealing activities may need to renegotiate contracts with investors to provide for a one-year lockup period.

[571] For example, a fund that engages in both dealing and non-dealing activities could divide its activities into two new funds: one that engages in dealing and offers different (lower) liquidity rights for investors, and another than continues to operate the non-dealing strategies and offers the same liquidity rights as the original fund.

[572] *See* MFA Comment Letter I.

[573] *See* DeFi Fund Comment Letter at 9; GDCA Comment Letter. The Net Capital Rule's AI standard requires net capital to exceed 1/15 of aggregate indebtedness. Any crypto assets that are not securities would not contribute to net capital, but borrowing to fund those holdings may contribute to AI. Thus, if an entity were to acquire non-security crypto assets using proportionally the same amount of leverage as for the entity's securities holdings, the non-security crypto assets would reduce the entity's ratio of net capital to AI. Crypto assets that are securities and that have a ''ready market,'' as defined in section (c)(11) of the Net Capital Rule, would likely contribute to net capital, subject to haircuts. *See* 17 CFR 240.15c3–1(c)(2)(vi)(K). Because the Net Capital Rule's AI standard requires net capital to exceed a fraction (1/15) of AI, entities would not necessarily need to fund holdings of non-security crypto assets with 100% equity.

[574] *See* FIA PTG Comment Letter I. The letter listed 18 ''typical types of trading activity that PTFs, and many others in the market, often employ,'' along with quantitative estimates of how much the required equity would have increased under the proposed rules.

[575] CFTC Reg. § 1.17(c)((5)(x)(B). *See also* Morgan Lewis Comment Letter.

[576] *See* 17 CFR 240.15c3–1b (''Rule 15c3–1b'').

[577] *See* 17 CFR 240.15c3–1b(a)(3)(ix)(A) (''Rule 15c3–1b(a)(3)(ix)(A)'') (providing that there is no charge for inventory which is currently registered as deliverable on a contract market and covered by an open futures contract or by a commodity option on a physical). We assume that futures positions involved in the strategies listed in the letter are covered, but *see infra* notes 587 and 588 for how our calculations may change if they are not.

[578] *See* FIA PTG Comment Letter I.

[579] The FIA PTG Comment Letter I did not provide sufficient information to enable us to assume details for strategy 10 ''Two offsetting butterfly positions in bonds.''

letter, and the right column lists the contracts and transactions that we assume the strategies involve. Dollar amounts such as $P or $0.5P indicate position sizes.

TABLE 9—SAMPLE STRATEGIES FROM THE FIA–PTG COMMENT LETTER

	Strategy listed in the comment letter	Contracts and transactions involved *
1	Two year futures vs On the Run cash.	short $P futures position with 2yr Treasury deliverable, long $P Treasury note that will be deliverable against the futures contract.
2	Five year futures vs On the Run cash.	short $P futures position with 5yr Treasury deliverable, long $P Treasury note that will be deliverable against the futures contract.
3	Ten year futures vs On the Run cash.	short $P futures position with 10yr Treasury deliverable, long $P Treasury bond that will be deliverable against the futures contract.
4	Ultra Bond futures vs Deliverable bonds.	short $P futures position with 25+yr Treasury deliverable, long $P Treasury bond that will be deliverable against the futures contract.
5	Two Year futures vs Off the Run 2s.	short $P futures position with 2yr Treasury deliverable, long $P off-the-run Treasury note that will be deliverable against the futures contract.
6	Ultra Bond futures vs On the Run 30s.	short $P futures position with 25+yr Treasury deliverable, long $P 30yr on-the-run Treasury bond.
7	Off-the-run Bond Butterfly	long $P 5yr Treasury note, short $0.5P 2yr Treasury note and short $0.5P 10yr Treasury note.
8	US/20yr/WN Butterfly	long $P 20yr Treasury bond, short $0.5P futures position with 10yr Treasury deliverable, short $0.5P futures position with 30yr Treasury deliverable.
9	TY futures vs. Off the Run cash	short $P futures position with 10yr Treasury deliverable, long $P off-the-run Treasury bond that will be deliverable against the futures position.
10	Two offsetting butterfly positions in bonds.	*We did not have sufficient information to analyze this strategy*.
11	On the Run vs Off the Run 20yrs.	short $P on-the-run 20yr Treasury bond, long $P off-the-run 20yr Treasury bond.
12	5s30s Flattener	short $P 5yr Treasury note, long $P 30yr Treasury bond.
13	TY Cash futures basis vs TU Cash futures basis.	short $0.5P futures position with 10yr Treasury deliverable and long $0.5P Treasury bond that will be deliverable against the futures contract; long $0.5P futures position with 2yr Treasury deliverable, short $0.5P Treasury note that will be deliverable against the futures contract.
14	Ultrabond futures vs. CTD Cash bonds.	short $P futures position with 25+yr Treasury deliverable, long $P Treasury bond that will be deliverable against the futures contract.
15	On the Run 30 Year vs. Aug47s	long $P Treasury bond maturing Aug. 2047 (assume maturity >25yrs), $P short on-the-run ** 30yr Treasury bond.
16	On the Run 30 Year vs. Feb42s	long $P Treasury bond maturing Feb. 2042 (assume maturity <20yrs), short $P on-the-run ** 30yr Treasury bond.
17	On the Run 30 Year vs. Feb36s	long $P Treasury bond maturing Feb. 2036 (assume maturity <14yrs), short $P on-the-run ** 30yr Treasury bond.
18	Low Risk Tight 3 Year Micro RV ***.	(a) long $P 5yr Treasury note, short $P 2yr Treasury note. (b) long $P 10yr Treasury note, short $P 7yr Treasury note. (c) Long $P 25yr Treasury bond, short $P 22yr Treasury bond.

* Based on the Commission's understanding of what these strategies mean.
** Analyses performed in Aug. 2022 (calculations of net capital requirements are not sensitive to changes in interest rates since Aug. 2022).
*** We consider three possible versions of this strategy.

In each strategy, the entity in question simultaneously (i) takes a long position of $P (in total) in one or more securities or futures and a short position of $P (in total) in one or more securities or futures; (ii) posts margin; and (iii) keeps no additional cash on its balance sheet, so that its equity equals the value of its margin account.

The net capital calculation begins with computing Tentative Net Capital (''TNC''), which is equal to book equity minus assets not readily convertible to cash (*e.g.,* fixed or intangible assets), minus certain operational charges, plus qualified subordinated liabilities. Because the comment letter discussed these trading strategies in isolation, our calculations correspondingly assume that the entity in question has no assets that are not readily convertible to cash, no relevant operational charges, and no qualified subordinated liabilities, so that TNC always equals book equity. Net Capital (''NC'') equals TNC minus a haircut. Haircuts are standardized by security,[580] but dealers can seek regulatory approval to instead compute net capital using the market risk standards of appendix E.[581] Our calculations rely on the standardized haircuts.

NC must equal or exceed the greater of a fixed-dollar minimum requirement and a ratio-based minimum requirement. The aggregate indebtedness (AI) standard requires NC to exceed the greater of (i) one-fifteenth of AI (or one-eighth for 12 months after commencing business as a broker or dealer) and (ii) a fixed dollar amount that varies by broker-dealer type.[582] We assume that the relevant fixed dollar amount is $100,000 for parties affected by the final rules, as that is the fixed dollar minimum for a dealer. We assume that all loans involved in the sample strategies in Table 9 would be ''adequately collateralized by securities which are carried long by the broker or dealer and which have not been sold''

[580] *See* SEC Rule 15c3–1(c)(2)(vi).

[581] Dealers approved to calculate net capital in this manner must also maintain at all times TNC of at least $5 billion and NC of at least $1 billion.

[582] For example, the fixed dollar amount equals $5,000 for a broker-dealer that does not receive, directly or indirectly, or hold funds or securities for, or owe funds or securities to, customers; $50,000 for an introducing broker dealer that receives but does not hold securities; $100,000 for a dealer (defined as a broker-dealer that, among other things, ''effects more than ten transactions in any one calendar year for its own investment account''); $250,000 for a carrying broker-dealer; $20 million for an OTC derivatives dealer; or $1 billion for a broker-dealer that has been approved to use models to compute net capital.

and that securities borrowed would also be adequately collateralized. AI is thus equal to zero in our analysis, and NC under the AI standard must therefore exceed the fixed dollar amount of $100,000.[583] An alternative standard requires NC to exceed the greater of (i) 2% of customer debit items or (ii) $250,000. Our calculations assume that, similarly to the PTFs to which the comment letter refers,[584] the trader in question has no customers. Therefore, in the absence of customer debit items, this alternative standard requires at least $250,000 of NC, which is higher than the $100,000 fixed-dollar minimum under the AI standard.

Certain dealers [585] engaged in activities as market makers can avoid calculating a haircut (so NC=TNC) if they maintain liquidating equity above a threshold equal to a percentage of their securities or derivatives positions.[586] We consider this provision in our analysis, but we find that the capital requirement for market makers is not the binding constraint for any of the sample strategies.

OTC derivatives dealers must also maintain TNC of $100 million, and dealers that are approved to calculate haircuts using their own internal risk models must maintain TNC of $5 billion. Our calculations are for affected parties to which these TNC requirements do not apply, however.

Lastly, as described above, our calculations assume that the entity in question, whether registered as a dealer or not, faces a margin requirement of 2%, so that its book equity equals $0.02P.

To summarize, we estimate the increased capital requirement for affected parties under the following conditions: (i) TNC equals book equity; (ii) affected parties would use the standardized haircuts specified in the Net Capital Rule; (iii) the fixed amount under the AI standard is $100,000 and AI equals zero so that the AI standard requires $100,000 of NC; (iv) the alternative standard requires NC of $250,000, therefore it would not be adopted by affected parties in lieu of the $100,000 fixed dollar minimum required under the AI standard; (v) certain entities can claim a market maker exception that allows them to avoid calculating a haircut (so NC=TNC) if they maintain capital above a certain threshold; (vi) all futures positions are covered; and (vii) the entity in question must maintain capital of $0.02P even if it does not register with the Commission.

Under these conditions, the AI standard requires that book equity minus any haircut exceeds $100,000—*i.e.,* book equity must exceed $100,000 plus any haircut—so that the percentage increase in required equity is equal to: [(haircut + $100k)/non-broker-dealer margin] − 1, or [(haircut + $100k)/$0.02P] − 1. The AI standard under the market maker exception requires instead that book equity exceed the greater of $100,000 and a percentage of the position size P that depends on the exposures involved. We now turn to our findings.

Eleven of the 17 strategies for which we provide estimates have no haircuts under the Net Capital Rule, because the securities and/or futures positions offset each other—the 11 strategies are strategy 1, 2, 3, 4, 5, 6, 9, 11, 13, 14, and 15—and six strategies do have haircuts—these strategies are 7, 8, 12, 16, 17, and 18. To illustrate the calculations involved, Box 1 describes the calculation details for a strategy with no haircut, and Box 2 describes the calculation details for a strategy with a haircut.

BOX 1—CALCULATION DETAILS FOR STRATEGY 1: ''TWO YEAR FUTURES VS ON THE RUN CASH''

Description: short $P futures position with 2yr Treasury deliverable, long $P Treasury note that will be deliverable against the futures contract.
Transactions assumed: borrow $P, buy $P 2yr notes, enter $P short futures position with 2yr Treasury deliverable, deposit $x in margin.

Balance Sheet			
Assets	$P 2yr note $x receivable (margin)	*Liabilities* *Equity* *Off balance sheet*	$P loan. *$x.* short $P notional 2yr futures.
Calculations	Notes		
Haircut *	0	futures and note positions offset.	
Capital Requirement (minimum required x)			
Non-dealer	0.02P	margin requirement.	
Dealer	max(0.02P, 100k)	max(margin requirement, dealer capital).	
% Change	(100k/0.02P) − 1 *or* 0	if P < 100k/0.02 = $5 million, if P ≥ $5 million (margin is binding constraint).	

BOX 2—CALCULATION DETAILS FOR STRATEGY 7: ''OFF-THE-RUN BOND BUTTERFLY''

Description: long $P 5yr Treasury note, short $0.5P 2yr Treasury note and short $0.5P 10yr Treasury note.

[583] Paragraph (c)(1) of the Net Capital Rule defines AI as ''the total money liabilities of a broker or dealer arising in connection with any transaction whatsoever,'' subject to several exclusions. Paragraphs (c)(1)(i) and (ii) describe two exclusions that apply to the trading strategies provided by FIA–PTG for ''indebtedness adequately collateralized by securities which are carried long by the broker or dealer and which have not been sold,'' and for ''amounts payable against securities loaned, which securities are carried long by the broker or dealer and which have not been sold.''

[584] *See* FIA PTG Comment Letter I.

[585] *See* paragraph (a)(6) of the Net Capital Rule. The market maker exception is available to a dealer ''who does not effect transactions with other than brokers or dealers, who does not carry customer accounts, who does not effect transactions in options not listed on a registered national securities exchange or facility of a registered national securities association, and whose market maker or specialist transactions are effected through and carried in a market maker or specialist account cleared by another broker or dealer.''

[586] *See* Rule 15c3–1(c)(6)(iii). For these strategies, the thresholds are generally 5% of the value of long positions in U.S. Treasury securities plus 25% of the value of long positions in U.S. Treasury futures plus 30% of the value of short positions.

BOX 2—CALCULATION DETAILS FOR STRATEGY 7: "OFF-THE-RUN BOND BUTTERFLY"—Continued

Transactions: borrow $P, buy $P 5yr notes, use 5yr notes as collateral to borrow $0.5P of 10yr notes and $0.5P of 2yr notes, sell them and use proceeds to repay loan, deposit $x in margin.

Balance Sheet			
Assets	$x receivable (margin)	*Liabilities* *Equity* *Off Balance sheet*	*$0*. $x. $0.5P stock borrowed (10yr note). $0.5P stock borrowed (2yr note). $P 5yr note posted as collateral.
Calculations		Note	
Haircut *	P*7.25%	(P*4% for 5yr note) + (0.5P*2% for 2yr note) + (0.5P*4.5% for 10yr note).	
Capital Requirement (minimum required x)			
Non-dealer	0.02P	margin requirement.	
Dealer	max(0.02P,100k+0.0725P) *or* max(100k, 0.35P) **	under regular AI standard. if acting as market maker (0.35P = 5% of long + 30% of short positions).	
% Change	(100k/0.02P) − 1 *or* (100k+0.0725P)/0.02P − 1	if P < 100k/(0.35–0.0725) = 360k. if P > $360k.	

* *See* 17 CFR 240.15c3–1, paragraph (c)(2)(vi)(A) ("Rule 240.15c3–1(c)(2)(vi)(A)").
** *See* 17 CFR 240.15c3–1, paragraph (c)(6)(iii) ("Rule 240.l3–1(c)(6)(iii)").

For strategies with no haircuts, such as in Box 1, the percentage change in capital is equal to ($100,000/0.02P) − 1, which converges to zero as the position size P grows, since as P gets large the 2% margin requirement already requires more capital than would the Net Capital Rule.[587]

For strategies with haircuts, such as in Box 2, the AI standard with the market maker exemption is the easiest to meet when the position size P is small enough because the market maker exemption allows the entity to avoid taking a haircut. As P grows, the market maker exemption becomes more binding, and the regular AI standard is the easiest to meet. As P grows arbitrarily large, the increase in equity converges to (haircut/0.02) − 1.[588] If the haircut is greater than the margin requirement, the Net Capital Rule will always require an increase in minimum capital. If the haircut is less than the margin requirement, then a large enough P will make the margin requirement the binding constraint.

Table 10 reports our findings. The first column shows the estimated increase in required capital that the commenter provided for each strategy included in the comment letter. Columns 2 shows our estimated increases in required minimum capital for a position size of $50 million (*i.e.,* at P = $50mm), because the final rules will exclude persons that have or control less than $50 million in total assets. Column 3 shows our estimated increases in required minimum capital for very large position sizes (*i.e.,* as P → infinity). We estimate that in 10 out of the 17 strategies provided by the commenter the Net Capital Rule would not increase affected parties' minimum capital requirements, and in another four strategies the capital requirements would increase by less than 100%. Our estimates are generally lower than the commenter's estimates. As described above, our calculations may differ because (i) we do not agree that futures margin requirement would necessarily increase by 50% and (ii) we use a flat 2% margin rather than calculating a risk-based margin using VaR.

The values shown in Table 10 may also overstate or understate the actual costs of the Net Capital Rule for the following reasons. For affected parties that pursue more than one trading strategy, we expect that the actual increase in minimum net capital would be lower than the values shown in column 2, and perhaps even lower than the values shown in column 3, because net capital applies to the entire portfolio and not just to a single strategy. The increases shown in Table 10 are therefore not additive—*e.g.,* trading P=$50 million of, Strategy 7 and $50 million of Strategy 8 will not cause minimum net capital to increase by 273% + 54%, but by a smaller amount. Holding many securities or futures positions for many different strategies may allow additional offsets when calculating standardized haircuts according to the Net Capital Rule, so the total increase in capital required for a $100 million multi-strategy portfolio could be even lower than the increase associated with $100 million in a single strategy.

[587] The increase for strategies with uncovered futures would be higher. For example, if the additional futures margin meant the entity's overall margin requirement increased from 2% of P to 3% of P, then the percentage increase would be [max(0.03, $100k)/$0.02P] − 1. The smallest value of P we consider is $50 million (*see infra* Table 10 and related discussion). Under the assumption that higher futures margin raises overall margin costs from 2% to 3%, the increase in required capital for strategies with no margin would be 50% at P=$50 million.

[588] The increase for strategies with uncovered futures would be higher. For example, if the additional futures margin meant the entity's overall margin requirement increased from 2% of P to 3% of P, then the percentage increase would be [max(0.03, haircut)/$0.02P] − 1. All but one of the 17 strategies with haircuts have haircuts larger than 0.03 except for strategy 8, for which we calculate a haircut of 2.875%. Under the assumption that higher futures margin raises overall margin costs from 2% to 3%, then, our calculations are nearly the same whether the futures positions are covered or not.

TABLE 10—ESTIMATED INCREASE IN REQUIRED MINIMUM CAPITAL

Strategy	Estimated capital increase reported by the commenter (%)	Commission-estimated increases in capital	
		P = $50mm (%)	Large P (P → infinity) (%)
1	828	0	0
2	595	0	0
3	718	0	0
4	1,117	0	0
5	34	0	0
6	645	0	0
7	580	273	263
8	718	54	44
9	171	0	0
10	913	* unknown	unknown
11	530	0	0
12	207	410	400
13	742	80	0
14	612	0	0
15	615	0	0
16	315	85	75
17	173	98	88
18 (a) **	522	210	200
18 (b) **	522	335	325
18 (c) **	522	73	63

* For strategy 10, the Commission was unable to find, under its analysis, a position size that corresponded to the commenter's estimate of 913%.

** The Commission estimated three potential versions of strategy 18, ''Low Risk Tight 3 Year Micro RV.''

The values shown in Table 10 may understate the actual costs of the Net Capital Rule because this analysis does not consider the ''lock-up'' requirement that capital be held for at least a period of one year.[589] As one commenter described, this requirement may be more restrictive for some corporate structures than for others.[590] For example, consider a dealer trading in both Treasury securities and equities for whom, on day 1, its Treasury positions require net capital of $70 and its equity positions require net capital of $30, for total required net capital of $100. On day 2, the dealer's activities shift such that its Treasury positions now require net capital of $30 and its equity positions require $70. If a single entity engages in these activities, the shift in activities on day 2 will not require any change in net capital. However, the shift may require additional net capital if different activities are conducted by separate subsidiary entities. Since the Net Capital Rule requires capital to be held for at least one year, the entity trading Treasury securities would still have $70 of net capital on day 2, while the entity trading equities would need to increase its net capital from $30 to $70, for a total required net capital of $140 across both entities. For a dealer organized in this way, shifts in the distribution of activities across subsidiaries may result in a higher net capital requirement than would otherwise apply to the aggregate activities. In this simple example, a dealer that engaged 100% in equities one day (through its equity-focused subsidiary) and 100% in Treasury securities on another day (through its Treasury-focused subsidiary) may have to hold twice as much net capital as it would if it were organized as a single consolidated entity. Affected parties may respond to this capital lock-up by limiting the amount of capital they deploy toward dealing activities, with the result that affected parties may become less likely to commit capital to dealing activities, even in times when the returns to dealing may be high. However, currently-registered dealers and their investors must already consider these consequences of the Net Capital Rule.

We acknowledge that in instances where the Net Capital Rule may increase affected parties' minimum capital requirements, these parties may need to raise capital or reduce leverage. Several commenters suggested that affected parties could respond to the final rules by changing or curtailing their trading to avoid the revised dealer definition.[591] Or, as discussed above, affected parties could respond by reorganizing their activities—*e.g.,* to consolidate subsidiaries—in order to avoid the capital lock-up problem described in the previous paragraph. We cannot quantify the costs to these affected parties and their investors of scaling back trading activities or reorganizing since we do not know the scope of their current activities, how profitable those activities may be, or how market participants may allocate trading across different legal entities. An affected party's costs of increased net capital requirements under the application of the Net Capital Rule could be partially offset by reductions in its cost of capital as higher levels of net capital may reduce the affected party's probability of default.

c. Potential Implications for Private Funds and Advisers

Commenters mentioned other potential conflicts between private funds' business and the dealer rules and regulations beyond the challenge of reconciling fund investors' withdrawal rights with dealers' capital requirements.[592] As explained above, the Commission expects that only a limited number of private funds will be affected by the final rules.[593] For the

[589] The Net Capital Rule allows for exceptions from the one-year lockup for withdrawals that are approved in writing by the examining authority. Based on staff experience, FINRA—in its capacity as an examining authority—has on rare occasions provided such approvals to address extraordinary circumstances. *See supra* note 567.

[590] *See* Duffie Comment Letter.

[591] *See supra* note 62.

[592] *See supra* notes 230, 233, 242, and 254.

[593] *See* sections II.A.3.b, III.B.2.c.

limited number of affected funds under the final rules, we discuss below potential costs to those funds and their advisers and investors. Depending on the specific conflict between private funds' business and the dealer rules and regulations, a fund may respond by revising its organizational documents and agreements with third parties, such as prime brokers and executing brokers; modifying its investing strategies (which can require investor consent and also trigger investors' redemption rights) to avoid dealing; or accommodating investors that withdraw from the fund. Although these costs may be significant for individual funds, in aggregate we do not expect that their combined impact will be significant because of the limited number of funds likely to be affected by the final rules.

One potential conflict is that private funds that register as dealers may face restrictions against participating in the IPO market.[594] Hedge funds that buy IPO shares and also engage in dealing strategies may have to withdraw from one set of activities when the final rules go into effect. We expect that funds will choose the activity that adds more value to the fund and its investors; some may choose to register and stay out of the IPO market, while others may forgo dealing to be able to invest in IPOs. Because hedge funds are important players in the IPO market,[595] any large-scale exit of hedge funds from this market could impact the ability of issuers to raise new capital, as well as reduce efficient pricing in new issues. Similarly, any large-scale exit from dealing could impact liquidity. The magnitude of these costs depends on the extent to which there are hedge funds that engage in both activities simultaneously, as well as on hedge funds' total share of aggregate IPO and dealing activity.

Several commenters stated that registering as dealers would cause funds to lose the benefit of various customer protection regulations that govern their relations with their broker-dealers.[596] Funds that register as dealers may incur costs to the extent that they need to revise their organizational documents and agreements with third parties because certain customer protection regulations would no longer apply. And insofar as the applicability of these customer protections affect investors' decisions to invest, funds may also incur costs from investors withdrawing or choosing not to invest.

One commenter suggested that the proposed rules' impact may be costly for private funds because funds and broker-dealers are treated differently for tax purposes.[597] This different treatment may result in costs for some of the affected funds. But given the limited number of affected funds, we do not believe that tax consequences for those funds will harm market liquidity and efficiency.

One commenter said that ''many investment funds (*e.g.,* pension plans) may not be permitted to register as a dealer under their organizational charters'' and also that ''many potential fund investors may not be permitted to invest in the equity of a broker-dealer.'' [598] If any affected funds are prohibited from registering as dealers or have investors that are prohibited from investing in a dealer, then we agree that those affected funds may incur additional costs, including costs of revising organizational documents, splitting dealing and non-dealing activities into separate legal entities, or changing investment strategies and withdrawal of investors, whichever option is least costly.

A commenter suggested one scenario in the context of all-to-all trading in which a fund's best execution obligation as a dealer under FINRA Rule 5310 may conflict with the fund adviser's fiduciary duty to achieve best execution for its client, the fund.[599] The adviser's fiduciary duty to achieve best execution is informed by applicable legal requirements,[600] and, as stated above, we do not believe a conflict between these legal obligations will arise in the scenario raised by the commenter.[601] The fund may nevertheless incur costs because of best execution obligations as a newly registered dealer, including costs for amending its organizational agreements to facilitate compliance with FINRA Rule 5310. To the extent they face these costs, some affected persons may consider ceasing any behavior that constitutes dealing.

Another commenter said that FINRA rules may restrict investment advisers who are also dealers from receiving carried interest from their private fund clients.[602] The comment letter cited to FINRA Rule 2150, which contains prohibitions against FINRA members sharing in the profits of customers' accounts. The commenter said that the proposed rules' aggregation provision, which would have combined advisers' trading on behalf of their clients together with advisers' proprietary trading, would also have meant that adviser-client relationships could be treated like dealer-customer relationships for the purposes of FINRA Rule 2150. We have removed the aggregation standard from the definition of ''own account,'' as discussed previously, and these changes mean the final rules are not likely to prevent advisers who are also dealers from receiving carried interest from their private fund clients.

d. Effects on Market Liquidity

Studies on HFT are mixed on whether affected firms' activities may improve or worsen market liquidity.[603] Recent experience is also mixed on the role of PTFs during market events. PTFs' share of market intermediation fell considerably more than did dealers' share did during 2020,[604] but their share actually increased during the 2014 flash rally [605] and again during March 2023.[606] Many commenters said that the final rules would reduce market liquidity, especially in the market for

[594] A broker-dealer registered with FINRA is subject to Rule 5130, which prohibits member firms from selling new issues (*e.g.,* IPOs) to restricted persons. Generally, a broker-dealer, along with the owners that would be listed on Form BD (*e.g.,* 5% direct owners, 25% indirect owners) would be considered ''restricted persons'' and subject to the new issue restrictions. FINRA member firms are also prohibited from purchasing new issue securities. *See* AIMA Comment Letter II; AIMA Comment Letter III; Citadel Comment Letter; Committee on Capital Markets Comment Letter; Element Comment Letter; Lewis Study; MFA Comment Letter I.

[595] *See* Hong Qian and Zhaodong (Ken) Zhong, 2017, ''Do Hedge Funds Possess Private Information about IPO Stocks? Evidence from Post-IPO Holdings,'' *Review of Asset Pricing Studies 8(1),* p. 117–152. These authors observe that hedge funds hold about 80% of the average IPO firm's shares as of the first reporting date after the IPO.

[596] *See, e.g.,* Citadel Comment Letter; Lewis Study.

[597] *See* Two Sigma Comment Letter I.

[598] *See* Blackrock Comment Letter.

[599] *Id.*

[600] *See* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Release No. 5248 (June 5, 2019), 84 FR 33669, 33674–75 (July 12, 2019).

[601] *See supra* note 235 and accompanying text.

[602] *See* McIntyre Comment Letter II.

[603] *See* section III.B.2.b for why we believe HFT is the most likely private fund activity to fit the final rules' factors. *See also* 2015 Joint Staff Report, stating that low latency trading—*i.e.,* HFT—is ''typically [a] key element of trading strategies'' for PTFs. For a survey of the literature on HFT, *see* Albert J., 2016, The Economics of High-Frequency Trading: Taking Stock, *Annual Review of Financial Economics (8),* 1–24. *See also* Brogaard, Jonathan, Allen Carrion, Thibaut Moyaert, Ryan Riordan, Andriy Shkilko, Konstantin Sokolov, 2018, High Frequency Trading and Extreme Price Movements, *Journal of Financial Economics 128(2),* 253–265; ''Fast and Furious,'' 11/20/2018, *J.P. Morgan North America Fixed Income Strategy;* ''Revisiting the Ides of March, Part I: A Thousand Year Flood,'' Council on Foreign Relations (July 20, 2020), *available at https://www.cfr.org/blog/revisiting-ides-march-part-i-thousand-year-flood;* Better Markets Comment Letter.

[604] *See supra* notes 21 and 443.

[605] *See* 2015 Joint Staff report.

[606] *See supra* note 447.

U.S. Government securities.[607] These commenters said that affected parties would curtail or cease the trading activities described in the final rule rather than submit to dealer registration.[608] Two commenters also said that the costs of dealer registration, especially the Net Capital Rule, would lead affected parties to curtail their trading even if they were to register as dealers and continue dealing.[609] Also, if affected parties experience rapid changes in their amounts of liquid assets or unsubordinated liabilities, the requirement to maintain minimum net capital could prevent them from providing liquidity even if it would be profitable to do so.[610] One commenter said that the costs of dealer registration are a barrier to participation in the U.S. Treasury market.[611] Another commenter said that the costs of the Net Capital Rule might make it more costly for firms to employ capital in trading U.S. Government securities.[612] For instance, when a ''parent'' firm has the option to contribute capital to any of its trading businesses (''subsidiaries''), one commenter added that the effects of applying the Net Capital Rule to these entities might directly harm liquidity in government securities by making it more costly for the parent entity to ''opportunistically'' deploy capital internally.[613]

We acknowledge that the final rules could have the effect of reducing liquidity. Affected parties may respond by curtailing their liquidity-providing activities. If the final rules reduce affected parties' profitability, then investors in those entities may reduce their market participation as well.[614] A decrease in the activities of liquidity-providing entities and their investors would harm market liquidity. Because some PTFs have become especially prominent intermediaries in the market for U.S. Government securities, any harm to market liquidity may be more pronounced in that market.[615]

We conclude that any potential harm to market liquidity is likely to be smaller than commenters suggested because the final rules will likely affect fewer entities than the proposed rule, due to the elimination of the proposed first qualitative factor[616] and the elimination of aggregation.[617] We also believe that any harm to liquidity is likely to be limited for the following reasons. First, if affected persons reduce their trading and bid-ask spreads meaningfully widen, then other registered dealers may compete with one another to trade on the wider spreads. The additional buying and selling by these other dealers would offset some of the liquidity lost as the affected persons withdrew from dealing. Second, if significant liquidity providers that are better capitalized are also less volatile during times of crisis, then the final rules may promote the stability and resiliency of market liquidity by consistently applying the Net Capital Rule. Third, section III.B.4 describes how the failure of a significant liquidity provider can harm market functioning. These final rules will reduce the risk that a significant liquidity provider fails, and so they should also limit the harm such failure may have on market liquidity.

The following analysis of Form PF data sheds light on how the final rules' effect on private funds might, in turn, reduce market liquidity.[618] Registered investment advisers report the monthly turnover[619] across all their funds, in each of 10 different asset classes. As discussed in section III.B.2.b, private fund activities reported as HFT are the most likely to be affected by the final rules. Table 11 describes the turnover for the advisers associated with funds that use HFT for the most recently reported month between 2021–Q4 and 2022–Q3 (*see also* Table 3). The left column describes the advisers for the 40 funds listed in Table 3 as using less than 10% of NAV for HFT, and the right column describes the advisers for the 12 funds listed as using more than 10%. The second row lists the total number of funds with these advisers (including funds that do not have any reported HFT), and the third row lists the total NAV of all of these funds. As described above in the context of Table 3, we use Form PF data to translate each fund's HFT use (reported as a percentage of NAV) into dollar amounts. The fourth row of Table 11 divides the total HFT use across these advisers by the total NAV of all the advisers' funds, to express an adviser-level percentage use of HFT. The remaining rows report the total turnover for these advisers during the most recent month in their most recent filings between 2021–Q4 and 2022–Q3. No adviser appears in both columns.

TABLE 11—TURNOVER FOR ADVISERS OF FUNDS USING HFT STRATEGIES, FOR MOST RECENT MONTH BETWEEN 2021–Q4 AND 2022–Q3

	Funds with HFT ≤10% of NAV	Funds with HFT >10% of NAV
Advisers over funds using HFT	21	10
Total funds with these advisers	178	23
Total NAV ($ billions)	$210.6	$63.2
HFT (as % of adviser total NAV)	0%–6.1%	14.1%–64.0%
Turnover ($ billions):		
Listed equity	$1,511.3	$193.8
Corp. bonds (other than convertible)	66.3	7.6
Convertible bonds	4.3	1.3
U.S. Treasury securities	423.1	78.6
Agency securities	11.0	3.4

[607] *See* AIMA Comment Letter II; BlackRock Comment Letter; Duffie Comment Letter, FIA–PTG Comment Letter; Hagerty-Hill Comment Letter; IDTA Comment Letter; Lewis Study; MMI Comment Letter; Morgan Lewis Comment Letter; Virtu Comment Letter. *See also* section III.C.2.b for a discussion of the Duffie Comment Letter, including the Net Capital Rule's potential impact on market participants' trading activity.

[608] *See supra* note 62.

[609] *See* MFA Comment Letter II; Citadel Comment Letter.

[610] Dealers that violate the Net Capital Rule by having too few liquid assets relative to unsubordinated liabilities, at any moment, must immediately cease taking on new positions.

[611] *See* Overdahl Comment Letter.

[612] *See* Duffie Comment Letter.

[613] *See* Duffie Comment Letter.

[614] *See* Two Sigma Comment Letter I.

[615] This potential reduction in liquidity may occur despite the improvement to the liquidity of the U.S. Treasury securities market that may result from increased central clearing. *See* section III.C.1.b.

[616] *See* section II.A.1.a.

[617] *See* section II.A.4.

[618] The Overdahl Comment Letter recommended that the Commission examine the liquidity contribution made by persons who would be affected by the proposed rule (esp. *see* paragraph 43).

[619] Question 27 of Form PF defines turnover as ''the sum of the absolute values of transactions in the relevant asset class during the period.''

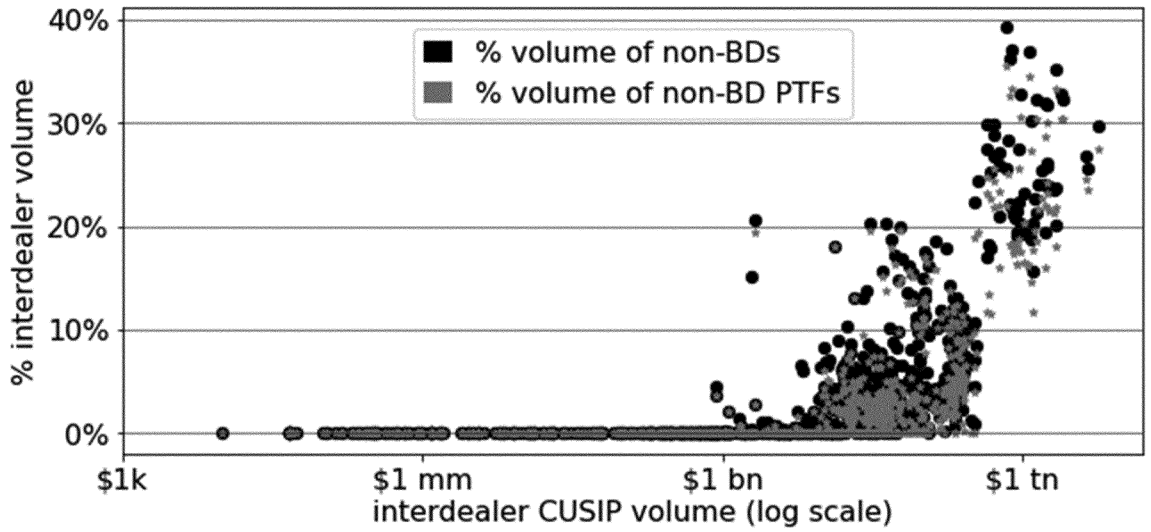
TABLE 11—TURNOVER FOR ADVISERS OF FUNDS USING HFT STRATEGIES, FOR MOST RECENT MONTH BETWEEN 2021–Q4 AND 2022–Q3—Continued

	Funds with HFT ≤10% of NAV	Funds with HFT >10% of NAV
GSE bonds	15.7	9.6
Sov. bonds (non-U.S. G10)	119.6	41.6
Other sovereign bonds	50.6	2.4
U.S. state & local bonds	0.8	0.6
Futures	2,709.3	1,366.1

As described in section III.B.2.c, the advisers in the left column may be less likely than those in the right column to have funds that meet the final rules' definition of dealing. To put the turnover numbers in context, total equity trading volume across all U.S. exchanges averaged about $12 trillion per month in 2022,[620] and total U.S. Treasury market volume was approximately $17 trillion in October 2023.[621] Therefore, the advisers in the left column may account for approximately 12.6% of equity market volume and 1.6% of Treasury market volume, and the advisers in the right column may account for another 2.5% of equity volume and 0.5% of Treasury volume. For the following reasons, we expect any curtailing of affected activities to reduce trading volumes by much less than these numbers. First, for the advisers in the left column that may be less likely to have any affected funds, only 0%–6% of the advisers' total NAV was used for HFT. Second, for the advisers in both columns, the final rules may not apply to all the activities that advisers report as HFT on Form PF. Third, affected private funds that do cease certain HFT activities may redeploy their capital to alternate trading strategies and thus keep the capital engaged in the markets. Fourth, if falling trading volumes were to cause bid-ask spreads to meaningfully widen, other registered dealers might increase their own buying and selling and so replace some of the lost activity.

We also analyze entities' trading volumes in TRACE data to estimate how much liquidity affected parties may provide in the market for U.S. Government securities. For each government security CUSIP in TRACE in 2022, we calculate trading volume in the interdealer market[622] and calculate the share of that volume attributable to identifiable[623] non-broker-dealers. Figure 3 shows, for each CUSIP, what the interdealer volume was in 2022 along with the share of that volume attributable to (i) all non-broker-dealers and (ii) the subset of non-broker-dealers identified in TRACE as PTFs. We do not show the shares for firms identified as hedge funds because the shares are generally quite low.

Figure 3. CUSIP-level volumes in 2022 and volume shares attributable to non-broker-dealers



The values for ''% interdealer volume'' in Figure 3 may be biased downwards by any non-broker-dealers that trade on Treasury ATSs by submitting orders through broker-dealers, because TRACE would attribute such trades to the broker-dealer and the ultimate buyer or seller would remain anonymous. However, this bias will be

[620] *See* Cboe, Historical Market Volume Data, *available at https://www.cboe.com/us/equities/market_statistics/historical_market_volume/.*

[621] *See* FINRA, *Treasury Monthly Aggregate Statistics, available at https://www.finra.org/finra-data/browse-catalog/about-treasury/monthly-data.*

[622] *See supra* note 430.

[623] *See supra* note 380.

smaller for CUSIPs that PTFs are most likely to trade on the most active Treasury ATSs—generally the higher-volume CUSIPs—because PTFs involved in such trades are not anonymous in our data. Identifiable non-broker-dealer PTFs account for more than 10% of interdealer volume in approximately 11% of CUSIPs and for more than 25% of volume in 1.6% of CUSIPs, but for no CUSIPs do they account for more than 40% of the volume in 2022.

The TRACE analysis is limited by the large volume of trading where the counterparty to the reporting broker-dealer is anonymous.[624] However, we understand that entities that regularly provide liquidity in U.S. Government securities markets are likely to appear in our data, because they are likely to trade on the ATSs that report to TRACE.

Commenters said that the proposed rules would harm liquidity in markets for crypto assets.[625] We acknowledge that the final rules may affect PTFs in crypto asset markets, but some significant liquidity providers in these markets may already be dealers under the Exchange Act.[626] If affected PTFs curtail their crypto asset trading activities, then trading volumes in crypto asset markets could fall, harming the liquidity and efficiency of these markets.

3. Effects on Efficiency, Competition, and Capital Formation

a. Effects on Efficiency

The previous section explains why we believe the final rules could have a small negative effect on market liquidity. More liquid markets tend to be more efficient markets since they allow new information to influence securities prices more quickly. Therefore, we also expect that the final rules could have a small negative effect on market efficiency, especially in the market for U.S. Government securities.[627] However, as discussed in section III.C.1.b, adequately capitalized firms [628] may be less sensitive to market disruptions that could otherwise reduce their capacity to provide liquidity. Therefore, to the extent that the final rules lead to better capitalization for significant liquidity providers, the final rules could also promote market efficiency.

b. Effects on Competition

Section III.C.1.a describes how the final rules will promote competition among entities that regularly provide significant liquidity by applying consistent regulation to these entities, thus leveling the competitive playing field between liquidity provision conducted by entities that are currently registered as dealers and government securities dealers and by entities that are not. The section also discusses how the final rules' costs may be proportionally greater for smaller affected parties, which may reduce the overall benefits to competition. Commenters also raised concerns that the final rules could harm competition. We respond to these concerns in the paragraphs below, but, in general, any negative effect on the competitiveness of liquidity provision in U.S. securities markets would likely be small because, as discussed in section III.B.3 (including Table 4 for the U.S. Treasury market), liquidity provision in securities markets is not concentrated, even among currently registered broker-dealers. The final rules may also affect some PTFs who conduct smaller trading volumes but nevertheless fit the final rules' qualitative factor, and such PTFs may choose to cease their liquidity-providing activities. Because such PTFs would be less significant liquidity providers on account of their smaller volumes, and because currently registered broker-dealers are not concentrated, we expect that any exit of theirs from the market would have a negligible effect on the competitiveness of liquidity provision in U.S. securities markets.

One commenter said that the final rules could put U.S. liquidity providers at a disadvantage versus foreign firms.[629] However, other than central banks, foreign sovereign entities, and international financial institutions (as defined in the final rules), foreign firms that deal in U.S. markets are not excluded from the final rules. Therefore, we do not expect the final rules to create competitive disadvantages for U.S. liquidity providers. Finally, any competitive disadvantages that these final rules may create would already be borne by currently registered dealers.

One commenter said that the final rules would harm competition by requiring some private funds to register but not others.[630] The final rules would apply a similar regulatory treatment to persons conducting similar activities in securities markets, regardless of the persons' legal organization or structure. The final rules may treat some private funds differently from others, but only in cases where those private funds engage in activities that have different characteristics than other funds' activities.

Another commenter said that the proposed rules would not have leveled the playing field because too many non-dealing entities would have been swept up by the proposed quantitative factor, by ambiguity in the proposed qualitative factors (*e.g.,* ''the same or substantially similar securities'') and by the aggregation language.[631] The Commission has responded to these concerns by removing the proposed quantitative factor and the proposed first qualitative factor and by removing the aggregation provisions. With these changes, the final rules are more appropriately targeted to persons who are effectively dealers.

Two commenters said that the proposed rules would harm competition in crypto asset markets.[632] The effect on competition in crypto asset markets would be similar to the effects on competition already discussed for other markets.[633]

In addition, as stated above, some commenters requested that the Commission consider interactions between the economic effects of the proposed rules and other recent Commission rules, as well as practical realities such as implementation timelines.[634] As discussed above, the Commission acknowledges that overlapping compliance periods may in some cases increase costs.[635] This may be particularly true for smaller entities with more limited compliance resources.[636] This effect can negatively impact some competitors because these entities may be less able to absorb or pass on these additional costs, making it more difficult for them to remain in business or compete. However, the final rules mitigate overall costs relative to

[624] *See id.*

[625] *See* Blockchain Association Comment Letter; American Blockchain PAC Comment Letter; Andreessen Horowitz Comment Letter; ADAM Comment Letter; U.S. Reps. Comment Letter.

[626] *See* section III.B.2.c.

[627] By ''efficiency,'' here we mean price discovery, or the speed with which new information or developments impact the market price of a security.

[628] PTFs' risk-taking is currently less constrained than that of registered broker-dealers (*see* section III.B.2.a). For evidence that hedge funds may have less capital than the Net Capital Rule allows, *see supra* notes 438 and 468 and accompanying text.

[629] *See* Overdahl Comment Letter.

[630] *See* Citadel Comment Letter.

[631] *See* Virtu Comment Letter.

[632] *See* Andreessen Horowitz Comment Letter; Consensys Comment Letter.

[633] We believe that some primary liquidity providers in crypto asset markets may already be dealers under the Exchange Act. *See* section III.B.2.c and *supra* note 626 and accompanying text.

[634] *See supra* section III.C.2.a.v.

[635] *Id.*

[636] *But see infra* section V (stating that the final rules will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act).

the proposal,[637] and we do not believe these increased compliance costs will be significant for most affected parties subject to the final rules.[638] We therefore do not expect the risk of negative competitive effects from increased compliance costs due to simultaneous compliance periods to be significant.

c. Effects on Capital Formation

We expect the final rules' effect on capital formation to be mixed. As described above in sections III.C.2.d and III.C.3.a, we agree with commenters[639] that the final rules could have small negative effects on market liquidity and efficiency. Lower liquidity and efficiency would tend to harm capital formation by reducing security prices and raising yields.

The final rules will also promote market stability, resiliency, and investor confidence by helping to ensure that dealing activity is adequately capitalized, subject to regulatory oversight, and accompanied by regulated internal controls and deterrents to deceptive behaviors. More stable markets and strengthened investor confidence in U.S. markets may promote capital formation by increasing demand for securities issued in U.S. markets, raising security prices, and lowering yields. One commenter agreed that the ''overall effects [on market participation, market liquidity, price efficiency, competition among liquidity providers, and capital formation] are positive.''[640]

D. Reasonable Alternatives

The Commission considered several alternatives to the final rules: (1) retain the quantitative factor; (2) add a quantitative threshold to the proposed first qualitative factor; (3) remove the exclusion for registered investment companies; (4) exclude registered investment advisers and private funds; (5) require registered investment advisers and private funds to report to TRACE (rather than comply with the full set of dealer rules and regulations); and (6) revise the final rules to carve out or narrow the application to crypto asset securities.

1. Retain the Quantitative Standard

Proposed Rule 3a44–2 would have required dealer registration of persons who purchased and/or sold a total of at least $25 billion in U.S. Government securities in each of 4 out of the last 6 months. The Commission proposed the particular threshold value because available data suggested that $25 billion would appear to strike a balance between low values, which may affect many small-volume traders who are not dealing, and high values, which may miss entities whose activities provide significant liquidity in the market.[641] Some commenters said the analysis behind the proposed quantitative factor was flawed due to the limitations of TRACE data and the assumptions the Commission used.[642] In section III.B.2.d, we discuss the limitations of TRACE data. Based on comments received, we acknowledge that identifiable TRACE data may not represent trading patterns in the dealer-to-customer market. This conclusion heightens the already high uncertainty around where to set the value of such a threshold.

Market participants who would meet the quantitative standard by regularly conducting large volumes of securities trading activity would likely also meet the expressing trading interest and primary revenue factors. The overlap may exist either because large trading volumes accompany expressions of trading interest in line with the expressing trading interest factor or because significant liquidity-providers that earn revenue from capturing bid-ask spreads or from capturing any incentives offered by trading venues (primary revenue factor) also tend to have large trading volumes.

Table 12 approximates the overlap between the proposed quantitative factor and the primary revenue factor by sorting identifiable firms based on their average monthly Treasury-trading volume in 2022 and then showing how many firms in each volume bucket appear to meet or not meet the primary revenue factor (*i.e.,* firms that appear in the left-most bar in Figure 2). This table counts firms based on their average monthly volume—which does not precisely match the ''4 out of the past 6 months'' in the proposed quantitative factor—but average monthly volume is sufficient to indicate the extent to which firms whose activities meet the primary revenue factor also have large trading volumes.

TABLE 12—OVERLAP BETWEEN QUANTITATIVE STANDARD AND PRIMARY REVENUE FACTOR

Average monthly trading volume in 2022	# firms meeting primary revenue factor	# firms not meeting primary revenue factor
<$10 billion	4	174
$10–25 billion	8	18
$25–50 billion	7	6
$50–100 billion	2	3
$100 billion or higher	10	0

The quantitative factor could support the final rules in applying dealer registration to entities that provide significant liquidity, by specifically including the most active market participants (unless excluded). The bright-line test in the quantitative factor also could reduce self-evaluation costs for persons who regularly surpass the threshold, but it would not reduce the self-evaluation costs of persons who do not regularly surpass the threshold because such persons would still have to consider the expressing trading interest and primary revenue factors.

The quantitative factor would potentially increase the costs of the final rules because the quantitative standard may apply to a greater number of entities.[643] This factor would have the potential to affect persons who are not dealing, because it would not consider any other facts and circumstances other than total transaction volume. For example, a hypothetical long-only investor that regularly purchased $25 billion Treasuries in a month and held them to maturity, would be defined as a dealer under this alternative. Many commenters said that the $25 billion

[637] *See supra* section II.A.3.

[638] *See supra* section III.C.2.a.v.

[639] *See supra* note 607.

[640] *See* Gretz Comment Letter.

[641] *See* Proposing Release at 23092–93.

[642] *See* Citadel Comment Letter; MFA Comment Letter I; NAPFM Comment Letter; Overdahl Comment Letter.

[643] *See supra* notes 203–204.

quantitative factor had a threshold that was too low or was otherwise not indicative of dealing.[644] We agree that the $25 billion threshold could capture persons who are not dealing. This alternative would potentially burden non-dealers with the costs of registration and compliance, could harm their investors by lowering returns, and could potentially harm market liquidity, efficiency, competition, and capital formation if affected persons were to reduce their trading below the $25 billion threshold to avoid becoming dealers.

Given that the quantitative factor is unlikely to capture dealing activity that is not also captured by the expressing trading interest and primary revenue factors, and given the additional costs of requiring entities who are not dealing to register as dealers, the Commission has removed the quantitative standard from the final rules.[645]

2. Retain the First Qualitative Standard (e.g., ''Routinely Making Roughly Comparable Purchases and Sales of the Same or Substantially Similar Securities [or Government Securities] in a Day'')

The Commission has long distinguished dealer activity from trader activity by focusing on, among other things, a dealer's frequent turnover of positions—stating, for example, that the dealer ''sells securities . . . he has purchased or intends to purchase elsewhere or buys securities . . . with a view to disposing of them elsewhere'' [646] The proposed first qualitative factor was intended to describe activities that include such frequent turnover, and also to separate persons engaging in isolated or sporadic securities transactions from persons whose regularity of transacting demonstrates that they are acting as dealers.

Commenters raised concerns about the proposed first qualitative factor, saying that the factor's language was vague and that the factor could potentially capture significant non-dealing activities.[647] Commenters suggested that the Commission modify the factor, limit it with exclusions, or eliminate it from the final rules.[648] The Commission considered changes to the rule, including revising the terms ''routinely,'' ''roughly comparable,'' or ''in a day, or changing the factor to require that dealing mean trading in the same security instead of in ''the same or substantially similar'' securities. Upon consideration, the Commission agrees with commenters' that the proposed first qualitative factor could capture more than dealing activity. The Commission also does not believe that modifications to this factor could appropriately limit its application to dealing activity, and dealing activity that would be captured by the factor would also likely be captured by at least one of the final rules' qualitative factors—the trading interest factor and the primary revenue factor.

Retaining the proposed first qualitative factor may improve regulators' ability to analyze data on market activity,[649] if persons who would not otherwise be affected by the final rules (including persons who may not be dealing) were to submit to dealer registration. However, retaining this factor may also substantially increase the final rules' costs by capturing activities that are not dealing. To the extent that this factor would capture non-dealing, retaining it would require persons who are not dealing to either register as dealers and incur the costs described in section III.C.2, or else to cease certain non-dealing activities.

3. Remove the Exclusion for Registered Investment Companies

The final rules exclude registered investment companies from the application of the rules, even if their activities meet the final rules' definition of dealing. The Commission could adopt the final rules without this exclusion, extending the rationale that all market participants engaged in activities that meet the final rules' definition of dealing, including registered investment companies, ought to register as dealers.

Including investment companies in the application of the rule would provide additional benefits by applying dealer regulation to more significant liquidity providers. First, we believe that standardizing the regulatory treatment of all significant liquidity providers would be beneficial because, as discussed previously, the uneven regulation potentially gives less-regulated entities an unfair advantage over registered dealers that engage in similar activities. Specifically, this alternative would further standardize regulatory treatment of significant liquidity providers in terms of capitalization, transaction reporting, books and records requirements, and anti-manipulation and anti-fraud provisions.[650] However, the benefits of registering investment companies that are engaged in dealing activity as dealers would be less than the benefits of registering PTFs that are engaged in dealing activity, because the existing regulation that applies to registered investment companies under the Investment Company Act overlaps with the regulation that applies to dealers on several points.[651] For example, registered investment companies are subject to rules that limit leverage risk; [652] they must maintain certain books and records; [653] and they must report to the Commission on many aspects of their operations and their portfolio holdings.[654] As discussed above and in the Proposing Release, the benefits of registering investment companies engaged in the rules' dealing activity as dealers would also be less than the benefits of registering private funds engaged in the rules' dealing activity, because private funds are not subject to the extensive regulatory

[644] *See* AIMA Comment Letter II; AIMA Comment Letter III; Citadel Comment Letter; Committee on Capital Markets Comment Letter; Element Comment Letter; FIA PTG Comment Letter I; Fried Frank Comment Letter; ICI Comment Letter; Lewis Study; MFA Comment Letter I; MFA Comment Letter II; NAPFM Comment Letter; Overdahl Comment Letter; SIFMA Comment Letter I; T. Rowe Price Comment Letter; Two Sigma Comment Letter I. A few commenters calculated that $25 billion, as a fraction of average daily activity in the U.S. Treasury market, may be as small as approximately 0.2%.

[645] The MFA Comment Letter I said that the quantitative factor would be redundant with the qualitative factors.

[646] *See* U.S. Securities and Exchange Commission, Report on the Feasibility and Advisability of the Complete Segregation of the Functions of Dealer and Broker XIV (1936).

[647] *See* section II.A.1.a.

[648] *See supra* notes 74–76.

[649] *See* section III.C.1.c.

[650] *See* section III.B.4 for a discussion of the market externalities that such rules seek to address; *see also* section III.C.1 for a discussion on the benefits of such rules.

[651] *See* ICI Comment Letter.

[652] *See* 15 U.S.C. 80a–18 (Section 18 prohibits closed-end funds from issuing or selling senior securities that represent indebtedness unless it has at least 300% asset coverage, and open-end funds from issuing or selling a senior security other than borrowing from a bank, which are also subject to 300% asset coverage, and defines ''senior security,'' in part, as ''any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness.''); 17 CFR 270.18f–4 (''Rule 18f–4'') (generally requiring investment companies that use derivatives to adopt a derivatives risk management program that includes a limitation on leverage risk based on VaR). *See also* Use of Derivatives by Registered Investment Companies and Business Development Companies, Investment Company Act Release No. 34084 (Nov. 2, 2021), 85 FR 83162 (Dec. 21, 2020).

[653] 15 U.S.C. 80a–30.

[654] Registered investment companies report certain census information annually to the Commission on Form N–CEN. Registered investment companies also are required to report monthly portfolio-wide and position-level holdings data to the Commission on Form N–PORT. This includes information regarding repurchase agreements, securities lending activities, and counterparty exposures, terms of derivatives contracts, and discrete portfolio-level and position-level risk measures to better understand fund exposure to changes in market conditions.

framework of the Investment Company Act.[655]

Removing the exclusion for registered investment companies would increase the costs of the final rules. Affected investment companies would bear the costs of registering with the Commission as dealers, joining FINRA or another SRO, reporting to TRACE and CAT, and becoming a member of SIPC.[656] They would also be required to comply with dealer rules on financial responsibility and risk management, operational integrity, and books and records.[657] Complying with these rules may be inefficient in cases where elements of the Investment Company Act overlap with dealer regulation—*i.e.,* where segments of the investment company rules and the dealer rules serve the same purpose but may entail different disclosure, recordkeeping, or other such actions.[658] The regulatory regime that has evolved around dealers might also be inadequate or inappropriate for affected investment companies. For example, investment companies may be unable to comply with the Net Capital Rule without substantially reducing their investors' withdrawal rights.[659]

Instead of registering as dealers, affected investment companies could respond by curtailing or ceasing certain trading activities.[660] Such a response would reduce the number of investment companies registering as dealers, and so would reduce or eliminate the benefits discussed above on net capital, transactions reporting, etc. The curtailing of profitable trading activities would also harm the affected investment companies and their investors. The changes in aggregate securities trading activity could also reduce market efficiency and liquidity, thus harming investors of all sizes throughout the markets. However, if the changes in market activity were to increase the profitability of certain activities (such as by increasing certain bid-ask spreads), then other registered dealers may increase their own trading activity and so offset at least some of the harm to market efficiency and liquidity.

Commenters generally agreed with the exclusion for registered investment companies,[661] and did not suggest any changes to the final rules' treatment of investment companies.

4. Exclude Registered Investment Advisers and Private Funds

Registered investment advisers and private funds may engage in activities that meet the final rules' definition of dealing. If so, the final rules would require them to register as dealers and comply with dealer regulations. Some commenters said that the Commission should exclude registered investment advisers, along with any private funds they may advise, from the final rules because the advisers are already subject to an extensive regulatory framework under the Advisers Act and because elements of the dealer regime—*e.g.,* the Net Capital Rule, restrictions on participating in the IPO market—may be inappropriate or untenable for advisers and adviser-led funds.[662] However, as stated in the Proposing Release, market participants that are engaged in dealing activity should be subject to dealer regulations. The Commission is mindful of concerns raised by commenters regarding the application of the dealer regime to investment advisers and private funds, and it has made significant changes to the definition of ''own account'' to remove the aggregation standard in order to appropriately tailor the scope of advisers and funds captured by the final rules.[663]

Excluding registered investment advisers and their private fund clients could reduce many of the final rules' benefits by applying dealer regulation to fewer significant liquidity providers.[664] Advisers or private funds whose activities have the effect of providing liquidity would not have to report transactions to TRACE or comply with the Net Capital Rule or other dealer rules that govern internal controls and are designed to prevent fraud or manipulation. Advisers would continue to be subject to the adviser regulations described in the baseline, including conduct rules, books and records requirements, reporting requirements, and examinations. If advisers and private funds would have responded to the final rules by curtailing their trading instead of registering as dealers, then excluding them from the rules may not substantially reduce the benefits described in section III.C.1.

This alternative would also reduce the final rules' benefit to competition, by failing to level the playing field between significant liquidity providers who are registered as dealers and significant liquidity providers who may be investment advisers or private funds. However, if the final rules would have a net negative impact on competition by deterring private funds and advisers from providing liquidity,[665] then this alternative could reduce that negative impact by not deterring such liquidity provision.

Excluding registered investment advisers and private funds would reduce the final rules' costs. Advisers and private funds who would otherwise be affected would not be required to register with the Commission as dealers, join FINRA or another SRO, report to TRACE and CAT, and become a member of SIPC.[666] They would also not be required to comply with dealer rules on financial responsibility and risk management, operational integrity, and books and records.[667] Since they would not be registered as dealers, they would not face dealer-specific restrictions against participating in the IPO market. Since they would not be subject to the Net Capital Rule, they would also not need to consider restricting their investors' withdrawal rights in order to comply with that rule.[668] If the costs of dealer registration and compliance would have lowered returns for investors in private funds, then this alternative would also reduce the harm to investors.

Excluding private funds would also limit the final rules' effects on market liquidity, efficiency, competition, and capital formation, since it would affect fewer parties who could respond by curtailing their trading activities. Section III.C.2.d describes how such a response could harm market liquidity and efficiency as well as how reductions in funds' profitability could reduce investor participation in the market. If advisers and private funds were excluded, then they would not respond in this way, and so any potential negative impact of such curtailing on market functioning or investor participation could be less than under the final rules.

Excluding advisers and private funds may allow current or future significant liquidity providers to avoid the dealer regime by registering as advisers. Commenters argued that principal

[655] *See supra* notes 218–220 and accompanying text.

[656] *See* section III.C.2.a for a discussion of these costs.

[657] *See supra* notes 24, 26, and 27.

[658] *See supra* note 218.

[659] *See supra* notes 567 and 568 and accompanying text for a discussion of why the Net Capital Rule may necessarily restrict withdrawal rights of investors in a registered dealer.

[660] Commenters suggested that affected private funds would respond to the final rules' adoption in this way. *See supra* note 62.

[661] *See supra* note 222.

[662] *See supra* notes 223–229.

[663] *See* discussion of registered investment advisers and private funds in section II.A.3.b.

[664] In section III.B.2.c, we identify up to 12 hedge funds that may be dealing under the final rules.

[665] *See* section III.C.2.d.

[666] *See* section III.C.2 for a discussion of these costs.

[667] *See supra* note 27.

[668] *See supra* notes 567 and 570.

trading firms are unlikely to attempt to avoid the dealer regime in this way.[669] Though firms would incur significant costs to reorganize their business and register as advisers, an exclusion would nevertheless allow for the possibility. The possibility concerns us because, as discussed above and in the Proposing Release, registered investment advisers and private funds that are engaged in dealing activity should be subject to the dealer regulatory regime.[670]

5. Require Registered Investment Advisers and Private Funds To Report to TRACE

As described above, private funds and private fund advisers not registered as dealers are not subject to the requirement to report transactions to TRACE. Rather than requiring liquidity-providing investment advisers and private funds to register as dealers, the Commission could instead require them to report their transactions to TRACE as if they were members of FINRA, without submitting to the other requirements of the dealer regime.[671] This alternative would fall short of applying other important elements of the dealer regime that mitigate the problems discussed in sections III.B.3 and III.B.4. These important elements of the dealer regime include the Net Capital Rule,[672] Exchange Act section 15(c),[673] and SRO membership.[674] Therefore, this alternative would not adequately address the potential for negative externalities discussed in section III.B.3 in the baseline. However, the alternative would eliminate, for affected registered investment advisers and private funds, the final rules' registration and compliance costs other than the costs of self-evaluation and of reporting to TRACE.[675]

6. Carve Out or Narrow Application to Crypto Asset Securities

As described in section II.A.3 above, the Commission received comments regarding the application of the proposed rules to crypto asset securities. Commenters requested that if the Commission were to move forward with adopting the proposed rules, the Commission revise the final rules to carve out or narrow the application to crypto asset securities.[676] For example, one commenter asserted that without an exclusion for digital assets, the proposed rules would hinder innovation, competition, and capital formation in the U.S.[677] Another commenter stated that the Commission should limit the scope of the proposed rules to persons transacting in the U.S. Treasury and listed equity markets, for which the Commission has adequate data, and that to the extent the Commission intends to address digital assets, it should do so as part of a multi-agency approach and in consultation with Congress.[678] Consistent with the comments received, the Commission has considered an alternative that would treat crypto asset securities differently from other types of securities under the final rules.

As noted in section II.A.3, the definitions of ''dealer'' and ''government securities dealer'' under sections 3(a)(5) and 3(a)(44) of the Exchange Act, and the requirement that dealers and government securities dealers register with the Commission pursuant to sections 15 and 15C of the Exchange Act, apply to dealers in all securities or government securities, including crypto asset securities. Rules 3a5–4 and 3a44–2, as adopted, apply to any person transacting in securities or government securities, irrespective of where, or the technology through which, the security or government security trades.

The Commission is not changing this longstanding historical application of the Federal securities laws to securities, including crypto assets that are securities. After consideration of comments, the Commission continues to believe that Rules 3a5–4 and 3a44–2 apply to persons transacting in crypto assets that meet the definition of ''securities'' or ''government securities'' under the Exchange Act. As discussed above, certain persons engaging in crypto asset securities transactions may be operating as dealers as defined under the Exchange Act.[679] The dealer framework is a functional analysis based on the securities trading activities undertaken by a person, not the type of security being traded.[680] Regardless of the technology used, if a person meets the expressing trading interest and primary revenue factors in the final rules, the application of the dealer regulatory regime to that person's activities[681] will be beneficial and critical to promoting the Commission's mission.

If the Commission were to revise the final rules to carve out or narrow the application to market participants who transact in crypto asset securities, that alternative would reduce costs for such market participants who are not dealers under current law and who, absent an exemption, would be required to register as dealers under the final rules. The alternative would also reduce the benefits of the final rules, discussed in section III.C.1, since it would not apply the dealer regime to market participants that provide liquidity in crypto asset securities markets.

The alternative could also have negative competitive effects, since certain market participants that deal in crypto asset securities would be exempted from registering as dealers, while market participants that deal in other types of securities would not enjoy such an exemption.

IV. Paperwork Reduction Act

The new definitions adopted in this document do not, in and of themselves, contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[682] However, they may increase the number of respondents for collection of information requirements in other Commission rules. Specifically, the rules may increase the number of respondents for fourteen Commission rules with existing collections of information. These are explained in more detail below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a currently valid control number. The

[669] *See* IAA Comment Letter I; AIMA Comment Letter II; MFA Comment Letter I; T. Rowe Price Comment Letter.

[670] *See* sections II.A.3, III.B.3, and III.C.1; Proposing Release at 23078–79.

[671] *See* Overdahl Comment Letter (stating ''To the extent that the SEC does identify any material informational gaps, the SEC could explore whether additional recordkeeping requirements are appropriate.'').

[672] *See* section III.C.1.a.

[673] *See supra* note 396 and surrounding text.

[674] *See* sections III.C.1.a and III.C.1.d. *See also* FINRA Comment Letter.

[675] *See* cost discussions in section III.C.2 for a detailed discussion of TRACE, self-evaluation, and other costs. The Commission estimates the initial combined cost of self-evaluation and TRACE reporting is at most approximately $600,000. This estimate is the sum of the initial cost estimate for TRACE reporting, which is $2,000, and the initial cost estimate for self-evaluation, which is up to $600,000. The combined initial costs' sum is $602,000, which we round to $600,000 to reflect uncertainty in our estimate of these combined costs. The Commission estimates the ongoing costs for TRACE reporting and self-evaluation are approximately $100,000. This ongoing cost estimate is the sum of the $100,000 annual expense estimate for TRACE reporting and a $0 annual expense for self-evaluation. The Commission expects few firms' trading operations to change sufficiently to merit ongoing self-evaluations because of the substantial investments in human-, technological-, and financial capital necessary to start a trading operation that satisfies the criteria necessary for registration as a dealer under the adopted rules.

[676] *See, e.g.,* Andreessen Horowitz Comment Letter; DeFi Foundation Comment Letter; ADAM Comment Letter; Gretz Comment Letter.

[677] *See* ADAM Comment Letter.

[678] *See* DeFi Fund Comment Letter.

[679] *See* section II.A.3.

[680] *Id.*

[681] *See* section III.C.1.

[682] 44 U.S.C. 3501 *et seq.*

Commission has submitted change requests to the Office of Management and Budget (''OMB'') to update the number of respondents for these fourteen rules. The titles of these existing collections of information are:

Rule	Rule title	OMB control No.
17 CFR 240.15b1–1 (''Rule 15b1–1'') and 17 CFR 249.501 (''Form BD'').	Application for registration of brokers or dealers	3235–0012
17 CFR 240.15Ca1–1 (''Rule 15Ca1–1'') and Form BD	Notice of government securities broker-dealer activities.	
17 CFR 240.15Ca2–1 (''Rule 15Ca2–1'') and Form BD	Application for registration of government securities brokers or government securities dealers.	
17 CFR 240.15b3–1 (''Rule 15b3–1'') and 17 CFR 400.5 (''Rule 400.5'').	Amendments to application.	
17 CFR 240.15b6–1 (''Rule 15b6–1'') and 17 CFR 249.501a (''Form BDW'').	Withdrawal from registration	3235–0018
17 CFR 240.15Cc1–1 (''Rule 15Cc1–1'') and Form BDW	Withdrawal from registration of government securities brokers or government securities dealers.	
17 CFR 240.15c2–7 (''Rule 15c2–7'')	Identification of quotations	3235–0479
17 CFR 240.15c3–1 (''Rule 15c3–1'')	Net capital requirements for brokers and dealers	3235–0200
17 CFR 240.15c3–5 (''Rule 15c3–5'')	Risk management controls for brokers or dealers with market access.	3235–0673
17 CFR 240.17a–3 (''Rule 17a–3'')	Records to be made by certain exchange members, brokers, and dealers.	3235–0033
17 CFR 240.17a–4 (''Rule 17a–4'')	Records to be preserved by certain members, brokers, and dealers.	3235–0279
17 CFR 240.17a–5 (''Rule 17a–5'')	Reports to be made by certain exchange members, brokers and dealers.	3235–0123
17 CFR 240.17a–11 (''Rule 17a–11'')	Notification provisions for brokers and dealers	3235–0085
17 CFR 242.613 (''Rule 613'')	Consolidated audit trail	3235–0671

A. Purpose and Use of the Collections of Information

As stated above, new definitions adopted in this document do not create any new collections of information, but we believe they will add respondents to the 14 existing collections of information noted above. The collections of information applicable to the additional respondents,[683] and the use of the information collected are summarized below.

1. Rules 15b1–1, 15Ca1–1, 15Ca2–1, 15b3–1, and 400.5 and Form BD

Section 15(a)(1) of the Exchange Act provides that it is unlawful for persons who meet the definition of the term ''broker'' or ''dealer'' to solicit or effect transactions in most securities unless they are registered as broker-dealers with the Commission pursuant to section 15(b) of the Exchange Act. Similarly, section 15C(a)(1) of the Exchange Act provides that it is unlawful for persons who meet the definition of the term government securities broker or government securities dealer, other than persons registered with the Commission as broker-dealers and certain financial institutions, to solicit or effect transactions in government securities unless they are registered with the Commission as government securities broker-dealers pursuant to section 15C(a)(2) of the Exchange Act. To implement these provisions, the Commission adopted Rules 15b1–1, 15Ca1–1, and 15Ca2–1 and Form BD. In addition, Rules 15b3–1 and 400.5 require that registered broker-dealers and government securities broker-dealers submit an amended Form BD when information originally reported on Form BD changes or becomes inaccurate.

The Commission uses the information disclosed by applicants in Form BD: (1) to determine whether the applicant meets the standards for registration set forth in the provisions of the Exchange Act; (2) to develop a central information resource where members of the public may obtain relevant, up-to-date information about broker-dealers and government securities broker-dealers, and where the Commission, other regulators, and SROs may obtain information for investigatory purposes in connection with securities litigation; and (3) to develop statistical information about broker-dealers and government securities broker-dealers. In addition, all information collected on Forms BD is public. The public may use this information to assist in determining whether to engage in business with a particular broker-dealer.

2. Rules 15b6–1 and 15Cc1–1 and Form BDW

Section 15(b)(5) of the Exchange Act provides that any broker-dealer may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. Similarly, section 15C(c)(1)(B) of the Exchange Act provides that any registered government securities broker or government securities dealer may, upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. To implement these statutory provisions of the Exchange Act, the Commission promulgated Rules 15b6–1 and 15Cc1–1 and Form BDW (the uniform request for broker-dealer withdrawal).

The Commission uses the information disclosed by applicants in Form BDW, as required by Rules 15b6–1, 15Bc3–1, and 15Cc1–1 to: (1) determine whether it is in the public interest to permit broker-dealers and notice-registered broker-dealers to withdraw from registration; (2) develop central information resources where the Commission and other government agencies and SROs may obtain information for investigatory purposes in connection with securities litigation; and (3) develop statistical information about broker-dealers, notice-registered broker-dealers, municipal securities dealers, and government securities broker-dealers.

[683] *See* section III.B above for a description of the categories of respondents.

3. Rule 15c2–7

The Commission adopted Rule 15c2–7 in 1964 to improve the reliability and transparency of the quotations broker-dealers submit to inter-dealer quotation systems. To ensure that an inter-dealer quotation system clearly reveals where two or more quotations in different names for a particular security represent a single quotation or where one broker-dealer appears as a correspondent of another, Rule 15c2–7 sets forth certain criteria that must be met for broker-dealers to furnish, or submit directly or indirectly, any quotation for a security (other than a municipal security) to an inter-dealer quotation system. More specifically, to furnish or submit any such quotation Rule 15c2–7 requires that:

- Broker-dealers that are correspondents for other broker-dealers for a particular security and enter quotations inform the inter-dealer quotation system of both the existence of the arrangement and the identity of the correspondent;
- Where two or more broker-dealers place quotations pursuant to any other arrangement between or among other broker-dealers, the identity of each broker-dealer participating in any such arrangement(s), and the fact that an arrangement exists, must be disclosed;
- The inter-dealer quotation systems to which the quotation is furnished or submitted must make it a general practice to disclose, with each published quotation, these arrangements, along with the identities of all other broker-dealers that were disclosed to the inter-dealer quotation system; and
- When a broker-dealer enters into any correspondent or other arrangement in which two or more broker-dealers furnish or submit quotations for a particular security, the broker-dealer must inform all broker-dealers furnishing or submitting such quotations of the existence of such correspondent or other arrangement and the identity of the parties thereto.

The information required by Rule 15c2–7 is designed to help the Commission prevent fraud, manipulation, and deceptive acts and practices. When Rule 15c2–7 was adopted in 1964, the information it required was critical to the Commission's role in monitoring broker-dealers and protecting the integrity of over-the-counter markets. The disclosures required by Rule 15c2–7 help assure that inter-dealer quotation systems reflect the demand for, and market activity related to, the securities quoted on their systems.

4. Rule 15c3–1

Rule 15c3–1 is designed to ensure that broker-dealers registered with the Commission at all times have sufficient liquid capital to protect the assets of customers and to meet their responsibilities to other broker-dealers.[684] Rule 15c3–1 is an integral part of the Commission's financial responsibility program for broker-dealers. In particular, Rule 15c3–1 facilitates the monitoring of the financial condition of broker-dealers by the Commission and the broker-dealer's designated examining authority (or ''DEA'').

Various provisions of Rule 15c3–1 require that broker-dealers provide written notification to the Commission and/or their DEA under certain circumstances. For example, no equity capital of a broker-dealer may be withdrawn if the amount withdrawn exceeds specified levels unless notice is provided to the broker-dealer's DEA and the Commission within prescribed timeframes.[685] In addition, a broker-dealer carrying the account of an options market maker must file a notice with the Commission and the DEA of both the carrying firm and the market maker prior to effecting transactions in the account.[686]

There are also certain recordkeeping requirements under Rule 15c3–1. For example, a broker-dealer must keep a record of who is acting as an agent in a securities loan transaction and records with respect to obtaining DEA approval prior to withdrawing capital within one year of a contribution.[687] The regulation at 17 CFR 240.15c3–1c (''appendix C to Rule 15c3–1'') requires registered broker-dealers that consolidate their financial statements with a subsidiary or affiliate to submit, under certain circumstances, an opinion of counsel to their DEA.[688]

These recordkeeping and reporting requirements are designed to inform the Commission and a broker-dealer's DEA of certain financial situations involving broker-dealers' financial situations.

5. Rule 15c3–5

Rule 15c3–5 requires that broker-dealers with access to trading directly on an exchange or ATS, including those providing sponsored or direct market access to customers or other persons, implement risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. More specifically, these broker-dealers must establish, document, and maintain certain risk management controls and supervisory procedures; regularly review those controls and procedures and document the review; and remediate issues discovered to assure overall effectiveness of such controls and procedures. These broker-dealers also must preserve a copy of their supervisory procedures and a written description of their risk management controls as part of their books and records. In addition, the Chief Executive Officer (or equivalent officer) is required to certify annually that the broker or dealer's risk management controls and supervisory procedures comply with Rule 15c3–5, and that the broker-dealer conducted the required review. These documents are required to be preserved by the broker-dealer as part of its books and records.

Rule 15c3–5 is generally designed to ensure that broker-dealers (which, under the current regulatory structure, are the only entities that may be members of exchanges or provide access to trading in securities on an ATS to non-broker-dealers) appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system.

6. Rules 17a–3 and 17a–4

The Commission adopted Rules 17a–3 and 17a–4 (''Recordkeeping Rules'') in 1939 to standardize recordkeeping practices by establishing minimum standards with respect to business records that broker-dealers registered with the Commission must create and maintain. Rule 17a–3 requires broker-dealers to make and keep current certain records relating to their financial condition, communications, customer information, and employees. Rule 17a–4 requires broker-dealers to preserve, for prescribed periods of time, the records required to be created under Rule 17a–3 and certain other Commission rules. In addition, Rule 17a–4 requires broker-dealers to preserve other records that may be created or received by the broker-dealer in the ordinary course of its business for prescribed periods of time. Rule 17a–4 also specifies the manner in which these records should be maintained. The Commission has periodically modified these rules to include additional records and to

[684] *See* Net Capital Rule, Exchange Act Release No. 39455 (Dec. 17, 1997), 62 FR 67996 (Dec. 30, 1997).

[685] *See* 17 CFR 240.15c3–1(e)(1).

[686] *See* 17 CFR 240.15c3–1(a)(6)(vi).

[687] *See* 17 CFR 240.15c3–1(c)(2)(iv)(B).

[688] *See* 17 CFR 240.15c3–1(c).

recognize new methods to maintain records.

The records and the information created and maintained in accordance with Rules 17a–3 and 17a–4 are used by examiners and other representatives of the Commission, State securities regulatory authorities, and the self-regulatory organizations (*e.g.,* FINRA, CBOE) (''SROs'') to determine whether broker-dealers are in compliance with the Commission's antifraud and anti-manipulation rules, financial responsibility program, and other Commission, SRO, and State laws, rules, and regulations.

7. Rule 17a–5

Rule 17a–5 requires that broker-dealers create, submit, and make available various reports. Paragraph (a)(1) of Rule 17a–5 requires broker-dealers to file quarterly or monthly (depending on a broker-dealer's business) reports on Form X–17A–5, the Financial and Operational Combined Uniform Single Report (''FOCUS Report'').[689] The FOCUS Report was designed to eliminate the overlapping regulatory reports required by various SROs and the Commission and to reduce reporting burdens. Paragraph (c) of Rule 17a–5 requires that certain broker-dealers furnish specified financial information to their customers.[690] Paragraph (d) of Rule 17a–5 requires broker-dealers, subject to limited exceptions, to file annual reports prepared by an accountant registered with the PCAOB.[691] The annual reports generally must be filed with the Commission, the SROs of which the broker-dealer is a member, and SIPC. Rule 17a–5 also requires additional notifications if an accountant identifies a material weakness in a broker-dealer's internal control over compliance during the most recent fiscal year.[692]

Reports required to be filed under Rule 17a–5 are used, among other things, to monitor the financial and operational condition of a broker-dealer by Commission staff and by the broker-dealer's DEA. The reports required under Rule 17a–5 are one of the primary means of ensuring compliance with the broker-dealer financial responsibility rules. In addition, FOCUS Report data are used in preparation for broker-dealer examinations. The completed forms also are used to determine which firms are engaged in various securities-related activities, the extent to which they are engaged in those activities, and how economic events and government policies might affect various segments of the securities industry.

8. Rule 17a–11

Rule 17a–11 requires broker-dealers that are experiencing financial or operational difficulties to provide notice to the Commission, the broker-dealer's DEA, and the CFTC (if the broker-dealer is registered with the CFTC as a futures commission merchant). For example, if a registered broker-dealer determines that the net capital it has on hand has fallen below the amount it must maintain (as calculated under Rule 15c3–1), it must immediately notify the Commission and its DEA (and, if applicable, the CFTC).[693] Rule 17a–11 is an integral part of the Commission's financial responsibility program, which enables the Commission, a broker-dealer's DEA, and the CFTC to increase surveillance of a broker-dealer experiencing difficulties and to obtain any additional information necessary to gauge the broker-dealer's financial or operational condition. The real-time information contained in these notices alerts the Commission, the DEA, and the CFTC of the need to increase surveillance of the broker-dealer's financial and operational condition.

9. Rule 613

Rule 613 requires FINRA and the national securities exchanges (''Participants'') to submit an NMS plan to create, implement, and maintain the CAT to capture order event information for orders in NMS securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single, consolidated data source.[694] The term ''NMS Security'' is defined as ''any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.'' [695] In general, the term ''NMS Security'' refers to exchange-listed equity securities and standardized options, but does not include exchange-listed debt securities, securities futures, or open-end mutual funds, which are not currently reported pursuant to an effective transaction reporting plan. Rule 613 requires that each Participant and its member broker-dealers to record, and electronically report to the central repository, details for each order documenting the life of an order through the process of original receipt or origination, routing, modification, cancellation, and execution (in whole or in part) for each NMS security.[696]

This audit trail information is designed to allow regulators to efficiently and accurately monitor and surveil the securities markets and detect and investigate activity in NMS securities throughout the U.S. markets, whether on one market or across markets. The data collected and reported to the central repository can also be used by regulators to evaluate tips and complaints and for complex enforcement inquiries or investigations, as well as inspections and examinations. Further, regulators can use the data collected and reported to conduct more timely and accurate analysis of market activity for reconstruction of broad-based market events in support of regulatory policy decisions.

B. Respondents

As discussed above, new Rules 3a5–4 and 3a44–2 would further define activities that would cause a person engaged in a regular business of buying and selling securities for its own account within the meaning of the Exchange Act. A person who satisfies the factors described in the amended definitions would be considered a ''dealer'' or ''government securities dealer,'' and thus would be required to register as such with the Commission, absent an exception or exemption. As detailed in section III.B.2.c, the TRACE analysis identifies as potential significant liquidity providers a total of 31 firms that are not currently registered as dealers; including 22 entities classified as PTFs, 4 entities classified as hedge funds, and another 5 entities.[697] Further, the Form PF analysis identifies 12 hedge funds that are the most likely to meet the final rules' factors due to their reported HFT activities.[698] For purposes of this PRA, we will calculate the burdens based on an estimated 31 liquidity providers plus 12 hedge funds, or 43 respondents. This

[689] *See* 17 CFR 240.17a–5(a)(1).

[690] *See* 17 CFR 240.17a–5(c).

[691] *See* 17 CFR 240.17a–5(d).

[692] *See* 17 CFR 240.17a–5(h).

[693] *See* 17 CFR 240.17a–11(g).

[694] *See* 17 CFR 242.613(a)(1) and (c)(1) and (7).

[695] *See* 17 CFR 242.600(b)(54).

[696] *See* 17 CFR 242.613(a)(1) and (c)(1), (6), and (7).

[697] *See supra* note 418.

[698] Based on staff analysis (*see* section III.B.2.c), the 12 entities were identified through Form PF since we believe that any private funds employing trading strategies that would fit the final rules' qualitative standard, as adopted, would likely report them as HFT. However, since reported HFT may apply to a broader set of activities than the final rules' qualitative factors, the actual number of affected funds may be less than 12. However, for purposes of this PRA, we conservatively estimate that up to 12 entities could be required to register as dealers and submit order information to CAT. *See infra* note 766 and accompanying text.

estimate of 43 respondents differs from the estimate of 105 respondents used in the Proposing Release. As discussed more fully in the Economic Analysis, changes made to the proposed rule text to address commenters' concerns (described in section I.B above), have decreased the number of persons that will likely need to register under the final rules.[699] These respondents would be subject to some or all of the following collections of information described below.

C. Paperwork Reduction Act Burdens

1. Paperwork Burdens Associated With Rules 15b1–1, 15Ca1–1, 15Ca2–1, and 15b3–1 and Form BD

As discussed above, section 15C of the Exchange Act requires that government securities dealers register with the Commission.[700] A government securities dealer has the flexibility to either register as a dealer pursuant to Rule 15b1–1 and file notice as a government securities dealer under Rule 15Ca1–1, or register as a government securities dealer under Rule 15Ca2–1.[701] In either case, the respondent is required to complete a Form BD.[702] The Commission believes that new Rules 3a5–4 and 3a44–2 would impose the same burden on these respondents irrespective of whether the respondent registers as a dealer or a government securities dealer. Once registered, a broker-dealer must file an amended Form BD when information it originally reported on Form BD changes or becomes inaccurate.[703] The Commission estimates an initial burden of 2.75 hours for completing a Form BD and an annual burden of .90 hours per respondent for amending Form BD,[704] resulting in a total initial burden of approximately 118 hours[705] and a total annual burden of approximately 39 hours[706] associated with the amendments to the definitions.

2. Paperwork Burdens Associated With Rules 15b6–1 and 15Cc1–1 and Form BDW

The time necessary to complete and file Form BDW will vary depending on the nature and complexity of the applicant's securities business. On average, the Commission estimates that it would take a broker-dealer approximately one hour[707] per respondent to complete and file a Form BDW to withdraw from Commission registration. For purposes of estimating this paperwork burden, the Commission posits that at least one of the 43 respondents may withdraw as a dealer each year, resulting in a total annual burden of one hour.[708] It is not anticipated that respondents will have to incur any capital or start-up costs, nor any additional operational or maintenance costs, to comply with the collection of information.[709]

3. Paperwork Burdens Associated With Rule 15c2–7

Any broker-dealer could be a potential respondent for Rule 15c2–7. Only quotations entered into through an inter-dealer quotation system, such as OTC Link and Global OTC, are covered by Rule 15c2–7. According to representatives of OTC Link and Global OTC, none of those entities has recently received, nor anticipates receiving, any Rule 15c2–7 notices.[710] However, because a respondent may be required to submit such notices, to estimate this paperwork burden the Commission posits that one filing, in the aggregate, by one broker-dealer, is made annually pursuant to Rule 15c2–7.[711] Based on prior industry estimates, the time required to enter a notice pursuant to Rule 15c2–7 is 45 seconds, or .75 minutes.[712] The Commission believes that none of the respondents that are required to register as a result of the amended definitions will be required to file a Rule 15c2–7 notice. Accordingly, the Commission estimates that there will be no internal compliance cost associated with the burden hours for Rule 15c2–7.

4. Paperwork Burdens Associated With Rule 15c3–1

The respondents that must register with the Commission as a result of the new final rules may incur a collection of information burden to comply with Rule 15c3–1. The Commission estimates the hour burdens of the requirements associated with Rule 15c3–1 as follows.

Notices: Based on the number of notices filed under Rule 15c3–1 between November 1, 2021, and October 31, 2022, the Commission estimated that broker-dealers annually file approximately 1,216 notices under Rule 15c3–1.[713] 3,528 broker-dealers submitted annual audit reports for the year ending December 31, 2021.[714] Thus, approximately 35% of broker-dealer respondents submitted a Rule 15c3–1 notice during this timeframe. Based on this percentage, the Commission estimates that at least approximately 15 of the 43 respondents would likely file one notice under Rule 15c3–1 annually.[715] In addition, the Commission estimated that a broker-dealer will spend approximately 30

[699] Section III.B above includes a discussion of commenters' concerns.

[700] *See* 15 U.S.C. 78*o*–5(a).

[701] *Compare* section 15(a) *with* section 15C. A government securities dealer that registers under section 15C(a)(l)(A) will be limited to conducting a government securities business only.

[702] *Compare* 17 CFR 240.15b1–1(a) (''Rule 15b1–1(a)'') (''An application for registration of a broker or dealer that is filed pursuant to section 15(b) of the Act (15 U.S.C. 78*o*(b)) shall be filed on Form BD (249.501 of this chapter) in accordance with the instructions to the form'') and 17 CFR 240.15Ca1–1(a) (''Rule 15Ca1–1(a)'') (''Every government securities broker or government securities dealer that is a broker or dealer registered pursuant to section 15 or 15B of the Act (other than a financial institution as defined in section 3(a)(46) of the Act) shall file with the Commission written notice on Form BD (249.501 of this chapter) in accordance with the instructions contained therein that it is a government securities broker or government securities dealer.'') *with* 17 CFR 240.15Ca2–1(a) (''Rule 15Ca2–1(a)'') (''An application for registration pursuant to section 15C(a)(1)(A) of the Act, of a government securities broker or government securities dealer that is filed on or after January 25, 1993, shall be filed with the Central Registration Depository (operated by the Financial Industry Regulatory Authority, Inc.) on Form BD in accordance with the instructions contained therein.'').

[703] *See* Rule 15b3–1.

[704] For the previously approved estimates, *see* ICR Reference No. 202306–3235–010 (conclusion date June 13, 2023), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202306-3235-010* (''Form BD PRA Supporting Statement''). The Commission's currently approved burden associated with filing an amendment to Form BD is .33 hours. From 2019 through 2021, the Commission received, on average, 2.72 amendments per broker-dealer (*see* Form BD PRA Supporting Statement at 5). Thus, we extrapolate that each new broker-dealer would submit approximately 2.72 amendments. 2.72 amendments × .33 hours = .90 hours per respondent.

[705] 43 respondents multiplied by 2.75 hours per respondent.

[706] 43 respondents multiplied by .90 hours per respondent.

[707] For the previously approved estimates, *see* ICR Reference No. 202306–3235–014 (conclusion date Aug. 11, 2023), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202306-3235-014* (''Form BDW PRA Supporting Statement'').

[708] 1 respondent multiplied by 1 hour per respondent.

[709] Form BDW PRA Supporting Statement at 5.

[710] For the previously approved estimates, *see* ICR Reference No. 202008–3235–005 (conclusion date Feb. 1, 2021), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202008-3235-005* (''Rule 15c2–7 PRA Supporting Statement'').

[711] Rule 15c2–7 PRA Supporting Statement at 3.

[712] *Id.*

[713] For the previously approved estimates, *see* ICR Reference No. 202301–3235–012 (conclusion date June 2, 2023), *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202301-3235-012* (''Rule 15c3–1 PRA Supporting Statement'') at 4. This justification also describes other collections of information associated with Rule 15c3–1, however the Commission determined that the business model of the firms expected to register as broker-dealers as a result of these new definitions would likely not require that they comply with those provisions (*see supra* section III.B (discussing types of entities that could be captured by the final rules)).

[714] Based on FOCUS data.

[715] 43 respondents × 35% = 15.05.

minutes preparing and filing these notices.[716] Accordingly, the Commission estimates a total additional annual burden associated with submitting these Rule15c3–1 notices of approximately 7.5 hours.[717]

Capital Withdrawal Liability: Paragraph (c)(2)(i)(G)(*2*) of Rule 15c3–1 requires that a broker-dealer treat as a liability any capital contribution that is intended to be withdrawn within one year of its contribution. The paragraph also includes the presumption that capital withdrawn within one year of contribution was intended to be withdrawn within one year, unless the broker-dealer receives permission in writing for the withdrawal from its DEA. For purposes of this PRA, the Commission estimates that approximately three respondents would likely seek permission in writing to withdraw capital [718] and that it will take each of those firms approximately one hour to prepare and submit the request to their DEAs.[719] Accordingly, the Commission estimates that the total annual reporting burden will be approximately three hours.[720]

5. Paperwork Burdens Associated With Rule 15c3–5

To comply with Rule 15c3–5, a respondent must maintain its risk management system by monitoring its effectiveness and updating its systems to address any issues detected.[721] In addition, a respondent is required to preserve a copy of its written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a–4(e)(7).[722] The Commission estimates that the ongoing annualized burden for a respondent to maintain its risk management system will be approximately 115 burden hours.[723] The Commission believes the ongoing burden of complying with the rule's collection of information will include, among other things, updating systems to address any issues detected, updating risk management controls to reflect any change in its business model, and documenting and preserving a broker-dealer's written description of its risk management controls.[724] In addition, the Commission estimates that a broker-dealer's legal and compliance burden of complying with Rule 15c3–5 will require approximately 45 hours per year.[725] Accordingly, the Commission estimates the annual aggregate information burden per respondent would be 160 hours,[726] for a total annual burden of 6,880 hours.[727]

6. Paperwork Burdens Associated With Rule 17a–3

As discussed above, the respondents that must register as dealers or government securities as a result of these new definitions will incur a burden associated with the collections of information necessary to comply with Rule 17a–3.

(i) Rule 17a–3 Generally

While recordkeeping requirements will vary based on the size and complexity of the broker-dealer, the Commission estimates that one hour a day [728] is the average amount of time needed by a broker-dealer to comply with the overall requirements of Rule 17a–3, in addition to the separate burdens described below. The number of working days per year is 249, and as a result the total annual estimated burden for respondents with respect to Rule 17a–3 generally would be 10,707 hours.[729]

(ii) Rule 17a–3(a)(12) and (19)

In addition to the hour burden estimate for Rule 17a–3 generally, the Commission also believes that paragraphs (a)(12) and (19) of Rule 17a–3 will impose specific burdens on respondents. Paragraphs (a)(12) and (19) of Rule 17a–3 require that a broker-dealer create certain records regarding its associated persons.[730] The Commission estimates that each broker-dealer spends, on average, approximately 30 minutes each year [731] to ensure that it is in compliance with these requirements, resulting in a total annual compliance burden of approximately 21.5 hours for the respondents.[732]

(iii) Rule 17a–3(a)(20) Through (22)

Paragraphs (a)(20) through (22) of Rule 17a–3 require broker-dealers to make, among other things, records documenting the broker-dealer's compliance, or that the broker-dealer has adopted policies and procedures reasonably designed to establish compliance, with applicable Federal regulations and SRO rules that require approval by a principal of the broker-dealer of any advertisements, sales literature, or other communications with the public.[733] Moreover, these rules require broker-dealers to create a record of the personnel responsible for establishing compliance policies and procedures and of the personnel capable of explaining the types of records the broker-dealer must maintain and the information contained in those records.[734] The Commission estimates that, on average, each broker-dealer will spend 10 minutes each year [735] to ensure compliance with these requirements, resulting in a total annual burden for the respondents of about approximately 7.2 hours.[736]

7. Paperwork Burdens Associated With Rule 17a–4

The respondents that registered as dealers or government securities would incur a collection of information burden to comply with Rule 17a–4. Rule 17a–4 establishes the records that must be

[716] Rule 15c3–1 PRA Supporting Statement at 4.

[717] 15 respondents multiplied by 0.5 hours per respondent.

[718] In its 2023 PRA, the Commission estimated that broker-dealers would submit approximately 238 notices annually. Rule 15c3–1 PRA Supporting Statement at 5. According to FOCUS data, 3,528 broker-dealers submitted annual audit reports for the year ending Dec. 31, 2021. Thus, approximately 7% of the active broker-dealers submitted a notice annually as of 2021. 43 respondents × 7% = 3.01.

[719] Rule 15c3–1 PRA Supporting Statement at 5.

[720] 3 respondents multiplied by 1 hour per respondent.

[721] *See* 17 CFR 240.15c3–5.

[722] *Id.*

[723] For the previously approved estimates, *see* ICR Reference No. 201907–3235–022 (conclusion date Dec. 10, 2019), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201907-3235-022* (''Rule 15c3–5 PRA Supporting Statement''). *See* Rule 15c3–5 PRA Supporting Statement at 4.

[724] *Id.*

[725] *Id.* at 5. Specifically, compliance attorneys who review, document, and update written compliance policies and procedures are expected to require an estimated 20 hours per year; a compliance manager who reviews, documents, and updates written compliance policies and procedures is expected to require 20 hours per year; and the Chief Executive Officer, who certifies the policies and procedures, is expected to require another 5 hours per year. *Id.*

[726] 115 hours for technology + 45 hours for legal and compliance.

[727] 43 respondents multiplied by 160 hours.

[728] For the previously approved estimates, *see* ICR Reference No. 202107–3235–019 (conclusion date Dec. 1, 2021), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202107-3235-019* (''Rule 17a–3 PRA Supporting Statement''). Rule 17a–3 PRA Supporting Statement at 6.

[729] 43 respondents multiplied by 249 hours per respondent a year.

[730] These records that a broker-dealer is required to make regarding the broker-dealer's associated persons include: (1) all agreements pertaining to the associated person's relationship with the broker-dealer and a summary of each associated person's compensation arrangement (17 CFR 240.17a–3(a)(19)(ii)), (2) a record delineating all identification numbers relating to each associated person (17 CFR 240.17a–3(a)(12)(ii)), (3) a record of the office at which each associated person regularly conducts business (17 CFR 240.17a–3(a)(12)(iii)), and (4) a record as to each associated person listing transactions for which that person will be compensated (17 CFR 240.17a3(a)(19)(i)).

[731] Rule 17a–3 PRA Supporting Statement at 6.

[732] 43 respondents multiplied by 0.5 hours per respondent.

[733] *See* 17 CFR 240.17a–3(a)(20).

[734] *See* 17 CFR 240.17a–3(a)(21) and (22).

[735] Rule 17a–3 PRA Supporting Statement at 6.

[736] (43 respondents multiplied by 10 minutes per respondent) divided by 60 minutes.

preserved by broker-dealers.[737] The Commission estimates that, on average, each broker-dealer spends 254 hours each year[738] to ensure that it preserves the records Rule 17a–4 requires all broker-dealers to preserve. Accordingly, the Commission estimates that there will be a total annual burden of 10,922 hours to comply with the Rule 17a–4 requirements applicable to the respondents.[739]

8. Paperwork Burdens Associated With Rule 17a–5

This section summarizes the burdens associated with Rule 17a–5.[740]

FOCUS Report for Broker-Dealers that do not Clear Transactions or Carry Customer Accounts: Paragraph (a)(2)(iii) of Rule 17a–5 requires that broker-dealers that do not clear transactions or carry customer accounts and do not use ANC models to calculate net capital are required to file FOCUS Report Part IIA on a quarterly basis.[741] The Commission believes that, based on their business models (as PTFs and hedge funds), the 43 respondents that would be required to register with the Commission would need to comply with this provision of Rule 17a–5. The Commission estimates that each FOCUS Report Part IIA takes approximately 12 hours to prepare and file.[742] As a result, each respondent is estimated to have an annual reporting burden of 48 hours,[743] resulting in an annual burden of 2,064 hours.[744]

Annual Reports: Paragraph (d)(1)(i)(A) of Rule 17a–5 requires broker-dealers, subject to limited exception, to file annual reports, including financial statements and supporting schedules that generally must be audited by a PCAOB-registered independent public accountant in accordance with PCAOB standards.[745] The Commission believes that each of the 43 respondents that would be required to register with the Commission would need to file an annual report. The Commission estimates that each respondent is estimated to have an annual reporting burden of 12 hours under this provision of Rule 17a–5,[746] resulting in an annual burden of 516 hours for the respondents.[747]

Exemption Report: Paragraph (d)(1)(i)(B) of Rule 17a–5 requires a broker-dealer that claims it was exempt from Rule 15c3–3 throughout the most recent fiscal year to file an exemption report with the Commission on an annual basis.[748] The Commission believes, based on their business models (as PTFs and hedge funds), that the respondents generally would claim exemptions from Rule 15c3–3 and be required to file an exemption report. The Commission estimates that it takes a broker-dealer claiming an exemption from Rule 15c3–3 approximately 7 hours to complete the exemption report,[749] resulting in an annual burden of 301 hours.[750]

SIPC Annual Reports: Paragraph (d)(6) of Rule 17a–5 requires that each SIPC member broker-dealer file a copy of its annual report with SIPC.[751] The Commission estimates that it takes a broker-dealer approximately 30 minutes to file the annual report with SIPC.[752] As a result, each firm is estimated to have an annual burden of .5 hour, resulting in an annual burden of 21.5 hours for the respondents.[753]

SIPC Annual General Assessment Reconciliation Report or Exclusion from Membership Forms: Paragraph (e)(4) of Rule 17a–5 requires broker-dealers to file with SIPC a report on the SIPC annual general assessment reconciliation or exclusion from membership forms.[754] The Commission estimates that it takes a broker-dealer approximately 5 hours to complete and submit its SIPC annual assessment reconciliation form or certification of exclusion from membership form,[755] resulting in an estimated annual burden of about 215 hours for the respondents.[756]

Statement Regarding Independent Public Accountant: Paragraph (f)(2) of Rule 17a–5 requires broker-dealers to prepare a statement providing information regarding the broker-dealer's independent public accountant and to file it each year with the Commission and its DEA (except that if the engagement is of a continuing nature, no further filing is required).[757] The Commission estimates that it takes a broker-dealer that neither carries customer accounts nor clears transactions approximately 2 hours to file the Statement Regarding Independent Public Accountant with the Commission.[758] As a result, each broker-dealer that neither carries nor clears transactions is estimated to have an annual burden of 2 hours, resulting in an annual burden of 86 hours for the respondents.[759]

9. Paperwork Burdens Associated With Rule 17a–11[760]

In 2019, the Commission received 343 Rule 17a–11 notices from broker-dealers.[761] Approximately 3,679 broker-dealers filed annual audited financial statements for fiscal year 2019.[762] Thus, approximately 9% of registered broker-dealers submitted Rule 17a–11 notices. The Commission estimated that it will take approximately one hour to prepare and transmit each notice.[763] Based on this, the Commission believes that 9% of the respondents may need to submit 17a–11 notices, resulting in a burden of four hours.[764]

10. Paperwork Burdens Associated With Rule 613

Paragraph (c) of Rule 613 provides that certain requirements are placed upon broker-dealers to record and report CAT information to the central repository in accordance with specified

[737] *See* 17 CFR 240.17a–4.

[738] For the previously approved estimates, *see* ICR Reference No. 202107–3235–021 (conclusion date Oct. 1, 2021), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202107-3235-021* (''Rule 17a–4 PRA Supporting Statement''). Rule 17a–4 PRA Supporting Statement at 7.

[739] 43 respondents multiplied by 254 hours per respondent.

[740] Registered government securities dealers are required to comply with Rule 17a–5, subject to the modifications enumerated in 17 CFR 405.1 (''Rule 405.1'') and 405.2 (''Rule 405.2''). *See* 17 CFR 405.1 and 405.2.

[741] *See* 17 CFR 240.17a–5(a)(2)(iii).

[742] For the previously approved estimates, *see* ICR Reference No. 202107–3235–022 (conclusion date Oct. 1, 2021), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202107-3235-022* (''Rule 17a–5 PRA Supporting Statement''). Rule 17a–5 PRA Supporting Statement at 6.

[743] These filings must be made quarterly. Rule 17a–5 PRA Supporting Statement at 6.

[744] 43 respondents multiplied by 48 hours per respondent.

[745] *See* 17 CFR 240.17a–5(d)(1)(i)(A).

[746] Rule 17a–5 PRA Supporting Statement at 7.

[747] 43 respondents multiplied by 12 hours per respondent.

[748] *See* 17 CFR 240.17a–5(d)(1)(i)(B).

[749] Rule 17a–5 PRA Supporting Statement at 8.

[750] 43 respondents multiplied by 7 hours per respondent.

[751] *See* 17 CFR 240.17a–5(d)(6).

[752] Rule 17a–5 PRA Supporting Statement at 8.

[753] 43 respondents multiplied by 0.5 hours per respondent.

[754] *See* 17 CFR 240.17a–5(e)(4).

[755] Rule 17a–5 PRA Supporting Statement at 9.

[756] 43 respondents multiplied by 5 hours per respondent.

[757] 17 CFR 240.17a–5(f)(2).

[758] Rule 17a–5 PRA Supporting Statement at 9.

[759] 43 respondents multiplied by 2 hours per respondent.

[760] Registered government securities dealers are required to comply with Rule 17a–11, subject to the modifications enumerated in 17 CFR 405.3. *See* 17 CFR 405.3.

[761] For the previously approved estimates, *see* ICR Reference No. 202107–3235–023 (conclusion date Oct. 1, 2021), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202107-3235-023* (''Rule 17a–11 PRA Supporting Statement'').

[762] Rule 17a–5 PRA Supporting Statement at 7.

[763] Rule 17a–11 PRA Supporting Statement at 4.

[764] 43 respondents multiplied by 9% = approximately 4 respondents. 4 respondents multiplied by 1 hour per respondent.

timelines.[765] The CAT is designed to capture customer and order event information for orders in NMS securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single, consolidated data source. If an affected party does not trade NMS stocks, OTC equities, or listed options, then the affected party will not incur CAT-related reporting costs because the affected party does not trade securities that must be reported to CAT. Based on staff analysis (*see* section III.B.2.c), the 12 entities were identified through Form PF since we believe that any private funds employing trading strategies that would fit the final rules' qualitative standard, as adopted, would likely report them as HFT. However, since reported HFT may apply to a broader set of activities than the final rules' qualitative factors, the actual number of affected funds may be less than 12. However, for purposes of this PRA, we conservatively estimate that up to 12 entities could be required to submit order information to CAT.[766]

The Commission recognizes that broker-dealers may insource or outsource CAT data reporting obligations.[767] The Commission believes all 12 of the respondents that may be required to submit order information to CAT would likely strategically decide to insource their data reporting functions as a result of their high level of trading activity.[768] The Commission estimates that the average initial burden associated with implementing regulatory data reporting to capture the required information and transmit it to the central repository in compliance with Rule 613 for each respondent to be approximately 14,490 initial burden hours,[769] totaling an initial burden of 173,880 hours for these respondents.[770]

After a respondent establishes the appropriate systems and processes required for collection and transmission of the required information, the Commission estimates that Rule 613 imposes ongoing annual burdens associated with, among other things, personnel time to monitor each respondent's reporting of the required data, maintenance of the systems to report the required data, and implementing changes to trading systems that might result in additional reports.[771] The Commission believes that it would take each respondent approximately 13,338 burden hours per year[772] to continue to comply with Rule 613, totaling an annual ongoing burden of 160,056 hours for the respondents.[773]

C. Paperwork Reduction Act Costs

In addition to the hour burdens associated with these rules, there may also be external costs associated with the paperwork burdens imposed by these rules.

1. Costs Associated With Rule 15c3–1 Paperwork Burden

Broker-dealers that file consolidated financial reports must obtain an opinion of counsel in accordance with appendix C to Rule 15c3–1.[774] The Commission indicated, when this rule was proposed, that it believed there will not be any respondents that are required to register as a result of the proposed rules that will obtain an opinion of counsel to file the consolidated financial reports as required under appendix C to Rule 15c3–1. We received no comment on this issue, and the Commission does not anticipate that respondents will incur any capital or start-up costs, nor any additional operational or maintenance costs, to comply with the collection of information under Rule 15c3–1.

2. Costs Associated With Rule 15c3–5 Paperwork Burden

The Commission estimates that the average ongoing external hardware and software expenses relating to the paperwork burden associated with Rule 15c3–5 would be approximately $20,500 per respondent,[775] for a total annualized external cost for all respondents of $881,500.[776]

3. Costs Associated With Rule 17a–4 Paperwork Burden

The Commission estimates that the average broker-dealer spends approximately $5,000 each year to store documents required to be retained under Rule 17a–4.[777] Accordingly, the Commission estimates that the annual reporting and recordkeeping cost burden for the respondents to be $215,000.[778]

4. Costs Associated With Rule 17a–5 Paperwork Burden

The Commission estimates that Rule 17a–5 causes a broker-dealer to incur an annual dollar cost to meet its reporting obligations. Those requirements that are anticipated to impose an annual cost are discussed below.

Annual Reports: The Commission estimates that postage costs to comply with paragraph (d) of Rule 17a–5, impose on broker-dealers an annual dollar cost of $7.75 per firm,[779] resulting in a total annual cost for the respondents of approximately $333.[780]

Exemption Report: A broker-dealer that claims it was exempt from Rule 15c3–3 throughout the most recent fiscal year must file an exemption report with the Commission on an annual basis.[781] The cost associated with an independent public accountant's review of the exemption report is estimated to create an ongoing cost of $3,000 per non-carrying broker-dealer per year,[782] for a total annual reporting cost of approximately $129,000.[783]

SIPC Annual Reports: The Commission estimates that postage costs to comply with paragraph (d)(6) of Rule

[765] *See* 17 CFR 242.613(c).

[766] Additionally, we acknowledge that fewer entities may actually need to report to CAT because some entities identified in the data as engaging in equity strategies could be effecting transactions in futures rather than transactions in NMS securities.

[767] For the previously approved estimates, *see* ICR Reference No. 202306–3235–008 (Oct. 13, 2023), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202306-3235-008* (''2023 CAT PRA Supporting Statement'').

[768] *See* 2023 CAT PRA Supporting Statement at 37.

[769] The 2023 CAT PRA Supporting Statement largely eliminated the initial burden estimate; stating that as the CAT reporting obligations have been in place for some time, the Commission assumes that the initial one-time hour burdens associated with implementation of the system have already been incurred. However, the 12 respondents may incur these initial burdens. The prior burden estimates (which include a description of the initial burdens) can be found at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201911-3235-003* (''2020 CAT Supporting Statement'').

[770] 12 respondents multiplied by 14,490 hours.

[771] *See* 2020 CAT PRA Supporting Statement at 39.

[772] *Id.* at 39–40.

[773] 12 respondents multiplied by 13,338 hours.

[774] Rule 15c3–1 PRA Supporting Statement at 11.

[775] Rule 15c3–5 PRA Supporting Statement at 6.

[776] 43 respondents multiplied by $20,500 per respondent.

[777] Rule 17a–4 PRA Supporting Statement at 13. Costs include the cost of physical space, computer hardware and software, etc., which vary widely depending on the size of the broker-dealer and the type of storage media employed. *Id.*

[778] 43 respondents multiplied by $5,000 per respondent.

[779] Rule 17a–5 PRA Supporting Statement at 15.

[780] 43 respondents multiplied by $7.75 per respondent.

[781] *See* 17 CFR 240.17a–5(d)(1)(i)(B).

[782] Rule 17a–5 PRA Supporting Statement at 16.

[783] 43 respondents multiplied by $3,000 per respondent.

17a–5 impose an annual dollar cost of 50 cents per firm registered with SIPC as a SIPC member broker-dealer [784] totaling, an estimated cost burden for the respondents of $21.50.[785]

SIPC Annual General Assessment Reconciliation Report or Exclusion from Membership Forms: The Commission estimates that postage costs to comply with paragraph (e)(4) of Rule 17a–5 impose an annual dollar cost of 50 cents per firm.[786] The Commission estimates that the respondents will file with SIPC a report on the SIPC annual general assessment reconciliation or exclusion from membership form, such that the estimated annual cost burden totals $21.50.[787]

Statement Regarding Independent Public Accountant: The Commission estimates that postage costs to comply with paragraphs (f)(2) and (3) of Rule 17a–5, impose an annual dollar cost of 50 cents per firm.[788] Accordingly, the Commission estimates that a cumulative total cost of $21.50 per year.[789]

5. Costs Associated With Rule 613 Paperwork Burden

The Commission estimates that each of the 12 respondents that may engage in effecting transactions in NMS securities will, on average, incur approximately $450,000 in initial costs for hardware and software to implement the systems changes needed to capture the required information and transmit it to the central repository, an additional $9,500 in initial third party costs, and an additional $250,000 in costs to implement the modified allocation timestamp requirement,[790] totaling a cumulative initial cost of $8,514,000 for the respondents.[791]

After each respondent has established the appropriate systems and processes, the Commission believes that Rule 613 imposes ongoing annual burdens associated with, among other things, personnel time to monitor each respondent's reporting of the required data, maintenance of the systems to report the required data, and implementing changes to trading systems that might result in additional reports to the central repository.[792] The Commission estimates costs for each respondent, on average, of approximately $80,000 per year to maintain systems connectivity to the central repository and purchase any necessary hardware, software, and other materials, an additional $1,300 per year in third party costs, and an additional $29,167 per year to maintain the modified allocation timestamp requirement,[793] totaling an estimated a cumulative annual ongoing cost of $1,325,604 for the respondents.[794]

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) of the Administrative Procedures Act (''APA''),[795] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of the rulemaking on ''small entities.'' [796] Section 605(b) of the RFA [797] states that this requirement shall not apply to any proposed rule or proposed rule amendment which, if adopted, would not have a significant economic impact on a substantial number of small entities.[798]

The Commission received one comment on this certification.[799] The commenter stated that the Commission should consider as part of its regulatory flexibility analysis that requiring a new category of registrants (*i.e.,* funds) to register as dealers under the proposed rules would require FINRA to provide new registration categories.[800] For the reasons described below, the final rules will not have a significant economic impact on a substantial number of small entities; nor does the Commission believe that there is a correlation between the regulatory flexibility analysis and the particular issue that the commenter raised.

As stated in the Proposing Release, the RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [801] The Commission's rules define ''small business'' and ''small organization'' for purposes of the RFA for each of the types of entities regulated by the Commission.[802] A ''small business'' and ''small organization,'' when used in reference to a person other than an investment company, generally means a person with total assets of $5 million or less on the last day of its most recent fiscal year.[803]

The final rules would not apply to persons that have or control total assets of less than $50 million.[804] Therefore, because small businesses and small organizations with total assets of $50 million or less would not meet the requirements of the final rules, the final rules would not have a significant economic impact on a substantial number of small entities.

For the foregoing reasons, the Commission certifies, pursuant to section 605(b), that the final rules will not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

VI. Other Matters

Pursuant to the Congressional Review Act,[805] the Office of Information and Regulatory Affairs has designated these rules as a ''major rule,'' as defined by 5 U.S.C. 804(2).

If any of the provisions of these final rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Statutory Authority

The Commission is adopting Rules 3a5–4 and 3a44–2 pursuant to authority set forth in sections 3 and 23 of the Exchange Act (15 U.S.C. 78c and 78w).

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[784] Rule 17a–5 PRA Supporting Statement at 16.

[785] 43 respondents multiplied by $0.50 per respondent.

[786] Rule 17a–5 PRA Supporting Statement at 16.

[787] 43 respondents multiplied by $0.50 per respondent.

[788] Rule 17a–5 PRA Supporting Statement at 17.

[789] 43 respondents multiplied by $0.50 per respondent.

[790] *See* 2020 CAT PRA Supporting Statement at 63–64.

[791] 12 respondents multiplied by (($450,000 in external hardware and software costs) + ($250,000 to implement the modified allocation timestamp requirement) + ($9,500 initial third party/outsourcing costs) = $709,500).

[792] *See* 2020 CAT PRA Supporting Statement at 66.

[793] *Id.*

[794] 12 respondents multiplied by (($80,000 in external hardware and software costs) + ($29,167 to maintain the modified allocation timestamp requirement) + ($1,300 ongoing external third party/outsourcing costs) = $110,467).

[795] 5 U.S.C. 603(a).

[796] Although section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small entity'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this rulemaking, are set forth in Rule 0–10 under the Exchange Act. *See also* Exchange Act Release No. 18451 (Jan. 28, 1982), 47 FR 5215 (Feb. 4, 1982) (File No. AS–305).

[797] 5 U.S.C. 605(b).

[798] *Id.*

[799] *See* ABA Comment Letter.

[800] *See supra* section II.B.3.

[801] 5 U.S.C. 601(6).

[802] Exchange Act Rule 0–10 contains applicable definitions.

[803] *Id.*

[804] *See* Rules 3a5–4(a)(2)(i) and 3a44–2(a)(2)(i). *See also* section II.B.3.

[805] 5 U.S.C. 801 *et seq.*

Text of Final Rules

List of Subjects in 17 CFR Part 240

Securities dealers, Government securities dealers.

For the reasons set out in the preamble, the Commission is amending title 17, chapter II, of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

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

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78j–4, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 2. Add § 240.3a5–4 to read as follows:

§ 240.3a5–4 Further definition of ''as a part of a regular business'' in connection with certain liquidity providers.

(a) A person that is engaged in buying and selling securities for its own account is engaged in such activity ''as a part of a regular business'' as the phrase is used in section 3(a)(5)(B) of the Act (15 U.S.C. 78c(a)(5)(B)) if that person:

(1) Engages in a regular pattern of buying and selling securities that has the effect of providing liquidity to other market participants by:

(i) Regularly expressing trading interest that is at or near the best available prices on both sides of the market for the same security and that is communicated and represented in a way that makes it accessible to other market participants; or

(ii) Earning revenue primarily from capturing bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interest; and

(2) Is not:

(i) A person that has or controls total assets of less than $50 million;

(ii) An investment company registered under the Investment Company Act of 1940; or

(iii) A central bank, sovereign entity, or international financial institution.

(b) For purposes of this section:

(1) The term *person* has the same meaning as prescribed in section 3(a)(9) of the Act (15 U.S.C. 78c(a)(9)).

(2) A person's *own account* means any account:

(i) Held in the name of that person; or

(ii) Held for the benefit of that person.

(3) The term *central bank* means a reserve bank or monetary authority of a central government (including the Board of Governors of the Federal Reserve System or any of the Federal Reserve Banks) and the Bank for International Settlements.

(4) The term *international financial institution* means the African Development Bank; African Development Fund; Asian Development Bank; Banco Centroamericano de Integración Económica; Bank for Economic Cooperation and Development in the Middle East and North Africa; Caribbean Development Bank; Corporación Andina de Fomento; Council of Europe Development Bank; European Bank for Reconstruction and Development; European Investment Bank; European Investment Fund; European Stability Mechanism; Inter-American Development Bank; Inter-American Investment Corporation; International Bank for Reconstruction and Development; International Development Association; International Finance Corporation; International Monetary Fund; Islamic Development Bank; Multilateral Investment Guarantee Agency; Nordic Investment Bank; North American Development Bank; and any other entity that provides financing for national or regional development in which the U.S. Government is a shareholder or contributing member.

(5) The term *sovereign entity* means a central government (including the U.S. Government), or an agency, department, or ministry of a central government.

(c) No person shall evade the registration requirements of this section by:

(1) Engaging in activities indirectly that would satisfy paragraph (a) of this section; or

(2) Disaggregating accounts.

(d) No presumption shall arise that a person is not a dealer within the meaning of section 3(a)(5) of the Act solely because that person does not satisfy paragraph (a) of this section.

■ 3. Add § 240.3a44–2 to read as follows:

§ 240.3a44–2 Further definition of ''as a part of a regular business'' in connection with certain liquidity providers.

(a) A person that is engaged in buying and selling government securities for its own account is engaged in such activity ''as a part of a regular business'' as the phrase is used in section 3(a)(44)(A) of the Act (15 U.S.C. 78c(a)(44)(A)) if that person:

(1) Engages in a regular pattern of buying and selling government securities that has the effect of providing liquidity to other market participants by:

(i) Regularly expressing trading interest that is at or near the best available prices on both sides of the market for the same security and that is communicated and represented in a way that makes it accessible to other market participants; or

(ii) Earning revenue primarily from capturing bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interest; and

(2) Is not:

(i) A person that has or controls total assets of less than $50 million; or

(ii) An investment company registered under the Investment Company Act of 1940; or

(iii) A central bank, sovereign entity, or international financial institution.

(b) For purposes of this section:

(1) The term *person* has the same meaning as prescribed in section 3(a)(9) of the Act (15 U.S.C. 78c(a)(9)).

(2) A person's *own account* means any account:

(i) Held in the name of that person; or

(ii) Held for the benefit of that person.

(3) The term *central bank* means a reserve bank or monetary authority of a central government (including the Board of Governors of the Federal Reserve System or any of the Federal Reserve Banks) and the Bank for International Settlements.

(4) The term *international financial institution* means the African Development Bank; African Development Fund; Asian Development Bank; Banco Centroamericano de Integración Económica; Bank for Economic Cooperation and Development in the Middle East and North Africa; Caribbean Development Bank; Corporación Andina de Fomento; Council of Europe Development Bank; European Bank for Reconstruction and Development; European Investment Bank; European Investment Fund; European Stability Mechanism; Inter-American Development Bank; Inter-American Investment Corporation; International Bank for Reconstruction and Development; International Development Association; International Finance Corporation; International Monetary Fund; Islamic Development Bank; Multilateral Investment Guarantee Agency; Nordic Investment Bank; North American Development Bank; and any other entity that provides financing for national or regional development in

which the U.S. Government is a shareholder or contributing member.

(5) The term *sovereign entity* means a central government (including the U.S. Government), or an agency, department, or ministry of a central government.

(c) No person shall evade the registration requirements of this section by:

(1) Engaging in activities indirectly that would satisfy paragraph (a) of this section; or

(2) Disaggregating accounts.

(d) No presumption shall arise that a person is not a government securities dealer within the meaning of section 3(a)(44) of the Act (15 U.S.C. 78c(a)(44)) solely because that person does not satisfy paragraph (a) of this section.

By the Commission.

Dated: February 6, 2024.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–02837 Filed 2–28–24; 8:45 am]

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